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Tuesday, 10 December 2002

The DEPUTY PRESIDENT (Senator Hogg) took the chair at 2.00 p.m., and read prayers.

QUESTIONS WITHOUT NOTICE

Trade: Wheat Exports

Senator O’BIEN (2.01 p.m.)—My question is directed to Senator Hill, representing the Minister for Foreign Affairs and the Minister for Trade. Can the minister confirm that the single desk for wheat exports will be a negotiable item in discussions with the United States about the proposed free trade agreement? Is the government considering the option of providing a competitive domestic supply chain behind the single desk for wheat exports as a concession to the United States in these trade negotiations? What consultations have taken place with Australian grain growers about the role the single desk might play in the negotiation of a free trade agreement with the United States?

Senator HILL—That question obviously calls for detail a little beyond the normal questions without notice. Particularly in view of the sensitivity of the issues, I will refer it to the Minister for Foreign Affairs and get a considered response.

Senator O’BIEN—Mr Deputy President, I ask a supplementary question. Might I say I am surprised that Senator Hill does not have a brief on this very important matter. Whilst he is seeking additional information, perhaps the minister can inquire about and confirm whether the government has guaranteed single desk export marketing arrangements with AWB Ltd. If that guarantee has been given, what is the basis for using the export single desk arrangements as a bargaining chip in these negotiations?

Senator HILL—That is two further parts to the same question. I will add them to the question that I am already referring.

Drought

Senator PAYNE (2.02 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. In light of the announcement yesterday by the Prime Minister concerning the worsening drought situation, will the minister update the Senate on the measures being offered to assist farmers and rural communities?

Senator IAN MACDONALD—I thank Senator Payne for that question. I know she has a personal as well as a professional interest in the drought. Her family in the southern highlands is, like many other families on the land, experiencing real difficulties as a result of the very dry conditions. The federal government’s $1.2 billion package will help alleviate some of the more disastrous impacts of the drought and will allow farmers to replant when the drought eventually breaks. The package will also allow farmers to keep breeding stock alive in these very difficult periods so that, again, when things return to normal, breeding stock will be there to lead the charge back to a profitable rural Australia.

Money can never compensate for the effects of the drought, but the Commonwealth’s $1.2 billion dollars will go a long way towards helping out. All that is needed now is for the states to come on board with some help; then those in difficult circumstances will be much better able to cope. I mentioned that the New South Wales Farmers Association have followed along with this theme by saying:

At the very least, the State Government should extend its current drought measures across the entire state.

Obviously, the New South Wales government are not helping as they should and the New South Wales Farmers Association are calling upon them to help. The National Farmers Federation have said:

The Federal Government’s response to providing assistance to farmers—which now totals close to $1 billion, is commended. Given this substantial assistance, NFF calls on State Governments to clearly articulate their commitment to supporting drought affected farmers ...

Obviously, state governments are not doing it at the present time. I was pleased to see that Premier Peter Beattie, the Labor Premier of Queensland, has actually congratulated Mr Howard on his new drought package. Senators will be aware that the package consists of an extra $368 million, on top of the $360
million previously announced and the $400-plus million forgone in revenue that the Commonwealth did without to prop up the farm deposit scheme. Senators will also know that the new package announced by the Prime Minister includes an income subsidy for those affected farmers—an interest rate subsidy of five per cent or 50 per cent of what they have currently been paying. Of course, it is interesting to note that, generally speaking, the interest rates in the economy these days are what the interest rates would have been back in Labor’s days with the 50 per cent subsidy. That is how interest rates have fallen. That has helped with the overall ability of farmers to see this drought through. So there is that interest rate package there.

Where more than 80 per cent of the farmers in a particular state are in the drought deficiency category, the whole state will automatically be declared for relief. The criterion for this is a rain deficiency of one in 20 years over the nine months between March and November of this year. Even though some farmers do not fall into that category, they may be eligible for relief if the normal exceptional circumstances situation applies. But for the normal exceptional circumstances to apply the state governments have to put in the application. In Victoria we have not had one application to date for exceptional circumstances, and in my own home state of Queensland there has only been one application so far.  

Distinguished Visitors

The Deputy President—Order! I draw the attention of senators to the presence in the President’s gallery of Mr Bill Taylor, a former, distinguished member of the House of Representatives from Queensland and the current Administrator of Christmas Island and Cocos (Keeling) Islands. I welcome Mr Taylor on his return to Parliament House.

Questions Without Notice

Defence: Budget

Senator Conroy (2.07 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that the Mid-Year Economic and Fiscal Outlook released recently shows a total $505 million cut in Commonwealth expenditure on defence over the next three financial years since the budget in May? Given the Prime Minister’s claim that Defence spending needs to be increased, why does the MYEFO show spending in the next three years being cut back since the budget? As a result of those cuts, doesn’t Defence spending as a proportion of Commonwealth expenditure decline over the next three years?

Senator Hill—I also noticed that figure and asked the same question. The answer was basically that there were two factors involved.

Senator Conroy—Whom did you ask?

Senator Hill—I asked the accounting people in my department. The answer is that it is partly as a result of changes in accounting methodology and that it partly relates to the sale of certain assets. I was told that it does not in fact have the consequence suggested by the honourable senator.

Senator Conroy—Mr Deputy President, I ask a supplementary question. Minister, doesn’t the MYEFO document also state that a large component of the actual increase in Defence spending in the current year flows automatically from a change to the indexation? Doesn’t this additional funding merely compensate for inflation and represents no real increase in Defence spending?

Senator Hill—No, that is not right. As the honourable senator knows, this government is committed to a three per cent increase in real terms and is meeting its commitment, as is demonstrated in the budget figures. It is true that the department is compensated on an indexation basis for increases in contracts, according to a long-established formula. But, in terms of the extent to which the increased funding has been indicated to the public in the past, it still stands.

Small Business: Policy

Senator Knowles (2.10 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. Would the minister explain how the Howard government is promoting a more flexible and family-friendly work force in Australia’s small businesses? Is the minister aware of any alternative approaches and
what the impact of those alternatives would be?

Senator ABETZ—I thank Senator Knowles for her ongoing interest in small business policy. As my Liberal Western Australian colleagues would be especially aware, for some weeks now the government has been stating that changes to the industrial and workplace relations laws in Western Australia will have a devastating impact on Western Australian small businesses. The first concrete test of this was the recent Yellow Pages business index survey.

I was saddened but not surprised to read the headline ‘Small business unhappy’ in the West Australian newspaper story about the survey. According to that report, more than one-third of small businesses owned in Western Australia say that the state Labor government is working against them. Only 13 per cent of respondents in the Yellow Pages survey said the state Labor government was supportive. That is even lower than Mr Crean’s approval rating! Thirty-nine per cent said the state government worked against them. This is in stark contrast to the federal government, where the results show that small business support for federal government policy has in fact improved by five per cent. Small businesses are saying that the major reasons for the increase in small- and medium-enterprise support for the federal government are its policies and that it is trying to help small business. That is exactly what we are trying to do with our attempts to repeal Labor’s unfair dismissal laws and our attempts to protect small business from secondary boycott.

Labor have continually said that their industrial relations reforms would have no impact on small business. Well, let us hear from the small businesses. A recent article said:

Emily’s Country Kitchen is closing this month and Cafe Sails only opens during weekdays ... Dylans is preparing to by-pass the changes by using the Federal Australian Workplace Agreements, and Beachside Cafe pre-empted the changes and now predominantly employ staff as contract workers.

We have four small businesses, all prepared to have their names identified, saying the Western Australian Labor Party’s industrial relations laws are costing jobs.

Jean-Claude, who operates a small business in Subiaco, is reported as saying that the new industrial relations laws meant his staff were now covered by three awards instead of one. So, when the Labor Party talks about red tape, all they need to do is look in the mirror to see what they have done in Western Australia, where small business workers are now covered by three awards instead of one. The report goes on to say:

No amount of juggling the roster could avoid heavy penalty rates for overtime and weekend work ... Chez Jean-Claude opened in 1997 with a staff of four. Now 42 people work there.

It also says that customers have been told that prices would rise 15 per cent because of the higher costs. If you want to know what the Labor Party does for small business, look no further than Western Australia. Small businesses are closing; small businesses are sacking people. Labor’s anti small business policies are really antijob policies. Our small business policies are projob policies, and that is why we support small business.

Defence: Budget

Senator MARSHALL (2.14 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm press reports that his bid for an additional $1.5 billion in defence funding was recently rejected by cabinet? Didn’t cabinet agree with the recent Australian Strategic Policy Institute report which stated that Defence should not get any more money unless they can actually show they can spend it appropriately? Didn’t the report rightly note that the qualification of Defence’s accounts this year, and the massive accumulation of cash at hand at a time when Defence is supposed to be short, suggest that the financial problems of the portfolio go very deep? Haven’t ASPI stated that more effective Defence reform is the most urgent long-term defence policy challenge the government faces? Minister, haven’t six years of your government’s so-called reforms left Defence in an absolute financial mess?

Senator HILL—Quite the contrary. I invite the honourable senator to attend estimates committees in which these matters are examined in depth. They were duly exam-
ined in depth at the last meeting, and the outcome was that the committee was informed that the standard of reporting of the financial accounts has considerably improved in recent years. If the honourable senator, instead of taking a question from the questions committee, referred back to the Auditor-General’s report, he would see that that was acknowledged by the Auditor-General. It is true that there was one minor qualification to the accounts this year. That was explained in detail as well. It related to deficiencies in systems in the past by which values were not adequately recorded.

Senator Faulkner—What are you doing about this crisis?

Senator HILL—That was dealt with as well in the estimates committee. You might like to attend next time, as well. The bottom line is that the financial accountability of the department is improving, as its financial reporting is improving.

Senator Conroy—Three years ago you introduced accrual accounting.

Senator HILL—This Department of Defence is further advanced in terms of accrual accounting than any other defence department in the world. Instead of just knocking the bureaucrats, I suggest to the Labor Party that it treat the issue seriously, read the Auditor-General’s report, look at the improvements that have occurred in recent years, recognise that the money being spent by Defence for defence purposes is being spent well and recognise that the services that are provided by our Defence Force within that spending are first-class and in the national interest.

Senator MARSHALL—Mr Deputy President, I ask a supplementary question. Minister, this is the first time the Audit Office has qualified the Defence financial statements. Doesn’t this raise serious questions about the management of over $6 billion in assets? Why has financial management in Defence deteriorated to the point that its financial statements have to be qualified?

Senator HILL—If the senator had read the report before you asked the question. If you understood the level of reduction of the threshold, you would know why it might have occurred on this occasion. The Auditor-General said that the accounting of Defence has significantly improved in recent years. That is what is important, and I suggest to senators on the other side that, rather than just passing the questions around, they go back to the source material, learn what is the basis of the issue and then come up with a more useful question.

Arts: Film Industry

Senator RIDGEWAY (2.19 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Minister, on 14 November this year in this chamber Senator Kemp said that the government has ‘got the policy mix right to ensure a robust film production industry in this country’. Minister, do you stand by that comment when a closer examination of the production figures actually shows quite the opposite—namely, that the only real growth occurring in the Australian film industry is expenditure on foreign features which are being made in Australia? Isn’t it true that if you take out the foreign-financed features there has been very little change in the level of Australian feature film and television drama production over the last year?

Senator ALSTON—I am grateful to Senator Ridgeway for asking two questions on the arts in successive days. I hope Senator Kemp understands that it is never safe to leave the country for long when the parliament is sitting. I think he would have killed to have had two questions in two days. Unfortunately, as Senator Kemp would have been only too keen to point out, Senator Ridgeway does not quite appreciate that the Film Finance Commission annual report shows that 2001-02 was an exceptionally strong year for Australian feature films. Three FFC features, including Lantana, The Man Who Sued God and Rabbit Proof Fence, passed the critical $5 million at the box office and made it into the top 25 Australian films of all time. The Australian Film Commission’s production survey showed that the number of locally produced features in-
creased to 30 in 2001-02 from 26 the previous year.

I think it has to be appreciated that it has been a pretty difficult year for film around the world. For example, we have seen a substantial reduction in local production in Canada, despite the fact that they have had a very generous film offset scheme which is designed to attract a lot of the runaway production from Hollywood, and California more broadly. I think our industry has stood up remarkably well. The other point that is worth making is that one should not simply regard Australian films—films about Australia by Australians—as the sole determinant of the success or prosperity of the Australian film industry. The whole reason that state governments have supported the Warner Bros facility on the Gold Coast or the Fox Studios in New South Wales, and why Mr Bracks has been playing lip-service to the need to provide funding for a third film production facility in the Docklands, is that an industry in this country that is not solely dependent upon Australian producers and Australian directors but that can accommodate the world’s best is a much healthier industry because it provides a lot more opportunities for employment for up-and-coming artists, producers, film crews and all of those who very much appreciate the benefits of a wider, export focused industry.

What we have seen in this country in recent years is that we have been able to improve on both fronts. Certainly we are very popular by world standards, and places like Ireland have done their best to try to undercut us. But our film offset announcement of September 2001, together with the $93 million that we provided for the film industry, very much addressed the needs of all the local film bodies and received an overwhelmingly positive reception because it did hit all the right buttons. So the government is entitled to be proud of what it is doing to support the industry. But ultimately, of course, it depends very much upon the creativity and the skills of those in a sector which is notoriously cyclical. So you cannot expect to be world’s best every year but I think we are doing pretty well.

Senator RIDGEWAY—Mr Deputy President, I ask a supplementary question. I thank the minister for that answer. Minister, let us take into account that for 2001-02 the figures show that the level of Australian feature film production was boosted by two high-budget fully foreign financed feature films, The Crocodile Hunter and Swimming Upstream. These two films alone boosted the growth figure by 60 per cent from $82 million to $131 million. Minister, if the government is supportive of the film industry, why is the government still trying to rethink how it can reallocate the $16 million that was dedicated to the Film Licensed Investment Company Scheme, or FLICS? Isn’t it also true that in July of this year the investment period under the FLICS scheme expired and no new films have been able to qualify to apply for licences under this scheme? When will the government restore the $16 million to the film industry?

Senator ALSTON—There are a number of vehicles that are now available, including FLICS, to try and accommodate the increased level of interest and demand. As you know, there have been a couple of FLICS projects that have attracted a fairly significant degree of interest, but it is a very narrow focus to simply say that, unless these are Australian films in every respect, we are not really interested or we do not support the industry. The industry is a very substantial one, not just in respect of the production sector but also in terms of the postproduction sector. We are world’s best practice: a lot of Hollywood studios use our postproduction sector here, and we are trying to find ways of providing more opportunities for them to aggregate demand and get some of that broadband traffic across the Pacific so that we can provide even more services. The last thing we want to do is to regard the industry as simply a question of, ‘How many Australians can we employ tomorrow in wholly Australian made films?’ That is not what it is all about. Australians will benefit greatly—(Time expired)

 Defence: Budget

Senator CHRIS EVANS (2.25 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that in
the year 1999-2000 the budget for military equipment acquisitions in Defence was $3.6 billion, allowing for foreign exchange supplementation? Can the minister also confirm that in the last two years this figure has dropped to just $2.5 billion and then $2.2 billion? Doesn’t this represent a massive cutback to spending on military equipment over the last two years and, in real terms, wasn’t the amount spent last year the smallest capital budget in five years? Minister, hasn’t this contributed to the run-down in equipment reported so critically in the department’s annual report?

Senator HILL—The white paper of 2000 committed to a significant increase in capability through an enlarged acquisitions program over a period of 10 years. It actually went out beyond 10 years, but it dealt with 10 years in considerable detail. As I said a little earlier in this question time, in real terms it provided for a three per cent increase in each year. That, in my terms, is a substantial increase, not a reduction as suggested by the honourable senator, and the result across the three services will be a significantly improved capability at the end of that period. Even in the 12 months that I have been in the job, cabinet has approved some $2.5 billion of acquisition projects that were within the Defence Capability Plan set out in the year 2000 but which of course need to be approved on a project-by-project basis when they reach the acquisition stage. I hope that puts the honourable senator’s mind at rest.

This government is committed to providing the Defence Force with the capability they need for the future, and the program is well under way to achieve those goals.

Senator CHRIS EVANS—Mr Deputy President, I ask a supplementary question. I thank the minister for his answer, but I was drawing a comparison between what the white paper says and what his budget paper says and asking whether or not he is meeting the expectations in the department’s annual report? Current spending has fallen but that the capital projects in the pipeline have also been wound back over the last three years?

Senator HILL—They certainly have not. These questions or similar questions were asked by the honourable senator in the estimates committee and what was explained to him at that time is that the funding is ramped up over the period of 10 years. Basically, the program is put in place to achieve a certain enhanced outcome by the end of 10 years and, as the projects develop and the acquisitions take place, funding is ramped up. If we take, for example, the possible purchase of the joint strike fighter, we have committed at this stage to the design and development phase some $300 million. If the government ultimately goes to acquisition, it could be out to $12 billion. Naturally, there is a stepping up process as these projects develop, and if the honourable senator looks at it in that light he will see how wrong he is.

Environment: Water Management

Senator LEES (2.29 p.m.)—My question is to Senator Hill, the Minister representing the Minister for the Environment and Heritage. I ask the minister what progress was made last Friday at the COAG meeting toward establishing a nationally consistent policy for how water rights should be determined. Did the meeting discuss the need for the capacity as well as the health of our rivers to be determined before property rights to the water in them are determined?

Senator HILL—I was not present at the meeting, obviously, but I understand an agreement was not reached. Not surprisingly, the disagreement largely related to the issue of who should pay. We saw how difficult it was to get the state Labor premiers to the line on hand gun control. In relation to paying for what is a primary responsibility of theirs—that relating to natural resources—it proved to be even more difficult.

Senator Carr—This is very longwinded.

Senator HILL—Actually I have three minutes.

Senator Carr—To say you don’t know? Why don’t you say, ‘I have three minutes to say I don’t know’?
Senator HILL—The difference is I am suspecting the honourable senator who asked the question is interested in the issue, which is more than you would ever get from the Australian Labor Party. When you look at their record in relation to water management and natural resource management, it is deplorable. Certainly, from my discussions with the Prime Minister subsequent to the meeting, the feeling was that some progress was being made but, in determining the issue of what legal right should apply to particular water interests, there is still a considerable way to go. As I indicated before I was rudely interrupted by Senator Carr, there is an even further distance to travel in relation to the issue of who will meet the funding responsibility. It is primarily a state responsibility to do so; the Commonwealth has always said that it is prepared to support the states in good natural resource outcomes, but it is important that the states pick up their primary responsibility.

Senator LEES—Mr Deputy President, I ask a supplementary question. If we could put to one side at the moment who is going to pay—I do understand that the Commonwealth, however, will be putting in some of the money—does the federal government believe that a national approach to how water rights are determined is the best way to proceed, given that in the Murray-Darling Basin in particular decisions made upstream will very much affect the minister’s home state of South Australia? Does the federal government agree that entitlements, or water allocations, should be allocated in direct proportion to the percentage of water that is able to be taken out of the river after environment flows have been calculated?

Senator HILL—We have always said that the best approach is to determine what is needed to be retained for good environmental and ecological outcomes and determine from that what can be taken for other legitimate objectives. The problem is, of course, that we are not starting with a clean sheet of paper; we are starting with river systems that are overutilised. It is an issue of needing to claw back what is necessary to sustain the health of the natural systems. That is obviously much more complicated.

On the issue of a national system, our approach has been through the previous COAG direction to seek consistency across the nation, although not to dictate one national scheme. Those of us who have advocated cooperative federalism are still hopeful that it will ultimately work. But, unfortunately, in relation to good water outcomes in Australia, it has not worked as successfully as we would like. (Time expired)

Defence: Budget

Senator LUDWIG (2.33 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that over the last four years the budget for consultants and professional services in Defence has blown out from $84 million to $280 million? How can the government justify spending $280 million in 2001-02 on consultants and professional services? Doesn’t this represent 30 per cent of the total civilian salary bill? How many of these people are in fact ex-Defence employees who were made redundant a few years ago and are now employed doing the same work at a far greater cost to the taxpayer?

Senator HILL—Consultants are of course listed in the annual report, and the honourable senator is able to look at the detail of who is being given the consultancies. If he wanted to ask about any specific consultancy, the appropriate place would obviously be the estimates committee. In relation to an overall increase, I do not think that that is surprising in view of the sophistication of the platforms that are being acquired under the present acquisition program and the desire to make the best decisions according to the technical knowledge that is necessary. I looked at the consultants and I have to say I was pleased that Defence was down the list in terms of consultancies across government departments as a whole. I suspected that it may even have been higher than it was in view of the task that has to be done. Therefore, in summary, the honourable senator can get the information from the annual report, he can ask specific questions in relation to any particular consultancy and he can satisfy himself that taxpayers’ money is being well spent.
Senator LUDWIG—Mr Deputy President, I ask a supplementary question. Minister, how is it that the government can find $280 million to spend on consultants and professional services in Defence but it will not spend enough on ammunition to allow troops to train properly?

Senator HILL—You have to wonder, if the ADF does not have bullets, how well it is doing in the field. Its operational record is outstanding. When these questions were asked some time ago, I thought we had put the honourable senator’s mind to rest that in fact the ADF is provided with the resources in terms of munitions that are necessary for training, for operations and for war stocks that are kept for the events that we hope will never occur.

Arts: Government Initiatives

Senator TCHEN (2.36 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Communications, information technology and the arts are all areas in which Australian talents and enterprises have excelled under the splendid leadership of Howard government ministers. Could the minister outline to the Senate the Howard government’s particular commitment to the arts and Australia’s cultural institutions? Further, is the minister aware of any alternative policies in this area?

Senator ALSTON—I am indebted to Senator Tchen for his astuteness and his interest in cultural events. He obviously recognises talent and I will pass that on to Senator Kemp in due course. As I was in the process of explaining to Senator Ridgeway not so long ago, $93 million for the film industry plus world’s best practice tax offsets is not a bad start. But, of course, our major review of the performing arts sector ultimately involved $45 million from the federal government, together with contributions from all of the overwhelmingly Labor state governments. We welcome that and I think it was a very big step forward in stabilising a number of those companies, some of which were a bit unsteady.

Over the last 6½ years, the coalition government’s track record in the arts has been a very impressive one. We have put $151 million, for example, into the National Museum—on time, on budget. Again, it is very good value for money in terms of a new structure. You might remember that this was the same National Museum that Labor went to the 1993 election promising to build and, as soon as they got into government, what did Mr Keating say? He said it was a mausoleum on the banks of Burley Griffin and he was not interested. That was par for the course; we all knew that. Whatever it takes to get there but, once you get there, who cares? We used the $1 billion Federation Fund for some very important capital contributions to the National Gallery of Victoria; to a number of regional art galleries around Victoria; to the National Portrait Gallery, into which we breathed new life; and to the National Institute of Circus Arts, which has been established. So it is a pretty impressive track record. I think it is recognition of the fact that the arts community understands that Labor posture but we deliver.

Labor have had a very consistent track record in this area. When they thought they were going to lose the 1993 election, Mr Keating actually said, in the depths of despair, ‘What have we done for the arts community? Not much.’ Everyone says Labor is for the arts but Keating said, ‘Not much. So once we get back, if we ever get back, we will put some money on the table.’ So they did, for Creative Nation, which turned out to be more about multimedia and Mr Keating’s indulgences than about anything to do with delivering to the arts community. Do you remember the Keatings—$700,000 to the Keating family’s personal pianist? Their idea of an arts policy was to wait until the upcoming election and round up a few people in the arts community to wave these placards saying ‘Arts for Labor’. That was their idea of an arts policy.

Senator Sherry—we were elected in 1993 and you’ve never forgotten it.

Senator ALSTON—No, you have tried it since, with singular lack of success. So it is a very stark contrast, because the arts community pay on performance. They do not pay on grandstanding. If we just look at Labor’s political commitment to the arts, they had
eight arts ministers in seven years prior to losing government. What have they had since then?

Senator Faulkner—All of them good.

Senator ALSTON—You are about the only one who didn’t get the job. Since the election they have had Carmen Lawrence, Bob McMullan, Duncan Kerr, Bob McMullan, Carmen Lawrence again and now Bob McMullan again. Bob is quite a nice bloke and obviously he is prepared to be the default option. He does have some understanding and sympathy for the arts, but obviously no-one else would touch it with a barge pole. So now you have got this extraordinary combination of Treasury and the arts. Anyone in the arts community who is somehow apprehensive about reviews ought to imagine what would happen if you had that sort of arrangement, but presumably it is pro tem until they can find someone else to put their hand up. They all knew Carmen Lawrence was going. (Time expired)

Defence: Budget

Senator CHRIS EVANS (2.41 p.m.)—My question is directed to Senator Hill, the fourth Minister for Defence in six years. Can the minister confirm that the $1.5 billion project to upgrade the Navy’s six guided missile frigates is, even on the most optimistic projections, over two years behind schedule, with the first ship not due to complete its upgrade until at least 2005? Can the minister also confirm that the oldest guided missile frigate, HMAS Adelaide, will not finish its upgrade until at least 2006 and yet will be taken out of service in 2013? Will this not mean $250 million of taxpayers’ money will be spent upgrading HMAS Adelaide just seven years before the end of its 35-year service life? Minister, in view of the continuously increasing delays, aren’t Australian taxpayers entitled to ask serious questions about the viability of this $1.5 billion project?

Senator Hill—The project is about two years behind time, but it is believed that that can be pulled back to about 18 months. As the honourable senator would know, in relation to that part of the project that involved enhancement of the combat system there were significant difficulties with the subcontractor. In the end, ADI, the principal contractor, took back the task and, so far, work is progressing satisfactorily. There will be a major assessment in relation to the combat upgrades in about February of next year. So it is another of these projects where there have been historical difficulties but, largely, they have now been arrested and significant progress is being made. The ships are designed to increase their capability, particularly in relation to air defence, and to operate up until the introduction of a new air defence destroyer. So that is the timetable in relation to their life and the time at which they will be taken out of commission to be followed by a new and even more capable ship.

With regard to the FFGs, the oldest of them will not be upgraded to the same level, particularly in relation to the replacement standard missile. So it is an important project because they do have a unique capability within the Navy. They do need to be upgraded, as the task has changed. That is taking place. It is a highly complex project and I am pleased that it is being conducted within Australia and that a company such as ADI has got the contract. They have had difficulties—in this instance, principally with a United States subcontractor—but we now believe they are making reasonable progress.

Senator CHRIS EVANS—Mr Deputy President, I ask a supplementary question. I thank the minister for his answer. I would like some further information on his answer, in which he said that the older ones will not be upgraded to the same level. Is that a more recent decision, and what does that mean for their capability and the cost of the project? Given that most of the FFGs will gain less than 10 years additional service as a result of the upgrade, has the minister at least begun to examine alternative options in case the project becomes unviable because of further delays? It is my understanding that it is at least two years and eight months behind now. I heard your expression of confidence, but have you examined alternative options in case the project begins to look unviable, given the limited life of the ships?

Senator Hill—I reviewed the project only about a week ago with the Navy and the Defence Materiel Organisation. Their advice
to me was two years but, as I said, they believe that it can now be pulled back to 18 months. I thought that I would explain that the reason for not necessarily upgrading all ships to the same level is that they will be phased out as the new, more capable ships are introduced. We obviously do not wish, and cannot afford, to spend more money than we need to achieve the capability that is required.

Employment: Child Labour

Senator CHERRY (2.46 p.m.)—My question is to the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware that the International Labour Organisation’s convention 182, adopted in June 1999 and calling for immediate action to ban the worst forms of child labour, has been ratified by 132 countries but not by Australia? With the ILO estimating that there are 250 million working children worldwide, what is the government’s objection to ratifying a treaty which seeks to remove children from work and provide for their education and social integration? With the USA, UK, China, New Zealand, Canada, Iraq, Iran and 125 other countries ratifying the convention, is it not embarrassing that Australia has not? Will you be following the lead of the Queensland government and establishing a national review of measures to prevent the exploitation of children in the labour force?

Senator ALSTON—Senator Cherry is right in saying that—

Senator Murray—Mr Deputy President, I rise on a point of order. I just heard Senator Abetz refer to the questioner as an idiot because he asked why Australia will not follow 142 other countries in ratifying the child labour convention.

The DEPUTY PRESIDENT—There is no point of order.

Senator ALSTON—The figure is actually 132, but never mind. Senator Cherry is right on that point, but he is also right in saying that the convention does relate to some of the worst forms of abuse of child labour. Clearly, whilst one can always quarrel about the level of protection and safety afforded to minors, it would be very surprising indeed if Australia were in the list of the top 100 countries who might be offending in that area. I will certainly obtain the information for Senator Cherry about the government’s position and why it has not seen fit to ratify the convention at this point in time.

I think that it is very interesting that Senator Cherry should ask about Mr Beattie’s review. Mr Beattie announced yesterday or today, I think, that the Commission for Children and Young People will improve the protection of Queensland children by reviewing ‘child labour’. That is an emotive term. It does have Dickensian overtones. Clearly no-one wants to see child exploitation or children being in danger in the workplace, but there is often a hidden agenda in these sorts of issues. The hidden agenda is really quite a simple one: it is the unions who want to see their members paid full adult wages, and they very much dislike young people earning a bit of income on the side, which can often assist them—

Opposition senators interjecting—

Senator ALSTON—I know that you have to cluck; that is the party line, isn’t it? But we understand these things as well as you do. Mr Beattie also pays lip-service to this concern that the ACTU is expressing: ‘We also share concerns that excessive work hours may be interfering with the education of some young people.’ As we know, some young people are getting real-life experience as well as useful money to support them for entertainment and for any other purposes.

I have to say that I was very impressed with Senator Murray’s comment when he went to the ACTU executive to talk to them about this very serious issue. As I recall, he said something like, ‘It’s like attending a meeting of alcoholics who are all sitting around a table arguing about the severity of the drink problem.’ Of course, when you ask anyone on the ACTU executive, ‘Who actually works a 38-hour week?’ none of them do by a country mile. They are all in there working as long as it takes to get the numbers to be able to ensure that they get into the Senate in due course when this lot have had enough. These guys are working flat out and, if you told them that 38 hours was enough and they had to go home, they would say,
‘No way. Once I get into the Senate I am happy to work 38 hours or less, but until I get that meal ticket I will be working very hard indeed.’ So we understand the sort of duplicity that is involved in these sorts of calls. I think that Senator Murray got it absolutely right. It is really a cover for paying more overtime for doing precisely the same amount of work. That is really what it is about.

So whilst I think one has to be very genuinely concerned to ensure that there is no exploitation or lack of safety in the workplace, particularly for young children, one also has to acknowledge that, if you asked the young children themselves, they would probably say that, by and large, they were very happy, thank you, in having the opportunity to gain that employment. They would probably also say that they were very unhappy at the attitude of the unions—and, of course, their proxies in this chamber—who are wanting to displace them, based on the theory that somehow more money will be paid for precisely the same work. We know that it does not work that way in real life, but some people have to go through this charade in order to get into the Senate. (Time expired)

Senator CHERRY—Now I wish I had sent the question to the other minister! Mr Deputy President, I ask a supplementary question. The Acting Children’s Commissioner yesterday in Queensland said:

Some of the reports we’ve been getting is we’ve got young people as young as 16 and 17 years old working in the adult entertainment industry and working in scanty clothing ...

There’s been reports of bullying of young people in the workplace and there’s also been a number of reports about young people having to work excessive hours.

Isn’t it the case that this government does need to look at the issue of child labour and at a national review of law, acknowledging the Queensland government’s concerns that these issues need to be examined at a national level, and sign the same treaty that great union lovers like the United States government have already signed?

Senator ALSTON—So you would like us to slavishly follow the US! We will take that advice on board. But in the meantime let me say to you that responsibility for the welfare of children lies overwhelmingly with the state governments. If the Queensland state government has all of these outrageous concerns that need to be addressed then it ought to do something about them. It should not just conduct another inquiry and run around the countryside presumably taking evidence from the Labor Party about how they are concerned about their own constituents not getting paid full wages; it should actually take some action. Presumably it has laws to deal with these issues and, if people are being forced to work in insalubrious circumstances or if they are being put at risk then one would hope that either there are laws in place or there should be laws in place. Either way, the Queensland government has responsibility for doing something about it.

Defence: Personnel

Senator KIRK (2.53 p.m.)—My question is to Senator Hill, the Minister for Defence. Can the minister confirm that over the last three years the number of Defence bureaucrats increased by 1,500 while the number of ADF personnel fell by more than 2,000, so now there are more bureaucrats and fewer troops? Given the personnel shortages in the ADF, why are you employing more civilians? How is it that this government can outsource many functions, pay for many more consultants and yet still increase the numbers of civilians in Defence? Doesn’t this show that the so-called reforms flowing from the Defence efficiency review have simply not delivered?

Senator HILL—I have to say no. But I do applaud this new found interest in defence on the part of the Labor Party. The next challenge of course will be to write a policy. They tried one in relation to a coast guard. The best they could do was pick up what Mr Beazley had written before the last election so they suggested spending another $600 million. But was it on defence? No. They said, ‘Create a new tier of law enforcement.’ We would have Customs and we would have Defence—the Navy—but that was not good enough. They wanted a new level of defence and they would call it a coast guard. They said they would give it three ships and helicopters and say that it could cover the whole
of the Australian coastline. A whole new system of administration and bureaucracy—$600 million, three ships—and it would have achieved next to nothing in terms of added value. If the Labor Party were really interested in defence, they could have said, ‘We will raise an extra $600 million and give it to the Navy.’ They could have given it the extra three ships. But no, that would require creative thinking. It was much easier—

Senator Chris Evans—I raise a point of order, Mr Deputy President: there is a question of relevancy. The minister was asked a question about the employment of large numbers of civilians and fewer troops in the ADF. He has now had three minutes discussing the coast guard. I am happy to discuss the coast guard with him, but that was not the question he was asked. If he is unable to help, he ought to take it on notice and get back to the senator.

The DEPUTY PRESIDENT—There is no point of order, Senator Evans. I remind the minister of the question and that there are two minutes and 37 seconds left in which to answer the question.

Senator HILL—Anyway, now that the Labor Party has found the Defence portfolio and it has decided that adopting Mr Beazley’s former policies which did not gain favour with the Australian people was unsuccessful, it may well now sit down and try for the first time for a long time to actually write a defence policy. Within that, it might wrestle with the issues of the appropriate size of the Defence Force and the appropriate size of the Defence bureaucracy necessary to support the Defence Force.

I said the honourable senator is wrong of course because the Defence Force now is increasing in numbers. I am pleased to say that recruiting is going exceptionally well, particularly in relation to Army and Air Force but Navy as well—and that was set out in the white paper. The only thing that is wrong in relation to the white paper is that recruitment is running ahead of the timetable set out in the white paper. In terms of increasing the sharp end of the Defence Force, which was the objective of this government, that is proving to be successful.

Senator Chris Evans interjecting—

Senator HILL—But it is true that if you are going to build greater capability and you have a major new acquisitions program then that has got to be serviced by Defence personnel. In some instances, it will require specialist consultants as well, Senator—you are learning what this is all about—and that has happened to some extent as well. I am sorry if the Labor Party believes that we are employing too many bureaucrats. I always thought that the Labor Party claimed to be on the side of the bureaucrats. If the Labor Party is now suggesting that we should take the knife to the bureaucrats in the Department of Defence, we could look at doing that. But we believe that employing those who are necessary to achieve the objective, which is a very capable Defence Force, is appropriate, and I am pleased to say we are succeeding in achieving that objective.

Senator Kirk—Mr Deputy President, I ask a supplementary question. Minister, why has the government sacked 3½ thousand civilians from Defence over the last five years at great cost only to refill the positions a few years later? Why is it that mismanagement in the portfolio remains an ongoing problem when the numbers of senior executives have jumped by 64 per cent in the last three years to an all-time high of 123?

Senator HILL—I guess only the Labor Party could talk on the one hand about sacking 3½ thousand civilians and on the other hand about employing an extra 2,000 civilians. It is very difficult to know just what the Labor Party is seeking through this particular question. What we are about on the government side is employing the labour force that is necessary to best achieve our outcomes. In relation to defence, that outcome is a military that can achieve the goals that we set for the Defence Force and a civilian bureaucracy that is able to support them in their necessary tasks. We believe—and you only need look at the record in terms of the operations of the ADF—that the department and the military personnel are working exceptionally successfully. Mr Deputy President, I ask that further questions be placed on the Notice Paper.
QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Nuclear Energy: Lucas Heights Reactor

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.00 p.m.)—On 9 December, Senator Forshaw asked me a question without notice about bushfires in the Sutherland Shire and about a competition being conducted to find a name for the replacement research reactor now under construction at the Lucas Heights Science and Technology Centre. I undertook to provide additional information and I seek leave to incorporate the following response in Hansard.

Leave granted.

The document read as follows—

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

The premise of the question and the supplementary question are incorrect. ANSTO works closely with emergency services agencies. On Thursday 5 December, emergency services agencies advised that, in order to facilitate traffic management on access roads in the area, non-essential personnel should leave the site early. The Lucas Heights Science and Technology Centre was not under direct threat from bushfires.

Contrary to the imputation by Opposition Senators, replacement research reactor construction contractors INVAP and the John Holland-Evans Deakin joint venture donated the prizes for the competition to name the reactor of their own volition, and were not responding to any contractual requirement.

Indonesia: Terrorist Attacks

Senator HILL (South Australia—Minister for Defence) (3.00 p.m.)—Mr Deputy President, Senator Faulkner and some other honourable senators have asked me questions about the Blick inquiry into security surrounding the bombings in Bali. Mr Blick has reported to the Prime Minister and I am able to table the public version of his report, which also includes the details of the task as assigned to him by the Prime Minister. While I do not want to debate the report, for the benefit of the Senate I can indicate that in paragraph 27 Mr Blick said:

Furthermore, even with the benefit of hindsight and knowledge of possible and likely perpetrators, the inquiry could not construe any intelligence, even intelligence not mentioning Bali, as possibly providing warning of the attack.

I seek leave to incorporate the document.

Leave granted.

The document read as follows—

BALI TERRORIST ATTACK OF 12 OCTOBER 2002

Report by the Inspector-General of Intelligence and Security

INTRODUCTION AND SUMMARY

Scope and method of inquiry

1. Shortly after the attack the intelligence and security agencies1 searched their records to ascertain whether there was any information that warned of the attack. The Director-General of ONA, who coordinated the search, reported to the Prime Minister that no material that specifically warned of the attack was identified.

2. The Australian Federal Police (AFP) conducted a similar search, with the same negative result.

3. Following media suggestions that there had been such intelligence, on 23 October 2002 the Prime Minister wrote asking me to:
   • review all relevant intelligence available to Australian intelligence and security agencies, and associated intelligence assessment processes, to establish whether there was any information that warned of the bomb attack in Bali on 12 October 2002; and
   • propose relevant recommendations in the light of my findings.

4. The intelligence and security agencies are not normally taken to include the AFP. In view of the possibility that the AFP might have been in a position to receive relevant intelligence I sought and obtained clarification from the Secretary of the Department of the Prime Minister and Cabinet that I should include the AFP in the inquiry.

5. The agencies all maintain detailed, searchable electronic records of the great bulk of the intelligence they receive. There are also, in some agencies, some hard copy records that are not converted to electronic form.

6. The inquiry identified approximately 170 search terms one or more of which would be likely to be contained in intelligence that
could have warned of the attack. They ranged from broad, obvious terms like “terrorism” and “Bali” to relatively obscure ones, such as aliases of possible perpetrators (the full list of terms is at Annex 1 to this report).

7. They included the terms that the agencies had used previously (see paragraph 1), as well as terms identified since the attack, such as names of suspects. More names were added, and fresh searches done, as investigations into the attack continued.

8. A team established for the purpose in each agency searched the agency’s electronic records back to 11 September 2001 using all these terms.

9. The inquiry supervised these searches and, where necessary, authorised modifications to take account of the agencies’ different information technology systems.

10. Each team identified and examined possibly relevant records listed as a result of the searches. The inquiry did likewise. Thousands of records were examined in this way.

11. Much intelligence is shared between the intelligence and security agencies. In the unlikely event, therefore, of one agency’s records not revealing the existence of a particular item of intelligence, this methodology would be likely to identify the item in the records of other agencies.

12. The inquiry also had direct access, from a computer terminal located in our office, to ASIS and DSD intelligence reports and conducted separate searches of those records as necessary.

13. The inquiry also examined each agency’s hard copy holdings. For this purpose it accessed subject indexes maintained by the agencies and perused files that appeared likely to contain intelligence warning of the attack if such intelligence existed.

14. It was possible that, notwithstanding the breadth of the searches, someone in an agency might recall seeing relevant intelligence. Each of the intelligence and security agencies, at my request, circularised staff asking that anyone who had seen or heard of, or who believed they may have seen or heard of, such intelligence, bring it to the notice of the agency or this inquiry. The AFP had previously taken similar action, without result, so I did not repeat the request there.

15. At the time of the searches referred to in paragraph 1, the agencies contacted cooperating overseas agencies that would have been likely to provide relevant intelligence. Each searched its records and confirmed that it did not have such intelligence and could not, therefore, have passed it to Australia.

16. The inquiry concluded that there was nothing to be gained by repeating the requests to overseas agencies, noting also that in the United States, the United Kingdom and New Zealand there had been official statements to the effect that no such intelligence was collected.

17. The Defence Imagery and Geospatial Organisation does not collect intelligence of the kind that would have forewarned of the Bali attack. At the start of the inquiry I confirmed with the Director that it had no such intelligence and that its collection activities would not have provided any. It was not necessary to do searches of the kind undertaken in the other agencies.

18. One agency has a number of electronic records of foreign language intelligence, collected shortly before the attack, that was not reported because on it did not meet the criteria for high interest intelligence at the time.

19. Under normal circumstances this material would have been discarded but the agency head decided, before the inquiry was announced, to retain the records in case they contain something significant. It is unlikely that they do, but to exclude the possibility the records will be examined in detail.

20. Rather than wait for that process to be completed, which will take some time, I have decided to report the results of the inquiry to date. A second and final report will be produced as soon as possible.

Results

21. The electronic searches resulted in thousands of “hits” on the various terms used. The nature of the searches, however, caused many records to appear multiple times on the lists generated.

22. A small proportion of these appeared, on the basis of the record summaries, to be possibly relevant. Nevertheless, the majority of the records were individually examined.

23. In the months before the attack there were numerous intelligence indications of possible terrorist activity, including activity in Indonesia, with foreign interests or foreigners as likely targets.

24. Annex 3 contains samples of intelligence records and assessments identified by the in-
25. One intelligence report, obtained from foreign liaison sources, mentioned various places, including Bali, as possible loci of terrorist activity should certain specified circumstances eventuate. Those circumstances did not eventuate in the time between receipt of the intelligence and the attack. I am advised that it is clear from the Bali investigation that these circumstances were not relevant to the attack.

26. No other intelligence was received that specified Bali as a likely or possible location for a terrorist attack.

27. Furthermore, even with the benefit of hindsight and knowledge of possible and likely perpetrators, the inquiry could not construe any intelligence, even intelligence not mentioning Bali, as possibly providing warning of the attack.

28. ASIO’s threat assessments during the period covered by the inquiry appropriately reflected the risks suggested by the available intelligence. Assessments by other agencies also contained realistic appreciations of the risks to Australian interests from action by extremists.

29. One person came forward as a result of the invitation to members of the agencies referred to at paragraph 14. This person did not, however, have any information about intelligence warning of the attack but wished to offer views on intelligence collection and analysis.

30. The inquiry noted, and where necessary followed up, instances of public allegations that warnings had been issued before the attack. None of these proved to have any substance.

31. The inquiry’s conclusion, therefore (subject to the further work mentioned in paragraphs 19-20), is that there was no intelligence warning of the attack.

Agency functions

32. It was apparent from media reporting in the period after the attack that there is much ignorance and confusion about the respective functions and responsibilities of the agencies in relation to terrorism.

33. The inquiry therefore prepared, on the basis of information provided by the agencies, a summary of these functions and responsibilities. It is Annex 2 to this report.

34. It is also evident that there is a perception in some quarters that the Inspector-General of Intelligence and Security is not sufficiently independent, or lacks sufficient powers, to conduct an inquiry of this kind. This is incorrect.

35. The Inspector-General is an independent office created under the Inspector-General of Intelligence and Security Act 1986. The Inspector-General is appointed by the Governor-General in Council for a fixed term. Although a minister can ask the Inspector-General to undertake an inquiry, the conduct of inquiries is entirely at the Inspector-General’s discretion and cannot be directed by anyone.

36. In conducting inquiries the Inspector-General has powers equivalent to those of a royal commission, provided by the Inspector-General of Intelligence and Security Act. These include the power to compel production of information and documents and to take evidence on oath. The Inspector-General has full and unfettered access to the premises, personnel and records of the intelligence and security agencies.

37. All the agencies provided complete cooperation and assistance during this inquiry. They each provided substantial dedicated resources to conduct the various search tasks that the inquiry required and they complied energetically and enthusiastically with all the inquiry’s requests.

Recommendations

38. The Prime Minister asked me (see paragraph 1) to propose relevant recommendations in light of my findings. I do not believe any recommendations are necessary.

1 Australia’s intelligence and security agencies are: The Office of National Assessments (ONA); The Australian Security Intelligence Organisation (ASIO); The Australian Secret Intelligence Service (ASIS); the Defence Signals Directorate (DSD); The Defence Intelligence Organisation (DIO) and the Defence Imagery and Geospatial organisation (DIGO).

Inspector-General of Intelligence and Security
December 2002
ANNEX 2
AGENCY RESPONSIBILITIES

ASIO
1. ASIO collects and evaluates intelligence relating to terrorism and provides advice and intelligence to government, other Australian agencies and cooperating agencies overseas.
2. ASIO maintains close cooperation with other Australian intelligence agencies, with the AFP and with state police services, participating in relevant inter-agency committees. It works closely with ONA in performing its assessment function. It also hosts a counter-terrorism coordination unit with officers from other agencies including the AFP. The purpose of the unit, which is advisory, is to ensure that no significant counter-terrorism investigation is hampered through failure to apply appropriate and available agency resources to its resolution.
3. ASIO is not just concerned with activity that occurs solely in Australia. It advises on and evaluates intelligence concerning terrorist activity overseas relevant to the protection of Australian interests. It tasks Australian intelligence collection agencies in relation to terrorist persons and activities overseas and maintains liaison with a wide range of overseas agencies through ASIO and other staff at Australian diplomatic missions.
4. Preparation of threat assessments, for which ASIO has sole responsibility in the field of terrorism, is an important ASIO function. ASIO provides the assessments, which it bases on the range of intelligence available to it, to relevant Commonwealth and State agencies. The Department of Foreign Affairs and Trade draws on these assessments in preparing travel advisory notices.

ASIS
5. ASIS obtains intelligence about the capabilities, intentions and activities of people and organisations outside Australia using human sources. It distributes the intelligence it obtains directly and that obtained from cooperating agencies overseas to government agencies according to their requirements and interests.
6. ASIS is not an assessment agency and does not seek to relate its intelligence product to other material or to provide analysis of developments overseas based on its product or other intelligence.

Australian Federal Police
7. The AFP has liaison officers in Indonesia working from the Australian embassy. Their previous roles were not primarily concerned with terrorism.
8. The passage of the counter-terrorism legislation has, however, led to the criminality associated with terrorism becoming a focus for the AFP.

DIO
9. DIO provides analysis and assessments of developments in regional countries related to stability, security, extremism and violence; and of the existence, nature, objectives and linkages of regional extremist and terrorist groups and in respect of weapons of mass destruction.
10. Its role in this respect is similar to ONA's, but with a specific defence orientation. There is close communication and cooperation between ONA and DIO.
11. DIO maintains whole-of-government expertise on, and provides assessments of, the size, structure, capabilities and modus operandi of foreign terrorist groups.
12. DIO also:
   (a) provides intelligence support for the planning and conduct of relevant Defence Force operations;
   (b) provides formal assessments of threats to military units and Defence Force personnel deployed overseas;
   (c) participates in whole-of-government arrangements relating to counter-terrorism;
   (d) advises departments on counter-proliferation measures; and
   (e) maintains a watch office, which alerts senior defence personnel and units to incidents and incoming information relating to terrorism.

DSD
13. DSD collects foreign signals intelligence, producing intelligence (Sigint end product) reports. While DSD’s primary focus of attention is in the region, it works closely with cooperating agencies overseas to determine linkages with terrorists in other regions.
14. DSD distributes the intelligence it collects and that obtained from foreign partners, in the form of Sigint end product reports, to government agencies according to their requirements and interests.
15. Like ASIS, DSD is not an assessment agency and does not seek to provide analysis of developments overseas based on its product or other intelligence.

ONA

16. ONA produces assessments of international political, strategic and, economic issues of significance to Australia. In performing this role ONA covers trends in international terrorism, especially as they affect Southeast Asia, and their effect on global and regional, political, strategic and economic environments, major terrorist incidents overseas, international reactions to terrorism and significant measures implemented by individual countries.

17. ONA has legislative responsibilities for coordinating and reviewing activities connected with international intelligence engaged in by Australia. It coordinates the setting of priorities for the Australian foreign intelligence community for assessment and collection through the National Foreign Intelligence Assessment Priorities process, involving approval by ministers, and through the National Intelligence Collection Requirements Committee.

18. ONA does not duplicate or compete with ASIO’s work on terrorism (for which see paragraphs 1-4).

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Defence: Budget
Defence: Personnel

Senator CHRIS EVANS (Western Australia) (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked by opposition senators today relating to the funding and administration of the Department of Defence.

I have moved this motion because it seems clear to me that the Minister for Defence does not have a grasp of the financial management issues in his portfolio and that he really struggled to come to terms with the very serious questions that were asked of him. He resorted to talking about a proposal for the coastguard and about how well our troops are doing. He effectively said, ‘Don’t worry about that; it’s all okay.’ The minister’s answers today reflected that he, like the department, is not on top of the financial management of Defence. The critics and former senior people in Defence are saying that the management of Defence is in very poor shape. This is not a view made up by the opposition; rather, it is a view adopted by a former deputy chief of the defence forces and a view contained in the ASPI report released the other day. It is also the view of the Audit Office, which actually saw fit to put a qualification on Defence’s financial reports last year.

It is true that Defence is under enormous operational strain at the moment and that our service men and women are doing an excellent job and performing very well under very difficult circumstances. There is no argument in Australian politics about that, and that is not the issue at stake. They have done tremendously well under very difficult circumstances. But, if we look at the financial management of Defence, if we look at the acquisitions made by Defence and if we look at a whole range of issues that go to the effective management of Defence, there are very serious question marks and very serious concerns. It is so bad that the report on the strategic review released by the Australian Strategic Policy Institute said:

More effective reform of Defence is the most urgent long-term defence policy challenge the Government faces.

It went on to say:

Defence reform is not just a matter of fiscal probity—it’s a matter of long-term strategic necessity.

ASPI has identified the major problem in Defence as its management and fiscal issues. That confirms the view expressed by Lieutenant General Des Mueller, who recently retired as the Deputy Chief of the Defence Force, and of course it confirms the judgment made by the Audit Office. We have a serious problem inside Defence. After almost seven years of the Howard government, after four ministers of defence and after so-called reform after reform after reform under different ministers promoting particular biases they held, we have very serious concerns about the ability of Defence management in this country to explain where the money has gone and whether in fact it is worth putting in more.
ASPI basically said in its report the other day that it is not worth putting any more money into Defence, because they would only waste it. That is a terrible indictment of the management of Defence and it is reflected in the minister’s inability to answer questions about that financial management and his inability to answer questions at estimates hearings about it. At estimates I spent a great deal of time trying to get the minister to explain where the extra money outlined in the white paper had gone, where the $500 million had gone. But the minister was unable to give us a satisfactory explanation about how the money had been spent.

We do know that, despite all the talk about the white paper, the actual money spent on equipment and capital projects has reduced, and it will keep reducing in the out years as well. The government said, ‘We’ve got this white paper and more money is going to go in,’ and Labor endorsed and supported that. But, when you look at the budget, the money is not there. It has not been spent on capital projects and it is not there for capital projects in the out years. But we do know, for instance, that there is $800 million in the bank account. While the troops are under enormous pressure and while there are serious concerns about issues like ammunition and the ability to train with live ammunition inside our Army, there is $800 million sitting in the bank. The troops are after $30 or $40 million extra for ammunition, yet the Department of Defence has $800 million in cash on the short-term money market at the same time as the minister is going to cabinet saying that he needs more money.

Something is very wrong. The Audit Office has said there is something very wrong, ASPI has said there is something very wrong and the former Deputy Chief of the Defence Force has said there is something very wrong. The minister today was unable to provide satisfactory answers about the management of financial matters inside Defence. This is a very serious public policy concern that needs to be addressed. The minister has to come to terms with it and we need some answers about where the money is going and whether we are getting value for money. Or are we going to have a further series of Sea-sprites and heavy torpedoes that will see Australian taxpayers’ money wasted for want of proper management? Will we see more terrible acquisition decisions taken that cost us millions of dollars for projects that are years late and that let down our troops?

Senator FERGUSON (South Australia) (3.07 p.m.)—I am amazed that Senator Evans would choose today to attack this government’s record in defence, particularly as he quoted ASPI’s view when speaking to his motion that the Senate take note of the answer given by the Minister for Defence. He has suggested that ASPI’s view confirmed things. I tell you that ASPI’s view is just that: it is a view. There are a variety of views within ASPI. They do not all concur, so to say that ASPI’s view confirms something is simply beyond imagination. I wonder if Senator Evans has ever taken the time to have a look at his own party’s record in defence. We heard Senator Kirk talking about a decrease in the number of personnel in the ADF while the money being spent on consultancies and bureaucrats was increasing. Let us have a look at Labor’s record. Its record on defence showed a lack of commitment to personnel, to funding, and to capability and management over 13 years. Over 13 years in office, the Labor Party cut 15,000 ADF personnel, including the disbanding of two full-time Army battalions made up of some 3,000 personnel. They have the hide to get up here today and talk about a lessening in the numbers of some 1,500 people in personnel. Two battalions were scrapped. It is just as well that Senator Evans is leaving the chamber because I am quite sure that the last thing that he wants to be reminded of is the record of Labor when they were in government and their attitude towards the funding and management of our Defence Force. Combat capability was run down; the two battalions that were scrapped to pay for a Ready Reserve initiative were nothing more than a financially flawed cost cutting exercise which was only designed to operate for 50 days. That is Labor’s record on defence and yet we have Senator Evans standing up here today criticising this government’s attitude towards Defence priori-
ties. Combat capability was run down with deficiencies identified by the Army’s own self-assessment which stated:

... units are not adequately prepared for combat ...
Army lacks sufficient combat power ...

... units are understaffed, poorly equipped and have low readiness levels.

That was the state of the Defence Force under the Labor government. This happened as a continuing process over 13 years. Defence spending under Labor was reduced from 9.4 per cent of total budget outlays before Labor to eight per cent in 1994-95, and inefficiency and mismanagement were rife. This is Labor’s record on defence and they have the hide to get up here in this chamber and question the efficient manner in which our Defence Force is being conducted today. The coalition has delivered the biggest increase in Defence funding for more than 20 years. Labor’s record was to decrease funding; the coalition’s record is to deliver the biggest increase in Defence funding for more than 20 years.

The white paper is a blueprint for the future security of Australia and for building a stronger and more reliable Defence Force. Look at what the coalition has achieved since it has been in government. It has helped to restore peace and security to East Timor under the United Nations operations that achieved very set objectives. It has tightened border security to address concerns such as illegal immigration, terrorism, drug trading, illegal fishing, piracy and quarantine infringement. It has improved pay and conditions for ADF personnel and it is committed to increasing Defence funding by an average three per cent per annum over the coming decade.

Labor try to criticise this government for what it has achieved in Defence. They made a flippant remark about having four ministers for defence since 1996. I am not sure whether my figures are entirely accurate but I seem to remember the Labor government having 11 ministers for immigration in 13 years. Immigration is the most important issue that has been confronting Australia for a long time. We have had one minister for immigration for all of our period in govern-

ment, and what an outstanding job he has done in conjunction with the Defence Force in making sure that we have secure borders and that we have a policy of border protection that is the envy of much of the world.

Senator LUDWIG (Queensland) (3.12 p.m.)—I want to take note of the same issue. Firstly, Senator Hill’s answer to my question, which was specifically in relation to consultants, missed the mark completely. We were looking for an answer from the government about what they have been doing with the Department of Defence. We found that they have not been able to support the troops on the ground at all. When you look at the Defence annual report to 30 June 2002, Defence held $835 million in cash—$800 million of which was held in interest bearing term deposits and was not available to pay off current debts, as claimed by the minister. This is well above the $313 million projected in the budget papers released in February this year.

So, in the five months from February to June, there was a $520 million increase in the projected cash holdings in the department. The department have been squirreling away their money; they have not looked at how they are going to support or help their troops on the ground. When asked about this massive jump, they could not give a valid reason and so they said nothing. They were completely at sea in trying to explain where they were going to spend the money and how they had accumulated that much cash. They admitted that the $835 million was over the needed $600 million, so there is a credibility gap.

The leaked report earlier this year about ammunition shortages in the Army noted that the government was saving approximately $80 million a year by not buying ammunition. If I have any idea, the troops on the ground would be sick of walking around saying ‘bucketful of bullets’ instead of using a machine gun. They would be fed up with it. When you look at the justification that $280 million went to consultants, that money could have been used to buy ammunition. Dry firing is no fun. Dry firing does not help train soldiers. It is a tool and an instrument, but it is not effective at the end of the day when you need experience on the ground.
The ammunition shortage was acknowledged in the latest Defence annual report, which noted that the readiness of many Army units has been compromised because of the shortage of ammunition. In addition, the annual report notes that many units are struggling to retain their capacity because of ageing equipment. The government was given an opportunity today to explain to the Senate why it was holding massive cash reserves, why it has been able to increase payments to consultants from $84 million to $280 million and why it has 30 per cent of the total civilian salary, but it was unable to explain satisfactorily. When we look at what is happening on the ground—the minister must be turning a completely blind eye to the issue—we find that the troops are not getting a fair go at all.

I recently visited 6RAR at Enoggera. I am sure that you, Mr Acting Deputy President Brandis, have been there as well. We find that there is a lack of IT training. We find that computer training for soldiers to help our field soldiers is lacking—it is not being provided for. That $800 million could have been used to support them. We know without doubt that they are keen, professional soldiers. There is no criticism directed at their keenness, their professional attitude, their ability to accept training or their ability to work effectively. But what they are lacking is a minister with some vision to ensure that they get the training and equipment that they need. When we look at even some of the basic issues—

Senator Hill interjecting—

Senator LUDWIG—Yes, we will talk about basic issues. Why don’t you go and find out what field equipment they need?

Senator Hill—I do.

Senator LUDWIG—If you knew that, you would be able to say, ‘If you’re going to mechanise an infantry battalion, you don’t want webbing at the back when you sit on a chair; you need front pouches and front webbing.’ Are you providing that? I don’t think so. You are making soldiers go out and buy their own equipment so that they can utilise it, sit in their seats and be an effective fighting force. Look at even some basic issues. Instead of ensuring that, say, 6RAR has maintained its operational capability—(Time expired)

Senator SANDY MACDONALD (New South Wales) (3.17 p.m.)—The Labor Party make a point of saying that there have been four coalition defence ministers in six years. I make the opening point that they have not had one defence minister in the last six years. We have had four very good defence ministers. The present Minister for Defence, Senator Robert Hill, is an outstanding minister. As somebody who is very interested in these matters in this chamber, I have a great deal of confidence in Senator Hill. I have confidence in his administration of his department. Furthermore, I have confidence in the Department of Defence. The proof of the pudding is in the eating. The Labor Party might have forgotten that. When the Department of Defence and the ADF are asked to do something, they do it. They give the government options and they carry out its tasks. That must be the most important thing for any military force anywhere in the world.

When we came to power—our proceedings are being broadcast, so it is nice to remind people of this—we had a $10 billion black hole and a momentum of Labor deficits of $96 billion that had been run up over the previous eight years. We were determined that, whilst we might manage the economy and balance the books in a way that allowed the government to do the things that needed to be done, one area of government expenditure that was going to be protected was defence. We have done that and we have stuck to our word on that. In recent times since the defence white paper we have increased defence expenditure in real terms—forced, I know, and quite appropriately so, by the commitments in the war against terror—because we happen to believe that protecting the nation, its citizens and its international obligations is probably the most important priority of any government. The government take that priority seriously and will continue to do so. The people of Australia recognise that the government have taken that stand and that it is the right stand for Australia.
Australians have always expected their defence forces to play a useful and, dare I say, modest role in world affairs. We are in a position to help our neighbours and our friends. We have done so in peacekeeping around the world—for example, in East Timor, which was a particularly courageous and appropriate role. When the history of this government is written, nobody, friend or foe, would say that the commitment made by the Prime Minister and the government in doing what needed to be done in East Timor was not one of the very best things that the government has done. The commitment that we have made in the war against terror and the role that our SAS troops have played in Afghanistan have added to the tradition of Australian troops being regarded as some of the most courageous and best in the world. The SAS company in Afghanistan—T1 troops that they are—showed that in training, equipment and leadership they were probably some of the best troops ever to leave Australia. I think I speak for all Australians in acknowledging the job that they have done in Afghanistan and welcoming them home to their families this Christmas.

The government have been determined that our defence effort be appropriate and proportionate to what the Australian people demand, in line with our military tradition of not imposing our will on people but providing the proper military response when international affairs get out of balance. In the very short time left to me, I will mention some of the places where our ADF are still serving. They are in the Middle East, where we have over 600 troops in the war against terror and to impose the United Nations sanctions against Iraq. We have a Middle East commitment where the UN Truce Supervision Organisation is supervising the truce agreed at the conclusion of the first Arab-Israeli war. We have troops in Bosnia and in Sierra Leone. We have peacekeepers in the Sinai, Eritrea and Ethiopia. We have the Navy in the Southern Ocean doing the very important job of fishery protection. The ADF supports the Australian Fisheries Management Authority through Coastwatch to enforce Australian sovereign rights in fisheries in the Southern Ocean. We have the continuing commitment to East Timor, where we still have 1,100 personnel as part of the UN mission to support the East Timor administration—(Time expired)

Senator MARSHALL (Victoria) (3.22 p.m.)—I also rise today to take note of the answers provided by Senator Hill, as Minister for Defence, to a range of questions asked by Labor today during question time. I rise to do that to focus on what can only be described as this government’s failure to deliver Australia’s defence forces with the necessary capital equipment that is strategically viable and at costs that fall inside the spending limits set out in the Defence budget. The Australian Strategic Policy Institute, an independent non-partisan policy organisation, recently released its 2002 strategic assessment in which a damning critique of Defence procurement is presented. The ASPI report identifies a series of problems that highlight the Howard government’s mismanagement in Defence.

For the benefit of senators and others, I shall outline a number of these problems now. They include the government’s decision to abandon the tender process and buy torpedoes that are too heavy for the Collins class submarines, forcing Defence to raid $200 million from other projects to cover the cost blow-out. As a result of the government’s interference, taxpayers will pay $450 million for torpedoes that do not fit our submarines. Despite allocating funding, the government has not ensured that essential electronic warfare protection and long-range weapons have been delivered for our FA18s and our F111s. It was recently revealed that the government has spent $200 million on the long-range AGM142 missile, but it will take at least nine years to fit them to the F111s. The government rushed into a decision to buy the F35 US joint strike fighter without any thought as to how Australia will maintain its air combat capability until the likely delivery date beyond 2015. Our existing FA18s and F111s will struggle to fly past 2010. Any strategically viable interim capability to fill the gap will be prohibitively expensive, with ASPI estimating the cost at an additional several billion dollars. The $1.4 billion frigate upgrade project, started three years ago, is already running more than two years late.
Some ships will now be upgraded with just seven years left out of their 35-year service life. We cannot forget the government’s contract to buy 11 second-hand 40-year-old Sea sprite helicopters, which are more than three years behind schedule. The government was even funding a maintenance facility for these helicopters which we do not have.

These bungles in defence equipment procurement represent a big black mark against this government’s defence management capabilities and serve as a costly reminder to the Australian taxpayer of just how imperative strategic and careful management of the Defence portfolio is. The Australian Strategic Policy Institute states that, before looking for new Defence projects to fund, the government should concentrate on actually delivering what is already in the capability plan. In the words of the ASPI report:

We think that it would be best to consolidate progress on the already ambitious Defence Capability Plan before setting new goals.

This may be obvious, but the government must take heed. The ASPI review provides a clear analysis that Australia’s long-term defence capability is most at risk from the failure of the Howard government to manage defence effectively. I quote the ASPI report again:

If the government simply bails out Defence every time costs escalate, it will remove any incentive for Defence to contain costs and seek innovative solutions.

The ASPI report follows comments from recently retired Lieutenant General Des Mueller that the management of defence equipment purchases needs a complete overhaul. In saying this, he clearly believes that the government’s recent purchasing reforms have failed. The Audit Office and Defence’s own Management Audit Branch have also raised serious concerns about the high likelihood of further capital equipment project failures over the next three to four years that could cost taxpayers millions of dollars. Given what I have just said, and what we have heard during question time today and in the motions to take note of answers moved by Senator Evans and Senator Ludwig, this government is failing our defence forces and, in turn, placing our country at risk.

These are testing times for Australia’s security and, as such, Australia’s defence forces. Australians deserve and require policies within the Defence portfolio that are carefully calculated and performed to precision. It is clear from what we have heard today that this current government is not in a position to fulfil that requirement.

Question agreed to.

**Arts: Film Industry**

Senator RIDGEWAY (New South Wales) (3.28 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Ridgeway today relating to the film industry.

Yesterday, I asked similar questions in relation to the Commonwealth government’s support for our national cultural institutions. Indeed, the minister confirmed that the government is undertaking a review of all of the major national cultural institutions across the country. I am concerned about the message that this sends to those institutions as well as to the groups that use them, particularly school groups, family groups and low-income earners, but more particularly the professional practising artists out there who have all contributed in one way or another to issues concerning national cultural identity.

Today, the minister’s answer to questions about ongoing funding to the Australian film industry was a very simple one. He has, however, come out from behind the bush and given some more answers about which institutions we are talking about, and he was also including the Film Finance Corporation, the Australian Film Commission and the Australia Council as part of that review.

It appears to me that the government is focused solely on the budget bottom line and somehow the bean counters have got together and realised that the arts sector is easy pickings in terms of financing the so-called war on terrorism and related border control measures. I think what the minister and the government fail to understand is that the Myer inquiry and the Guldberg report stated that for every $1 of public money invested in these institutions there is a $3 dollar return. The Myer inquiry talked about 20,000 people
employed in the arts sector, an industry that is contributing $160 million annually as a return. It is a serious investment and there is a good argument about providing support for these industries.

I turn to the minister’s comments today in relation to the film industry itself. Although he keeps talking about figures that somehow say that the industry is in good shape—and overall we are talking about an eight per cent increase—we know that the Australian feature production level was boosted this year by two high-budget foreign feature film productions, *The Crocodile Hunter* and *Swimming Upstream*. The problem, of course, is that when you have foreign feature productions being done this financial year and in the previous financial year—films like *Moulin Rouge*—they often distort what is happening in the Australian film production industry, and this is what needs to be spoken about. As Kim Dalton, the Chief Executive Officer of the Australian Film Commission, recently said:

> Although foreign production activity in Australia is increasing, it’s important to recognise that local production remains the foundation of the industry. It is Australian productions which bring Australian stories to our cinema and our television screens and which over the years have promoted Australia so successfully overseas. It is also Australian productions which discover and promote our local talent and which are so often the training ground for our world class crews.

We need to keep in mind that, since 30 June this year, the government has withheld some $16 million from the Film Licensed Investment Company scheme, commonly known as FLICS. FLICS contributed $16 million of investment over the financial year 2001-02 but, with the pilot scheme set to completely wind up in June next year and with no new investments having been considered since July this year, that is $16 million that the government will not be injecting into the Australian film production industry in this country. What that says is that the outlook for Australian film production and feature films being produced here and globally looks very grim, and the possibility of raising finance for Australian feature films overseas, which is something that has been a crucial element in the investment structure for our films, is becoming tougher.

When we consider that in another context, TV drama has fallen from $240 million to $212 million. That is a decline of 12 per cent in terms of our own TV producers producing shows for Australian consumption. Whilst there has been some increase in relation to in-house production, we need to keep in mind that for the first time in 20 years no adult miniseries have been produced in this country. We are relying upon the big box office hits that foreign feature films often produce as a result of foreign investment. That is distorting the figures. The film production industry in this country is seriously distorted and seriously in crisis, and it needs assistance.

Question agreed to.

**PETITIONS**

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

**Immigration: Detention Centres**

To the Honourable the President and Members of the Senate in Parliament assembled:

The petition of the undersigned shows the concern for the human rights of children held in Immigration Detention Centres and Immigration Reception and Processing Centres around Australia. This is a violation of the Convention on the Rights of the Child that stipulates that children should not be held in detention.

Your petitioners therefore request that the Senate repeal legislation that forces children seeking refugee status in Australia to be held in detention.

by Senator Bartlett (from 728 citizens).

**Foreign Affairs: Iraq**

To the Honourable the President and Members of the Senate in Parliament assembled:

The Petition of the undersigned calls on the members of the Senate to support the Australian Democrats’ motion to oppose a pre-emptive military strike against Iraq by Australian forces.

We feel strongly that such action will simply escalate the current level of terrorist activity, without resolving any of the underlying issues, and fuel further conflict within Australia’s multicultural society.

We wish to impress on the Senate the necessity to persuade the Government to lead the world in
determining a diplomatic outcome to the present impasse on Iraq.

by Senator Reid (from 68 citizens).

Education: Deregulation of University Fees

To the Honourable the President and Members of the Senate assembled in Parliament:

The petition of the undersigned citizens of Australia shows the widespread opposition to the deregulation of university fees within the Australian community.

We, the undersigned, believe that deregulation of university fees would:

Prevent many academically talented students from undertaking university study simply because they come from a disadvantaged or lower to middle socio-economic background. It has been shown that the current HECS system already prevents many of these potential students from taking up a position at university. Therefore, if fees were to increase any further, as they certainly would with deregulation, many more potential students would be put in this unfortunate position. This has been shown in New Zealand where deregulating university fees led to a devastating fee increase of 92% between 1991 and 1999.

Lead to the emergence of elite institutions that are inaccessible to many students. Competition, caused by deregulation, will mean that well-established and well-respected universities, such as the Group of Eight, will charge much higher fees than other universities. Thus, the possibility of attending these institutions will become out of reach for students from lower socio-economic backgrounds.

Lead to an increase in the already massive levels of student debt and student poverty.

Reduce diversity within student populations. Under deregulation prestigious and expensive courses such as dentistry, medicine, law and veterinary science would attract students from a very narrow, wealthy section of society. This would undermine diversity not only at university but also within these professions in the wider community.

Your petitioners therefore ask the Senate to:

Reject any moves towards the deregulation of university fees.

Ensure that there is an immediate injection of public funds to at least bring Australia’s university sector in line with average OECD expenditure.

Re-introduce a system of HECS equity scholarships to allow people from disadvantaged backgrounds to enter tertiary education.

by Senator Webber (from 243 citizens).

Petitions received.

NOTICES

Presentation

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

That the time for the presentation of reports of the Employment, Workplace Relations and Education References Committee be extended as follows:

(a) small business employment—to 6 February 2003; and

(b) refusal of the Government to respond to the order of the Senate of 21 August 2002 for the production of documents relating to financial information concerning higher education institutions—to 6 March 2003.

Senator Ferris to move on the next day of sitting:

(1) That, with effect from 1 January 2003, matters relating to the powers and proceedings of the Parliamentary Joint Committee on the Australian Crime Commission shall be as set out in the resolution of 14 February 2002 relating to the powers and proceedings of the Parliamentary Joint Committee on the National Crime Authority.

(2) That a message be sent to the House of Representatives requesting concurrence with this resolution.

Senator Ridgeway to move on the next day of sitting:

That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 11 December 2002, from 4 pm, to take evidence for the committee’s inquiry into the rural water resource usage.

Senator Heffernan to move on the next day of sitting:

That the time for the presentation of the following reports of the Rural and Regional Affairs and Transport Legislation Committee be extended to the last sitting day in June 2003:
(a) the administration of the Civil Aviation Safety Authority;
(b) the import risk assessment on New Zealand apples; and
(c) the administration of AusSAR in relation to the search for the Margaret J.

Senator Ian Campbell to move on the next day of sitting:
(1) That estimates hearings by legislation committees for the year 2003 be scheduled as follows:

**2002-03 additional estimates:**
- Monday, 10 February and Tuesday, 11 February and, if required, Friday, 14 February (Group A)
- Wednesday, 12 February and Thursday, 13 February and, if required, Friday, 14 February (Group B).

**2003-04 Budget estimates:**
- Monday, 26 May to Thursday, 29 May and, if required, Friday, 30 May (Group A)
- Monday, 2 June to Thursday, 5 June and, if required, Friday, 6 June (Group B)
- Wednesday, 5 November, and, if required, Friday, 7 November (supplementary hearings—Group A)
- Thursday, 6 November and, if required, Friday, 7 November (supplementary hearings—Group B).

(2) That the committees consider the proposed expenditure in accordance with the allocation of departments to committees agreed to by the Senate.

(3) That committees meet in the following groups:

**Group A:**
- Environment, Communications, Information Technology and the Arts
- Finance and Public Administration
- Legal and Constitutional
- Rural and Regional Affairs and Transport

**Group B:**
- Community Affairs
- Economics
- Employment, Workplace Relations and Education
- Foreign Affairs, Defence and Trade.

(4) That the committees report to the Senate on the following dates:
- Wednesday, 19 March 2003 in respect of the 2002-03 additional estimates,

Senator Murray to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to encourage the disclosure of conduct adverse to the public interest in the public sector, and for related purposes. *Public Interest Disclosure (Protection of Whistleblowers) Bill 2002.*

Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes the ceasefire agreement signed by Indonesia and the Free Aceh Movement in Geneva on 9 December 2002;
(b) expresses sorrow over the many lives that have been lost as a result of ongoing violence between Indonesia and the Free Aceh Movement over the past 26 years;
(c) congratulates Indonesia and the Free Aceh Movement on their commitment to deal with ongoing issues through peaceful negotiation rather than violent means;
(d) welcomes the Government’s initial commitment of support to the international ceasefire monitoring group to implement the agreement; and
(e) urges the Government to continue to provide assistance to the international ceasefire monitoring group, particularly in the lead-up to the provincial elections to be held in Aceh in 2004.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the introduction by Swimming Australia of a member protection policy requiring police checks for instructors and other sports officials who have unsupervised contact with children,
(ii) the call by the Australian Sports Commission that this requirement be extended to all sports within 12 months, and
(iii) that this requirement is already law in New South Wales and Queensland;
(b) congratulates Swimming Australia and the Australian Sports Commission for this initiative;
(c) urges the Federal Government, through the Council of Australian Governments process, to put in place nationally-consistent requirements for police checks for those who have unsupervised contact with children; and
(d) urges state governments:
(i) to extend this requirement to schools, particularly for teachers and others involved in school camps and other situations in which children may be vulnerable, and
(ii) to provide funds for groups and schools to cover the cost of such police checks.

Senator Allison to move on the next day of sitting:
(1) That so much of standing orders be suspended as would prevent this resolution having effect.
(2) That the Uranium Mining in or near Australian World Heritage Properties (Prohibition) Bill 1998 be restored to the Notice Paper and that consideration of the bill be resumed at the stage reached in the last session of the Parliament.

Senator Bartlett to move on the next day of sitting:
(1) That the Senate notes:
(a) that the scheduled program of sittings for 2003 is just 63 days;
(b) that the scheduled sittings for 2002 and 2003 are the shortest parliamentary sitting years since 1988 that have not been election years; and
(c) that by providing for minimal sittings of the Senate the Government does not allow the Senate enough time to properly consider and evaluate the Government's heavy legislative program.
(2) That the order of the Senate relating to the days of meeting of the Senate for 2003 be varied as follows:
(a) by adding additional sitting weeks as follows:
   Monday, 24 February to Thursday, 27 February 2003
(b) the routine of business for the week beginning Monday, 7 April 2003 be in accordance with standing order 57 except that, on each day, general business orders of the day relating to private senators' bills shall take precedence of government business.

Senator Faulkner to move on the next day of sitting:
That the Senate congratulates:
(a) writer Doris Pilkington, film director Phillip Noyce and producers Christine Olsen and John Winter for their Australian Film Institute (AFI) award for best Australian feature film, in Rabbit Proof Fence;
(b) the actors and the film crew for this achievement;
(c) the makers of the soundtrack which won AFI awards for best score and best sound; and
(d) Senator Abetz for his constant assistance in promoting this powerful film about the tragedy of the children of the Stolen Generations.

Senator Sherry to move on the next day of sitting:
That the following matters be referred to the Select Committee on Superannuation for inquiry and report by the last sitting day in June 2003:
(a) in the context of the ageing and longer life expectancies of the Australian population identified in the Intergenerational Report, the implications of evolving employment and retirement trends for the superannuation and social security systems, with particular reference to:
(i) the effects of ageing on workers' productivity,
(ii) the continuing relevance of the concept of a fixed retirement age,
(iii) the potential to encourage progressive transitions from work to retirement, including through possible new benefit access and contribution arrangements,
(iv) any scope for older workers to access their superannuation to finance retraining to continue work that is more suitable for elderly people,
(v) the potential implications for individual standards of living in retirement, especially for those who are over the age of 45,
(vi) how to assist older workers plan for their retirement,
(vii) the short- and long-term effect on the Budget of any proposals for change, and
(viii) issues for the federal and state workplace relations systems; and
(b) corporate governance and standards for superannuation funds.

Senator Ian Campbell to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend the law relating to broadcasting, and for related purposes. Broadcasting Legislation Amendment Bill (No. 3) 2002.

Senator Brown to move on the next day of sitting:
That there be laid on the table by the Minister for Fisheries, Forestry and Conservation, no later than noon on Thursday, 12 December 2002, all documents relating to the answers to question on notice no. 404 (Senate Hansard, 14 October 2002, p. 5093) and subsequent related questions on logging activities in Tasmania.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.33 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—
FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

Purpose of the Bill
This Bill will give effect to the measure agreed to as part of the 2000-2001 Budget to introduce activity testing arrangements for special benefit recipients who hold a temporary protection visa and who are of work-force age.

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

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

Senator Brown to move on the next day of sitting:
That the Senate calls on the Australian Government to urgently pursue alternatives with the Chinese Government to the death sentence handed down on Tibetan activists Trulku Tenzin Delek and Lobsang Dhondup in Karze, Sichuan province.

Senator O’Brien to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) on 16 October 2002 it agreed to a motion seeking documents relating to the Government’s consideration of an ethanol excise and production subsidy,
(ii) on 21 October 2002 the Parliamentary Secretary to the Treasurer (Senator Campbell) advised the Senate that ‘the government intends to comply with the order as soon as possible and fully expects to be in a position to do so shortly’,
(iii) 50 days have passed since Senator Campbell gave the Senate a commitment the Government would respond to the order of the Senate in a timely fashion; and
(b) calls on the Government to comply with the order of the Senate no later than 5 pm on 11 December 2002.

Senator Collins on behalf of all opposition senators, Senator Bartlett on behalf of all Australian Democrats senators, and Senators Brown, Nettle, Lees, Harradine and Murphy to move on the next day of sitting:
That the Senate—
(a) notes the evidence presented to the Select Committee on a Certain Maritime Incident regarding the central role played by the person known as Abu Quessai in
organising people smuggling operations in Indonesia;

(b) welcomes the statement by the Australian Federal Police that they have issued a further warrant for the arrest of Quessoai, in relation to his involvement in people smuggling specifically in relation to the vessel known as SIEV X;

(c) further notes that the issue of this warrant indicates the strength of evidence linking Quessoai with the people smuggling aspects of SIEV X, including the procurement of the vessel, the recruiting of crew, the provision of passage on the vessel in return for payment, the loading of the vessel (including the gross overloading), and the departure of the vessel bound for Australia;

(d) further notes that Abu Quessoai is currently in prison in Indonesia for unrelated immigration offences, and is due to be released on 1 January 2003, with a high risk of him remaining out of reach of Australian legal authorities after that time; and therefore

(e) calls on the Australian and Indonesian Governments to undertake all actions necessary prior to 1 January 2003 to ensure that Abu Quessoai is immediately brought to justice:

(i) on all matters relating to the outstanding warrants relating to people smuggling, and

(ii) in relation to his involvement with the vessel known as SIEV X, including the foundering and sinking of that vessel with the resultant tragic loss of 353 lives.

Postponement
An item of business was postponed as follows:

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 11 December 2002.

Senator O'BRIEN (Tasmania) (3.37 p.m.)—by leave—I move:

That business of the Senate notices of motion nos 2, 3 and 4 standing in my name for today, relating to the disallowance of certain regulations, be postponed till the next day of sitting.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.38 p.m.)—I move:

That—

(1) On Tuesday, 10 December 2002:

(a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to 11.10 pm;

(b) the routine of business from 7.30 pm to 10.30 pm shall be government business only; and

(c) the question for the adjournment of the Senate shall be proposed at 10.30 pm.

(2) On Wednesday, 11 December 2002, the hours of meeting shall be 9.30 am to adjournment, and standing order 54(5) shall apply to the adjournment debate as if it were Tuesday.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.39 p.m.)—At the request of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Financial Sector Legislation Amendment Bill (No. 2) 2002 be extended to 12 December 2002.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.39 p.m.)—I move:

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

Aviation Legislation Amendment Bill 2002
Copyright Amendment (Parallel Importation) Bill 2002
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002
Financial Sector Legislation Amendment Bill (No. 2) 2002
Inspector-General of Taxation Bill 2002
National Environment Protection Council Amendment Bill 2002
Renewable Energy (Electricity) Amendment Bill 2002
Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002
Workplace Relations Amendment (Fair Termination) Bill 2002.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Reference

Senator MACKAY (Tasmania) (3.39 p.m.)—At the request of Senator Cook, I move:

(1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 14 May 2003:

An examination of the adequacy and effectiveness of the Government’s foreign and trade policy strategy, with particular reference to the forthcoming Foreign and Trade Policy White Paper, Advancing the National Interest.

(2) That, in examining this matter, the committee have regard to the following:

(a) the merits of new policy directions identified by Advancing the National Interest;

(b) whether Advancing the National Interest meets its stated objective of best using Australia’s credentials and attributes to enhance Australia’s national interests;

(c) the strategy’s consistency with Australia’s international obligations; and

(d) the process for implementation.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.40 p.m.)—At the request of Senator Heffernan, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Transport Safety Investigation Bill 2002 be extended to 11 December 2002.

Question agreed to.

Finance and Public Administration References Committee

Extension of Time

Senator MACKAY (Tasmania) (3.40 p.m.)—At the request of Senator Forshaw, I move:

That the time for the presentation of the report of the Finance and Public Administration References Committee on the recruitment and training in the Australian Public Service be extended to 27 March 2003.

Question agreed to.

TRUCKING INDUSTRY: ROAD SAFETY

Senator ALLISON (Victoria) (3.41 p.m.)—I move:

That the Senate—

(a) notes:

(i) the truck blockade on the Hume Highway on 3 December 2002,

(ii) that the purpose of the blockade was to call attention to the lack of safety standards and a national code of conduct for long distance truck drivers,

(iii) that the primary cause of long-distance truck driver death is driver fatigue,

(iv) the concern of the long-distance trucking industry that unreasonable driving hours are partially a result of demands made by shippers,

(v) the concern of the long-distance trucking industry that transport rates are so low that increased driving hours are increasingly necessary in order for long haul truckers to remain economically viable, and

(vi) that these pressures to drive longer hours create a threat for drivers and the broader community; and

(b) calls on the Government to implement national safety standards and an enforceable code of conduct for long-distance drivers in consultation with that industry.
Question put.

The Senate divided. [3.45 p.m.]

(The Deputy President—Senator J.J. Hogg)

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**AYES**

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**NOES**

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Question negatived.

**ENVIRONMENT: WALLA WEIR IRRIGATION PROJECT**

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.49 p.m.)—I move:

That there be laid on the table no later than 4 pm on Thursday, 12 December 2002, the following documents:

(a) the agreement signed by the Commonwealth for the Walla Weir Irrigation Project, funded under the Sugar Industry Infrastructure Package; and

(b) any materials relating to compliance with the terms of the agreement.

Question agreed to.

**IMMIGRATION: PEOPLE-SMUGGLING**

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.50 p.m.)—I, and also on behalf of the Leader of the Australian Democrats and Senators Harradine, Murphy, Brown and Nettle, move:

That the Senate—

(a) expresses:

(i) its support for the majority findings in the report of the Select Committee on a Certain Maritime Incident and calls on the Commonwealth Government to immediately implement all of the recommendations contained in that report, and

(ii) its serious concern at the apparent inconsistencies in evidence provided to the committee and estimates committees by Commonwealth agencies in relation to the People Smuggling Disruption Program and in relation to Suspected Illegal Entry Vessels (SIEVs), including the boat known as SIEV X; and

(b) calls on the Commonwealth Government to immediately establish a comprehensive, independent judicial inquiry into all aspects of the People Smuggling Disruption Program operated by the Commonwealth Government and agencies from 2000 to date, including:

(i) all funding and other resources put to the program, both within Australia and overseas,

(ii) the involvement and activities of all Australian Departments and agencies involved in the program, both within Australia and overseas,

(iii) the extent of ministerial knowledge of, and authorisation for, the program,

(iv) allegations raised in the media in relation to the program, including by the *Sunday* program,

(v) the nature of the co-operative relationship between the Australian and Indonesian Governments and
agencies, including the operation of agreements and protocols, the funding and resources provided under those arrangements, and the activities of individual Australian and Indonesian citizens,

(vi) the use of Australian equipment and resources in the program, including use by persons outside of Australian agencies,

(vii) the effect of the program on persons seeking asylum from Indonesia or Australia, including the effect on means of transport, and

(viii) the circumstances and outcomes of all departures from Indonesia of all boats carrying asylum-seekers, including the circumstances of the sinking of SIEV X.

Question agreed to.

MINISTERIAL CONDUCT: SENATOR COONAN
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.51 p.m.)—I move:

That there be laid on the table, no later than immediately after motions to take note of answers on Thursday, 12 December 2002, all documents relating to the inquiries undertaken by the Department of the Prime Minister and Cabinet into the possible conflict of interest between the ministerial responsibilities of the Minister for Revenue and Assistant Treasurer (Senator Coonan) and the commercial activities of Endispute Pty Ltd (including, but not limited to, a copy of the report of those inquiries furnished to the Prime Minister (Mr Howard) and referred to by him during question time in the House of Representatives on Tuesday, 3 December 2002).

Question agreed to.

ENVIRONMENT: TOWNSVILLE TROUGH
Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.52 p.m.)—I move:

That there be laid on the table no later than 4 pm on Thursday, 12 December 2002, all materials prepared by Geoscience Australia in response to the proposal by TGS-NODEC to conduct seismic testing in the Townsville Trough.

Question agreed to.

MILITARY DETENTION: AUSTRALIAN CITIZENS
Senator NETTLE (New South Wales) (3.52 p.m.)—as amended, by leave—I move the motion as amended:

That the Senate—

(a) notes its profound concern that Mr David Hicks and Mr Madioum Habib remain incarcerated in Camp X-Ray at Guantanamo Bay, Cuba, without having been charged or brought before the courts for trial;

(b) notes that Article 9 of the Universal Declaration of Human Rights states that, “No-one shall be subject to arbitrary arrest, detention or exile”;

(c) recalls the commitment that the Minister for Defence and the Attorney-General made on 14 December 2001 that, “If Mr Hicks has committed a crime against Australian law, the Australian Government will do whatever is necessary to bring him to justice”;

(d) calls on the Australian government as a matter of urgency to take whatever steps are required to return both Mr Hicks and Mr Habib to Australia to determine whether they should be freed or face trial, as is their right.

Question, as amended, agreed to.

INTERNATIONAL HUMAN RIGHTS DAY
Senator NETTLE (New South Wales) (3.53 p.m.)—I move:

That the Senate—

(a) notes that 10 December 2002 is International Human Rights Day and joins with the many thousands around the world who are participating in events on this day to:

(i) condemn the ongoing abuse of human rights worldwide,

(ii) extend our sympathy to the victims of these abuses, and

(iii) support the defence of those rights both in Australia and overseas; and

(b) condemns the Government’s appalling record in the field of human rights and, in particular, the Government’s:
(i) failure to endorse the optional protocol to the United Nations (UN) Convention Against Torture,
(ii) contravention of the UN Convention on the Rights of the Child in relation to some asylum seeker detainees,
(iii) proposed contraventions of the International Covenant on Civil and Political Rights to be enacted under the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002.
(iv) unwillingness to act in defence of Mr David Hicks and Mr Mamdouh Habib, illegally detained in Guantanamo Bay, Cuba, and
(v) in principle support of a United States impunity agreement in regard to Article 98 of the International Criminal Court treaty.

Question put.
The Senate divided. [3.54 p.m.]
(The Deputy President—Senator J.J. Hogg)

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

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G. *
Campbell, G. Campbell, I.G.
Colbeck, R. Carr, K.J.
Crossin, P.M. Collins, J.M.A.
Eggleston, A. Ferguson, A.B.*
Ferris, J.M. Forshaw, M.G.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Payne, M.A. Ray, R.F.
Reid, M.E. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Tierney, J.W. Troeth, J.M.
Watson, J.O.W. Webber, R.
Wong, P.

* denotes teller

Question negatived.

ROADS: ALBURY-WODONGA BYPASS

Senator BROWN (Tasmania) (4.02 p.m.)—I move:
That the Senate calls on the Minister for Transport and Regional Services (Mr Anderson) to explain the sudden reversal of his decision in February 2001, repeated as recently as 4 December 2002, to support the Albury bypass.

Question put.
The Senate divided. [4.04 p.m.]
(The Deputy President—Senator J.J. Hogg)

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

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Campbell, G. Campbell, I.G.
Colbeck, R. Carr, K.J.
Collins, J.M.A. Crossin, P.M.
Colbeck, R
Forshaw, M.G. Hogg, J.J.
Hutchins, S.P. Johnston, D.
Kirk, L.Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Marshall, G.
Mason, B.J. McGauran, J.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Payne, M.A.
Ray, R.F. Reid, M.E.
Santoro, S. Scullion, N.G.
Sherry, N.J. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.
DOCUMENTS

Auditor-General’s Reports

Report No. 20 of 2002-03

The ACTING DEPUTY PRESIDENT (Senator Chapman) (4.07 p.m.)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 20 of 2002-03—Performance Audit—Employee entitlements support schemes: Department of Employment and Workplace Relations.

AUDITOR-GENERAL’S REPORTS

Report

The ACTING DEPUTY PRESIDENT (Senator Chapman) (4.07 p.m.)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Results of a performance audit of contract management arrangements within the Australian National Audit Office.

COMMITTEES

Privileges Committee

Report

Senator ROBERT RAY (Victoria) (4.08 p.m.)—I present the 110th report of the Committee of Privileges, relating to persons referred to in the Senate.

Ordered that the report be printed.

Senator ROBERT RAY—I seek leave to move a motion relating to the report.

Leave granted.

Senator ROBERT RAY—I move:

That the report be adopted.

This is the 41st in a series of reports recommending that a right of reply be accorded to persons who claim to be adversely affected by being referred to, either by name or in such a way as to be readily identifiable, in the Senate.

On 15 November 2002, the President of the Senate received submissions from Dr Geoffrey Vaughan and Dr Peter Jonson concerning a matter raised by Senator Boswell in the Senate on 12 November 2002. The President referred the submissions to the Committee of Privileges under resolution 5. Subsequently, on 20 November, he referred a further letter from Dr Geoffrey Vaughan as a submission to the committee. Finally, on 2 December 2002, the President forwarded to the committee a submission by Professor Brian Anderson.

The committee considered the submissions at its meeting on 5 December and recommends that the responses in the terms included in the report I have just tabled be incorporated in Hansard.

The committee always reminds the Senate that, in matters of this nature, it does not judge the truth or otherwise of the statements made by honourable senators or persons who seek redress. I commend the report to the Senate.

Senator CARR (Victoria) (4.10 p.m.)—I notice that Senator Boswell is not here today and I presume that the normal courtesies have been extended to him. I know that Senator Ray in the past has extended that courtesy to me in advising me that a report of this nature is to be tabled in the Senate. Senator Boswell is not here—oh, here he is! Senator Boswell, are you intending to speak on this matter?

Senator Boswell—I want to have a look at it first.

Senator CARR—I would have thought that Senator Boswell might take this opportunity to deliver an abject apology to the Senate for his remarks to the Senate on 12 November 2002. We have a Privileges Committee report here which indicates that three prominent scientists in Australia have been highly offended by the remarks made by Senator Boswell and have categorically denied the allegations made to the Senate by him. Dr Peter Jonson has indicated that he has had no personal relations with Professor Trounson, Dr Geoffrey Vaughan or Dr Moses. Professor Brian Anderson was described as a prominent Trounson supporter and he has indicated that he has had no contact with Professor Trounson whatsoever.

I would like to particularly refer to the remarks that Senator Boswell made concerning Dr Geoffrey Vaughan. Dr Vaughan was the subject of a vindictive attack by Senator Boswell on 12 November. Senator Boswell claimed that there has been a pattern of research funding decisions that raise seri-
ous concerns about conflicts of interest. He further called on the government—and remember that he is a parliamentary secretary in the government—to launch an investigation into a number of recent research grants. I say this because I am the shadow minister for science and research. I take a particular interest in some of the claims that are being made by Senator Boswell. I have listened to him at estimates, where he managed to cross over from the government side to the opposition side in order to make a number of claims.

I am particularly concerned about the remarks he made about Dr Geoffrey Vaughan, who was a former Deputy Vice-Chancellor at Monash University. I am also very concerned about the remarks made about the other two individuals named. In Senator Boswell’s eyes it seems that Dr Vaughan’s crime is to be a scientist concerned to ensure that the fruits of Australian scientific research are realised in Australia for the benefit of Australians. His first accusation was that Dr Vaughan misused his position as Chairman of the CRC Committee to direct research funds in such a way as to obtain a commercial benefit. I notice that a similar claim was made about Dr Peter Jonson allegedly taking commercial advantage of grants, but these were grants that were actually entered into two years prior to Dr Jonson’s commencement with the CRC.

A claim was made about Dr Vaughan that, as a member of the Industry Research and Development Board, he gave a $4.9 million grant to BresaGen, a company of which he was a director. It was claimed that he had been involved in some inappropriate way in misdirecting a biotechnology innovation fund grant of some $245,000 into another company that was associated with Professor Alan Trounson. In short, what Senator Boswell implied was a serious conflict of interest, impropriety and a lack of honesty on the part of Dr Vaughan. In doing so he tried to sketch a nasty little conspiracy that explained why, in his view, the majority of the Senate was being misguided in the support of the stem cell legislation.

It seems to me that what was being done here was an attempt to actually undermine, to discredit, supporters of embryonic stem cell research. Dr Vaughan has sought, through the Senate processes, to set the record straight. I welcome the claims that he has made and I call on Senator Boswell now to make that abject apology and to explain himself before the Senate for his clear failure to address the basic questions that were raised by Dr Vaughan in his response.

With regard to the allegation of misuse of the position of Chairman of the CRC Committee, Dr Vaughan has indicated, in correcting Senator Boswell, that the CRC Committee provides advice to the Minister for Science but does not make any direct grants whatsoever to any applicant. More specifically, Dr Vaughan has also clearly stated that the CRC Committee has never received an application for funding involving the company that Senator Boswell claimed that Dr Vaughan was associated with. So much for that first allegation.

The second allegation with regard to the role and operation of the CRC Committee and the CRCs in general shows the ignorance of the informers that Senator Boswell appears to have. It is very revealing. What you see here is that their interest lies not in improving the research outcome or better public policy but in character assassination. As far as I am concerned, what we have got is an accusation. It reads:

Vaughan was also appointed to the Industry R&D Board that subsequently gave Vaughan’s own company, BresaGen, a grant of $4.9 million ...

It is simply a ludicrous proposition. The facts are that, while BresaGen was awarded in May 2000 the grant referred to by Senator Boswell, Dr Vaughan was not appointed to the R&D board referred to by the senator until September 2000—four months later. That shows a similar pattern to the previous allegation I have referred to. What we have got is taking retrospectivity just a bit too far.

Thirdly, Senator Boswell seeks to claim that somehow Dr Vaughan exerted his influence in relation to the Biotechnology Innovation Fund grant, BIF, to IngenKO, another company associated with Alan Trounson. What we have is seemingly a failure to understand what actually occurs within the research industry in terms of the government
allocation. Full declarations of interest are required by DEST, and in fact Dr Vaughan removed himself from receiving any papers—not even agenda papers—with regard to any of these matters before the IR&D Board. Responsibility for the BIF awards was delegated to the board’s biological committee, a committee of which Dr Vaughan was not a member, and he consequently played no part in its deliberations in awarding any of the grants.

The list of those slandered by undistinguished coalition senators goes on, and Dr Vaughan joins that list. We have seen Justice Kirby, and many other eminent Australians who have committed public service, be unfairly and vindictively attacked within this chamber. I do not think the magnitude of Senator Boswell’s blunder can be underestimated. As a parliamentary secretary in this government, you ought to be making an abject apology here today, Senator.

Senator McGauran—Yes, but are you going to defend Trounson? We don’t hear Trounson’s name here—the worst of them all. You don’t want to know him.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order, Senator McGauran!

Senator Carr—Even the Minister for Science, the brother of Dolly McGauran over here, the ultimate clone in the McGauran family, understands it. Even your brother has understood the heinous crime that was committed against the public interest in regard to this. The Minister for Science said:

Senator Boswell did not seek my advice before making his claims in the Senate today.

If he had, I would have disabused him of any notion that Mr Vaughan has or would ever favour Alan Trounson or any other person or company for that matter.

Senator Boswell, you have embarked upon gutless and miserable slander against these scientists. This is a matter of disgrace to all professional politicians in this chamber.

The ACTING DEPUTY PRESIDENT—Order! Senator Carr, it is inappropriate to direct remarks at a senator. Your remarks should be directed through the chair.

Senator Carr—Thank you very much, Mr Acting Deputy President. I will direct my remarks to you. This is a gutless, worthless assault upon prominent scientists in this country. It is a disgrace to all professional politicians in this parliament. It has rightly been condemned by both the opposition and the government in this parliament. Senator Boswell, you now have the chance: get up and apologise. You have committed a shocking thing here.

Senator Coonan—Mr Acting Deputy President, on a point of order: Senator Carr seems to have completely lost control and I would ask him to withdraw the reflections upon Senator Boswell.

The ACTING DEPUTY PRESIDENT—There is no point of order. Senator Carr was referring to comments made by Senator Boswell. I do not believe the remarks were personally directed at Senator Boswell but I would ask Senator Carr to perhaps restrain himself in his comments. I again remind him to direct his remarks through the chair rather than at individual senators.

Senator Carr—Thank you very much. What I have said is that this was a miserable and gutless assault upon prominent scientists in this country. It was without foundation. There is an opportunity now for the parliamentary secretary to stand in his place and apologise for what he has done. The evidence is quite clearly not there to sustain any of the claims that he has made. He ought to now fulfil his obligations to this parliament and explain to us why he made such a vicious, vindictive and incorrect assault upon these Australians. The chance is now with you, Senator Boswell, and I would ask you to fulfil your obligations through this chamber.

Senator Boswell—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.21 p.m.)—I fulfilled my obligations to this parliament and the citizens of Australia when I raised this matter, which I thought should have been raised in the Australian parliament when I considered there was what you would call a conflict of inter-
est. I have been given this document. It was distributed 20 minutes ago, as I was told by the Clerk’s assistant. I am not going to get up and debate this now. I am going to look at it, I am going to study it and I am going to come back and respond to you. But I have evidence here that I want to put on the record. I do not know where you got your information, Senator Carr. This was distributed 20 minutes ago. I am not going to fly off the handle and respond. I make no apologies about raising a most important issue in the Senate. Courage was required. I think that I displayed that courage in raising the issue. In my opinion there was a conflict of interest.

Senator Carr—You were wrong.

Senator BOSWELL—No, I was not wrong. I do not concede for a minute that I was wrong, but I do concede that these people have a right to put it on record. I want to go back to my office, look at the decision of the Privileges Committee and see what those three scientists have said. Then I will respond. But I am not going to get up and respond to you off the cuff, Senator Carr. It does deserve a response. You are perfectly correct. And you will get a response. But you are not going to get one off the cuff. It is a very serious matter, and I will respond either tonight or tomorrow. When I do respond, I will invite you down to the chamber.

Question agreed to.

The responses read as follows—

Appendix 1

RESPONSES BY DR GEOFFREY VAUGHAN, DR PETER JONSON AND PROFESSOR BRIAN ANDERSON AGREED TO BY DR VAUGHAN, DR JONSON, PROFESSOR ANDERSON AND THE COMMITTEE OF PRIVILEGES PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE OF 25 FEBRUARY 1988

(A) Response by Dr Geoffrey Vaughan

I have noted from Hansard, 12 November 2002, that Senator Boswell has raised “serious questions of conflict of interest” in relation to my membership, as Chair, of the Cooperative Research Centres (CRC) Committee and as a member of the Industry Research and Development (IR&D) Board. Senator Boswell has implied impropriety in relation to my activities on these bodies. He has linked the conflict of interest to my position as a Director of BresaGen Limited and a perceived association with Professor Alan Trounson. I should like to bring to your attention the following matters:

- The activities of the CRC Committee are under continuous review of a probity auditor appointed by the Commonwealth. The committee considers matters of conflict of interest as a key agenda item at every meeting of the committee.
- I have declared my directorships, all shareholdings, and all other areas of potential conflict to the Department of Education, Science and Training (and to the Department of Industry, Tourism and Resources in the case of the IR&D Board) and this information is held on the appropriate departmental registers.
- The CRC Committee is a committee of advice to the Minister for Science. The committee does not make direct grants to applicants; through its terms of reference it only gives advice to the Minister who is responsible for all funding decisions.
- The CRC Committee has never received an application for funding involving BresaGen Limited.
- Senator Boswell has stated that “Vaughan was also appointed to the Industry R&D Board that subsequently gave Vaughan’s own company, BresaGen, a grant of $4.9 million to find a stem cell therapy cure for Parkinson’s”. The facts are that BresaGen was awarded a START Grant in May 2000 and I was appointed to the Board in September 2000.
- Whenever any matter related to BresaGen is discussed at the IR&D Board my conflict is declared by me in advance and I remove myself from the meeting. I do not receive any related agenda papers, I do not participate in any discussion, I am not involved in any way in any decision making, and I do not receive the minutes of the particular agenda item.
- Senator Boswell has linked me to Professor Trounson because I held the position of Deputy Vice-Chancellor of Monash University. I resigned from Monash more than 10 years ago. Since that time I have held Australian Government and industry appointments.
- Senator Boswell has linked my name in the debate to other people he has identified, namely Peter Jonson, Alan Trounson, and Bob Moses. I have never had any personal commercial interests or dealings with any of these people.
The START grant awarded to the “Trounson company” Copyrat was made under delegation by the Biological Committee of the IR&D Board. I am not a member of that committee and played no role whatsoever in any part of the process.

It is implied that I was associated with the Biotechnology Innovation Fund (BIF) award to the “Trounson company” IngenKO through my membership of the IR&D Board. Again, the Board delegated, through its legislated powers, the full operation and allocation of BIF awards to the Biological Committee of the Board. I am not a member of the Biological Committee and thus played no part in the award of any grant to IngenKO, nor indeed in any other award or grant of BIF Funds.

I have never been involved with the funding bodies responsible for the award of the Biotechnology Centre of Excellence, Major National Research Facilities, ARC or NHMRC grants.

The implications that I have abused a conflict of interest because of my role on the CRC Committee, as a member of the IR&D Board, as a Director of BresaGen Limited, or in my previous role of Deputy-Vice Chancellor on Monash University are without foundation and an unwarranted attack on my reputation, honesty and integrity.

Yours sincerely,
(Signed)
(Dr) Geoffrey Vaughan MSc PhD
13 and 19 November 2002

(B) Response by Dr Peter Jonson

I note from Hansard, 12 November 2002, that Senator Boswell has mentioned my name in a context that implies possible impropriety in matters of decisions about Commonwealth grants.

I wish to make the general point that in my experience the Commonwealth processes in this area are very tight. Careful and explicit attention is paid to avoiding actual or potential conflicts of interest. A probity auditor is appointed by the Commonwealth to monitor the processes and report afterwards. Certainly this was the case in the two committees I have chaired for the Commonwealth.

In regard to the matters raised by Senator Boswell, I simply say there is no way in which any conflict occurred or could have occurred.

I have had no past commercial relationships with Professor Trounson, Dr Geoffrey Vaughan or Mr Bob Moses.

The CRC [Cooperative Research Centre] which I chair won its grant in April 1999; my association with it commenced in March 2002.

I ceased to be Managing Director of ANZ Funds Management in April 1999. Even during my time in that role I would as a matter of policy have had no detailed knowledge of shares held by the portfoilo managers, who were judged on results, not inputs.

My personal and family share portfolios are managed by a professional fund manager on a basis that is entirely at his discretion and with no input from me. He confirms, incidentally, that he has never invested in BresaGen on my behalf.

My personal and family share portfolios are managed by a professional fund manager on a basis that is entirely at his discretion and with no input from me.

I had earlier written to Senator Knowles [as Chair of the Committee Affairs Legislation Committee] about the appointment of Dr Dianna deVore to the Board of MNT Innovation Pty Ltd, which was made well after the award of the Commonwealth Government and made entirely on merit.

Yours sincerely,
(Signed)
Peter D. Jonson
November 13, 2002

(C) Response by Professor Brian Anderson, AO, FAA, FRS, FTSE

On 12 November 2002, in the Second Reading of the Research Involving Embryos Bill 2002, Senator Ron Boswell, Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services, addressed the Senate. According to the record of Hansard, Senator Boswell stated “Another prominent Trounson supporter, also on the ARC [Australian Research Council] board, is Professor Brian Anderson from the Academy of Science—and a great believer in cloning.”

I write to object in the strongest possible terms to the implied maligning of my integrity by Senator Boswell. This statement is a clear abuse of parliamentary privilege.

First, I am not a “prominent Trounson supporter” and indeed, have no recollection of ever meeting the man, before we found ourselves placed on the same stage by conference organisers at an Innovations conference early this November. He is not a fellow of the Australian Academy of Science.

Second, I am not “a great believer in cloning”. Indeed, during my Presidency of the Australian Academy of Science, the Academy published A Position Statement on Human Cloning in February 1999 that stated:
Council considers that reproductive cloning to produce human fetuses is unethical and unsafe and should be prohibited. However human cells derived from cloning techniques, from ES cell lines, or from primordial germ cells should not be precluded from use in approved research activities in cellular and developmental biology.

Third, I object most strenuously to the implication that my personal relationships and personal beliefs impinge on my decision-making as a member of the board of the Australian Research Council.

For the record, I also note that to the best of my knowledge no member of my family or myself has any direct or indirect association through any investment or financial instruments with commercial activities with which Professor Trounson is associated.

The offending, and offensive, sentence should be struck from the official record of the Federal Parliament.

(Signed)
28 November 2002
Senator DENMAN (Tasmania) (4.23 p.m.)—In accordance with the Senate resolution of 17 March 1994 on the declaration of senators' interests, I present the Register of Senators' Interests incorporating current statements of interests, including new statements of interests and notifications of alterations of interests lodged between 25 June 2002 and 5 December 2002.

Treaties Committee Report
Senator KIRK (South Australia) (4.24 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 50th report entitled Treaties tabled 15 October 2002, together with the Hansard record of proceedings and minutes of proceedings and seek leave to move a motion in relation to the report.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The statement read as follows—

The report contains the results of an inquiry conducted by the Joint Standing Committee on Treaties into three treaty actions tabled in the Parliament on 15 October, concerning double taxation, medical treatment for temporary visitors, and research, development and training relating to nuclear science and technology.

The first treaty considered by the Committee was:

- An Amendment to the double taxation agreement between Australia and Vietnam:

Mr President

This treaty proposal, in the form of an Exchange of Letters, arose because of changes Vietnam has made to its domestic laws regarding foreign investment. Vietnam has sought Australia's agreement that the relevant tax incentives will remain substantively the same as those previously agreed between the two countries. In effect, the treaty ensures that tax sparing arrangements previously agreed to in the double taxation agreement continue until 30 June 2003, when they will expire permanently.

Tax sparing is an arrangement where tax foregone by a foreign country on the income of an Australian resident is deemed to have been paid. Thus the tax foregone is credited as if it were actually paid. The Committee has considered such arrangements in past reports, most recently in Report 48, where tax sparing arrangements with Malaysia were considered and the Committee agreed that they be extended to 30 June 2003.

Tax sparing arrangements are targeted to foster genuine economic development and relate to active business income, for example, the construction of power production infrastructure, the development of ports to facilitate export processing, the expansion of heavy industry and the plantation of new forests for commercial exploitation.

The Committee has had ongoing concerns about the manner in which information on double taxation agreements, including tax sparing arrangements, is provided by the Department of the Treasury, and has sought to ensure that such agreements are in fact in the national interest. The Committee was concerned that the OECD has reservations about tax sparing policies in general. The Committee was also advised that these arrangements are no longer preferred government policy, however, the Committee agrees with Treasury that the Australian Government ought to honour its commitments to tax sparing arrangements with Vietnam until the previously agreed date. The proposed Exchange of Letters accomplishes this objective by recognising changes in Vietnamese domestic law, thus providing security for Australian investors in Vietnam. The Com-
The Committee also accepts that this is conducive to continuing the strong bilateral relations between the two countries.

The Committee acknowledges Treasury’s continuing efforts to provide specific details in National Interest Analyses relating to double taxation agreements and is looking forward to receiving information from the Department on the historical costs and benefits of such treaties when similar amendments or extensions are considered.

Mr President
The second treaty action considered in this report is:

- An amendment to the agreement between Australia and Ireland on medical treatment for temporary visitors.

This bilateral Reciprocal Health Care Agreement enables visiting residents of one country to access the public health system of the other, to obtain any treatment that is immediately necessary prior to travelling home. This particular agreement covers public hospital and pharmaceutical care.

Reciprocal Health Care Agreements are of particular assistance to persons who are fit to travel overseas, but are unable to obtain insurance. This could be because, for example, they are over 70 years of age, or have a pre-existing medical condition. Australia has RHCAs with New Zealand, Italy, Malta, Sweden, the Netherlands, Finland, the United Kingdom and the Republic of Ireland. These countries have health systems of an equivalent standard to Australia.

Until the introduction of the National Health Amendment (Improved Monitoring of Entitlements to Pharmaceutical Benefits) Act, access to PBS benefits was automatic upon presentation of a valid prescription. The Act now requires people to produce evidence of their entitlement to PBS benefits. For Australians, this would be a Medicare card. The amendment to this agreement introduces a requirement that Irish visitors requesting access to the PBS produce a passport to access the PBS entitlements, thus bringing the treaty into line with Australian law.

The third and final agreement considered in this report is:

- An extension to the Regional Cooperative Agreement for research, development and training related to nuclear science and technology.

Mr President
The Committee understands that the Regional Cooperative Agreement, the RCA, is an important mechanism in fulfilling the technical co-operation provisions of the Nuclear Non-Proliferation Treaty. Continued membership of the 1987 RCA is therefore one way for Australia to meet its obligations to co-operate with other parties in the peaceful uses of nuclear energy under that treaty.

The Committee was advised that the non-proliferation treaty is the centrepiece of the non-proliferation regime which, for over a quarter of a century, has helped maintain Australia’s immediate strategic environment free from nuclear weapons.

As a party to the NPT, Australia has made a commitment to facilitate the exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.

The 1987 RCA also allows Australia to participate in international collaborative projects and to maintain and extend a national capacity in cutting-edge nuclear technologies. The Committee understands that the cooperation program covers six broad thematic sectors: health, environment, industry, radiation protection, agriculture and energy.

The Committee was advised that Australia is leading half of the projects in the health care sector, especially for the training of medical technicians, medical graduates in oncology and in medical physics. The Committee was advised that there is a critical shortage in the Asia-Pacific region of medical physicists, who are essential to ensure that optimum performance is obtained from equipment that represents considerable investment by the countries involved.

The RCA program has matured over the years since its inception, from capacity building into applications that assist in addressing and providing solutions to environmentally sustainable development programs and challenges of collective importance.

The Committee concurs with evidence it received that Australia has been playing a lead role in developing management strategies to enable RCA Member States to take on more responsibility for the development and implementation of the program. Also, the Committee agrees that the extensive networking that occurs between the counterpart agencies engenders a cooperative atmosphere that assists mutual understanding and facilitates regional contact across a wide range of science and technologies.

Mr President
It is the view of the Committee that it is in the interest of Australia for the treaties considered in Report 50 to be ratified and the Committee has made its recommendations accordingly.
I commend the report to the Senate.

Question agreed to.

**Superannuation Committee**

**Membership**

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.25 p.m.)—by leave—I move:

That Senator Hogg be discharged from and Senator Wong be appointed to the Select Committee on Superannuation.

Question agreed to.

**COPYRIGHT AMENDMENT (PARALLEL IMPORTATION) BILL 2002**

**First Reading**

Bill received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.26 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.26 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Copyright Amendment (Parallel Importation) Bill 2002 further demonstrates the coalition Government’s willingness to act in the best interests of consumers, the education sector and business.

The central aim of the bill is to improve access to a wide range of software products and printed material on a fair, competitive basis by permitting the parallel importation of such goods.

‘Parallel importation’ is the commercial importation of non-pirate copyright material without the permission of the Australian copyright holder.

At present, software products and printed material (books, periodical publications and printed music) are not subject to open and genuine competition.

This is because copyright law allows local rights holders to control importation of these products.

This has significant implications for Australian consumers and businesses as Australia is a net importer of copyright material.

The bill offers the prospect of cheaper prices and increased availability of products for all Australians, but especially for small businesses, parents and the education sector.

Unlike the Labor Party’s ‘use it or lose it’ policy, the Government’s policy is not about benefiting foreign rights holders, and maintaining import restrictions and monopoly distributions at the expense of Australian businesses and consumers.

Many argued in 1998 that the relaxation of parallel importation restrictions for sound recordings would devastate the Australian music industry.

But, the industry is in good shape and there is no evidence of the claimed 50,000 job losses.

The recording industry grew after the 1998 reforms, with reports of around 2.9 per cent growth in 1999 alone.

Many top selling CDs are over 30 per cent cheaper (and sometimes less than half-price) than prior to parallel importation.

This is despite impact of the GST and unfavourable exchange rates.

Claims were also made that piracy rates would soar as a result of the CD reforms, and similar claims are likely in relation to software.

In a report in January 2000 the Australian Institute of Criminology, on the available data, could find ‘little evidence of the increase in CD piracy predicted by opponents of liberalisation’.

According to published industry statistics, Australia has comparatively low software and sound recording piracy rates.

Industry data on software piracy rates in New Zealand has recorded a decrease in the piracy rate since the introduction of parallel importation there.

**Books**

To enable maximum community access to competitively priced products, the bill permits parallel importation of all major forms of printed material.

A 1999 review by the Australian Competition and Consumer Commission (ACCC) found that for
best selling paperback fiction, the price difference between Australia and the USA had exceeded 30 per cent on average over the previous four years. As recommended by the Intellectual Property & Competition Review Committee, the printed material provisions will be delayed for 12 months to allow the book industry to undertake contractual adjustments. The Committee noted that it had not been provided with any evidence to substantiate printing industry claims in relation to the beneficial effects of keeping the current restrictions.

Software products
The bill allows parallel importation of all software products including business, education and home software and pay-per-play video arcade machines.

A 1999 ACCC report recorded that over the past 10 years, Australian businesses and consumers have had to pay an average of 27 per cent more for packaged business software than their US counterparts.

Coverage
Some Australian rightsholders have attempted to prevent parallel importation of sound recordings by relying on the copyright in secondary material included on the music CD.

This bill will close this loophole by allowing parallel importation of copyright protected ‘accessories’ other than feature films.

As the Government has not fully assessed the impacts of allowing the full parallel importation of ‘cinematograph film’ on the Australian industry or consumers, the bill does not allow the parallel importation of ‘feature film’.

Enforcement Provisions
To assist copyright owners to enforce their rights under the changed arrangements the bill gives them substantial procedural assistance.

It provides amendments so that, as for sound recordings, in civil importation action involving software or printed material, the defendant will bear the onus of establishing that a parallel imported copy is not an infringing copy.

In addition, criminal penalties for infringement of copyright are severe, including up to five years imprisonment for each offence.

Conclusion
This bill will open up new business opportunities and allow easier fulfilment of specialist needs.

It balances the needs of copyright owners and copyright users. Copyright owners will continue to be fairly remunerated, but in the context of a global marketplace.

Australian consumers and businesses will be able to get the best deal on legitimate printed material and software products.

Debate (on motion by Senator Buckland) adjourned.

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

AVIATION LEGISLATION AMENDMENT BILL 2002

First Reading
Bill received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.27 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.27 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Aviation Legislation Amendment Bill 2002 will amend several aviation-related Acts within the Transport and Regional Services portfolio. These amendments are contained within three schedules to the Bill.

Schedule 1 of the Bill streamlines International Air Services Commission processes through amendments to the International Air Services Commission Act 1992.

In 1992 the International Air Services Commission was established to act as an independent body for allocating capacity available under Australia’s air services agreements to Australian airlines.

The Government’s success in negotiating significantly increased capacity has created opportunities for the Australian community, particularly
The changes have also increased opportunities for Australian airlines, provided that they can respond more quickly to changes in what is an increasingly global market. These opportunities are available for new carriers as they arise to take the place of Ansett International.

Therefore the Bill simplifies the process of allocating capacity to ensure that Australian airlines are not unduly delayed by Commission procedures from putting Australian capacity into the market to compete with foreign airlines.

The Government will retain the Commission's role of assessing the viability of airlines applying for capacity to operate international air services. This is particularly important as new airlines press to take advantage of these opportunities. It is reasonable to seek evidence from applicants that they are capable of using the resources that are allocated to them and this Act provides that Commissioners be selected for specific skills that are directly relevant to this assessment.

Further, there is an obligation for a Government each time it licenses a services provider. The Government needs to be satisfied that the licensee can actually provide the services it is licensed to perform.

The next major component of the Bill, Schedule 2, initiates a statutory framework for handling aviation security information and reforms the regulation of the carriage of munitions and implements of war on civil aircraft.

Aviation security arrangements seek to protect major commercial airline passengers against acts of unlawful interference—such as aircraft hijack or aircraft sabotage. Aviation security allows Australians to place confidence in the aviation industry by reducing the threat to members of the travelling public and the business community.

Schedule 2 will introduce a statutory framework for the handling of aviation security information. This framework is designed to encourage industry to provide regular and accurate information to Government on how it complies with the aviation security standards. The receipt of this additional, targeted security information will assist the Government to deal with and resolve compliance issues within the industry in a timely and effective manner.

Schedule 2 also reforms the regulation of the carriage of munitions and implements of war on board civil aircraft. The amendments will eliminate duplication and bureaucratic approval processes, whilst maintaining standards. Regular carriage of munitions will be able to be authorised through regulations, to increase accountability and transparency. The Minister will also retain the ability to make instruments to authorise the carriage of munitions.


In summary, the new security standards to be initiated under Schedule 2 to the Bill will be focussed on the security outcomes to be achieved by Australia's civil aviation industry and will support an effective industry compliance program.

The Government Amendment to Schedule 2 in the House of Representatives removed the repeal of the current aviation security arrangements. It was originally intended that the aviation security arrangements be consolidated into the regulations. Following the events of September 11, 2001 a number of reviews of aviation security have been initiated and it has been decided that a full revision of the regulatory arrangements be undertaken after the completion of the reviews.

Schedule 3 proposes that the Federal Airports Corporation Act 1986 be repealed and that any remaining contracts, assets and liabilities of the Corporation be transferred to the Commonwealth. The Federal Airports Corporation (FAC) ceased trading in September 1998. All airports previously owned and operated by the FAC are now operated either by private lessee companies or Commonwealth-owned corporations. There is therefore no need to retain the legislation on the statute books.

With some minor exceptions, the transfer of assets and liabilities to the Commonwealth was completed in September 1999. It was however not possible to transfer residual liabilities in relation to Head Office employees who did not transfer to the privately-leased airports. The proposed amendments will transfer any residual contracts, assets and liabilities in relation to these employees to the Commonwealth.

Debate (on motion by Senator Buckland) adjourned.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Report

Senator CARR (Victoria) (4.28 p.m.)—On behalf of Senator George Campbell, I present the report of the Employment, Workplace Relations and Education References Committee on the education of students with
disabilities, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CARR—I seek leave to move a motion in relation to the report.

Leave granted.

Senator CARR—I move:
That the Senate take note of the report.

As chair of the subcommittee that undertook this inquiry for the Employment, Workplace Relations and Education References Committee, I am pleased to be able to report that the subcommittee was unanimous in its deliberations and recommendations. Senator Tierney and Senator Allison worked tirelessly with the subcommittee to produce a report which I think should provide the basis for quite serious action by government. I suspect that this is a report that neither the government nor the opposition will find comfortable in many respects. This is—I emphasise this—a genuinely unanimous report, and I commend the courage of Senator Tierney on raising some of these matters which, as I say, I hope may produce some serious debate within government.

The inquiry into the education of students with disabilities attracted considerable interest. The committee received some 247 submissions and it heard from 122 witnesses around Australia. Interest groups included parents and students with personal accounts that often highlighted a sense of frustration, stress and disappointment with practices that have failed to help students and their families. Disability groups, professionals, parents and student groups provided a comprehensive analysis of disability education and they raised a series of concerns which this report has sought to address. There are approximately 115,000 students with disabilities funded under specific Commonwealth funding around the Strategic Assistance for Improving Student Outcomes program—the SAISO program—in schools. However, this figure grossly underestimates the number of students requiring extra support in the classroom because of the learning problems associated with a disability. This is because eligibility for Commonwealth funding is based on a narrow definition of disability. Approximately 18,000 students enrolled in university and some 62,000 students enrolled in TAFE courses have a disability.

The committee agreed that students with disabilities pose a considerable policy challenge for all governments in Australia. The number of students with disabilities attending schools and enrolling in post-secondary education is increasing. There have been increases in the diagnosis of disabilities such as autism and learning disabilities such as ADHD. The net result, of course, is that strong competition now exists for special needs funding across the various sectors. The issue is further complicated given the substantial number of students with learning difficulties, as opposed to learning disabilities, who are also educationally disadvantaged for reasons other than the disability but who nonetheless require funding support. While all state and territory education departments have developed inclusive policies for the education of students with disabilities, differences exist in the extent to which student needs are addressed, assessed and funded. In part, this arises because nationally consistent definitions of disabilities do not exist. The result is inequities between the states and territories in relation to funding support. It also makes national comparisons about the performance of students with disabilities almost impossible. For these reasons, the committee has recommended that the Ministerial Council on Education, Employment, Training and Youth Affairs, MCEETYA, develop nationally consistent definitions of disabilities.

One important mechanism that will give a level of consistency to the delivery of education for students with disabilities is the finalisation of nationally agreed educational standards. The Disability Discrimination Act 1992, along with similar state and territory laws, makes it unlawful to discriminate against a person on the grounds of disability. Those claiming discrimination have a right to lodge a complaint with HREOC. The development of a set of nationally agreed educational standards will clarify these rights and obligations. Quite clearly, there is a series of problems with the fact that so few
people are able to take claims of discrimination forward because of this inconsistency across the various states and territories, because of the expense and because of the clear level of frustration that exists with the existing complaints resolution processes that operate within the states. The committee has also found it almost beyond belief that an agreement on educational standards has eluded MCEETYA for over six years. I want to emphasise that point. For six years the states and territories and the Commonwealth have been arguing the toss about such a basic concept. Given the importance of the educational standards to the overall legislative scheme that is designed to reduce discrimination in education and the unconscionable delaying tactics of some states, the committee believes that it is the responsibility of the Commonwealth to bring these standards into force unilaterally.

The basis for disagreement over the standards is, of course, the indeterminate cost of adopting them. Putting aside whatever legal mumbo jumbo is presented here, the fundamental question is the issue of costs. The committee believes that conflicting evidence about these costs needs to be resolved. Some state and territory governments argue that the introduction of the standards would impose no additional costs on governments. Others argue that the costs would be substantial. The regulation impact statement prepared by the Commonwealth for the July 2002 MCEETYA meeting estimated the implementation cost to be $328.3 million to $334.3 million for schools and $18.1 million to $24.1 million for the VET sector. The committee agrees that the Commonwealth, state and territory governments should share the costs of implementing educational standards. It also agreed that MCEETYA was the appropriate forum to determine the extent to which these costs should be shared.

The committee concludes that there is a need for a much clearer and more prominent role for the Commonwealth in educating students with disabilities. In particular, the Commonwealth should be in a position to provide a legislative and policy framework for this crucial area of public policy. It must, as a matter of urgency, formulate and promulgate disability standards for education. This is a matter for the Attorney-General. The cost of implementing these standards, which could be considerable, should be shared between the Commonwealth and the states. MCEETYA is the appropriate forum in which to determine how that cost burden should be borne. Enhancing and making more proactive the role for the Commonwealth which is envisaged by this committee in this area will especially assist and support the smaller jurisdictions, where resources and staffing issues are particularly acute and problematic. The training of specialist teachers and support staff is a matter where Commonwealth support and coordination are especially required. States such as Tasmania and the Northern Territory cannot easily devote financial resources to this area. The Commonwealth has a particular role in coordination and training.

I turn to the matter of Commonwealth funding itself and the funds that are currently made available for the education of students with disabilities. The committee has a shared concern about whether Commonwealth funds reach down to the level where assistance is required. I want to emphasise that. This is a matter that goes right across the political divide within this chamber. It is hard to follow the money trail. The committee cannot be assured that Commonwealth funds are being used as parliament intended. Reporting processes need to be strengthened and we believe that the current accountability guidelines are inadequate. A number of organisations used the inquiry to seek claims for increased funding. The committee did not see its role as being the one proposed by the supposedly neglected interest groups. The committee proposes that the non-government school organisations, for instance, be given additional specific funding for students with disabilities. The committee took the view that such funding proposals need to be considered within the broader context of the State Grants Act funding, which all members of the committee describe as at least very generous.

With regard to other issues, the committee has considerable concerns about the training of skilled and dedicated teachers to work in
schools and about the extraordinary strains being placed upon teachers to fulfil the multitude of obligations now being asked of them. In regard to post-secondary education, we are particularly concerned about the failure of the vocational education system to fulfil its obligations. Frankly, my personal view is that that is a national disgrace. I am concerned that there is a need for greater work to be done in this. This inquiry has had a profound effect on me. It has allowed me to gain some insight into the difficulties faced by children with disabilities and their families. (Time expired)

Senator TIERNEY (New South Wales) (4.38 p.m.)—The inquiry of the Senate Employment, Workplace Relations and Education References Committee into the question of children with disabilities produced a fairly rare thing for this committee—a unanimous report. The last unanimous report that it produced was on children at the other end of the educational spectrum—gifted children. It has had two inquiries into atypical children at both ends of the spectrum: children who are gifted and children with disabilities.

The committee received evidence from right around Australia and we spoke to parents, teachers, administrators, academics and to concerned citizens. We developed a view that has produced a report with 19 unanimous recommendations. As I mentioned before, that is a rare thing for this committee. That has occurred because of our concern that children who fall outside the normal spectrum of learning across each state in this country are disadvantaged. There need to be major changes in the approach to pre-service education, in-service education, the diagnostic procedures and to the support for these children when they are at school.

One of the current problems in education that is exacerbating the situation for these children is the philosophy of inclusive education. Inclusive education means that the classroom teacher is expected to teach across the full range of abilities of children from those who are particularly gifted to those with educational disabilities and, in some cases, with profound disabilities. This philosophy can work if it is resourced properly, if teachers have appropriate pre-service training and if, after having got into the classroom and teaching in that situation, they have ongoing in-service education. We found uniformly around Australia that that was not the case, that the diagnostic implements used to assess these children were greatly inadequate and often applied far too late, that when these children were included in a classroom the teachers had not had proper pre-service training and, as a matter of fact, in many cases had not had any pre-service training in this area—it is not mandatory in any state with the exception of New South Wales and Western Australia—and that after teachers had begun teaching very little was done about their in-service training needs.

There is in Australia in relation to this issue confusion not only between state and federal levels of responsibility but also across the states on the relationship and roles of health and education departments. We received considerable evidence from parents who were not experts on medical and educational conditions but who sensed at a very early age of their child that there was something seriously amiss with their learning ability. They had sought help from the state education or health departments and on many occasions they expressed their extreme frustration that they could not find assistance.

What is particularly sad about this is that early intervention in many of these conditions can make a great difference. In particular, if a hearing disability in a child is picked up early, that can make an enormous difference to that child’s education. Some states are now beginning to introduce screening of children at birth for hearing disabilities. This will make an enormous difference to children in these situations—even in very extreme conditions of disability such as autism. There is evidence that very early intervention for children with autism will make an incredible difference to their education and life outcomes. But very little work has been done not just in Australia but anywhere in the world on carrying out this identification of autism in children at a very early age and then putting in the programs to work with them.
The problems that the committee discovered in the city areas were even more profound in rural and regional areas. Because of the sparsity of populations and the geography of the country, it is often difficult to get the health needs of children with disabilities in regional and rural areas attended to within a reasonable distance and it is also more difficult to find an appropriate school for these children. The vastness of this country creates a particular problem for children who are in rural and regional areas.

One of the trends we found disturbing is a pattern of gradual shutdown of special education schools across this country. There is a very great need for parental choice in this area. In some situations it is better for a child to be in an integrated class situation, and that might be the wish of the parents. There are other situations where the parents may wish—and even educators see it as appropriate—that they are in a special school. But if these schools increasingly shut down, the chance of parents having a choice is diminished. Then if their child goes to a school where the teachers have not had proper pre-service training and have very little in-service training in disabilities then the educational and life outcomes for these children are greatly diminished.

One of the hopeful approaches we did see in special schools—and we advocate more of this—is what are called 'lighthouse schools'. This is where the special education school becomes a lighthouse for in-service training in disability education for the surrounding schools. Courses can be run and offered by people in the special schools because these people do have specialist training that the classroom teachers do not have.

One of the very important things that we must ensure is that all the money that is allocated for disabilities education is actually spent for this purpose. One of the most disturbing things we found around all states was that, with the advent of global budgeting, it was incredibly difficult to establish whether the Commonwealth money that had been allocated to a child in a school in the area of disabilities was actually spent on that. Perhaps it was; perhaps it was not. There are no accounting mechanisms that show that this is happening. The committee is calling for the state governments to put in accountable processes so that the dollars sent to the school for disability education are spent appropriately. One parent I spoke to in Nowra said that according to the standards her child should have had $6,000 a year additional funding spent because of her disability. From the evidence there was no way that was happening. We suspect this is quite widespread. One of the most effective ways to get additional money into special education and teaching children with disabilities could be to make sure that the money that is allocated is spent appropriately on the children.

The final thing I want to touch on is the issue raised earlier about agreed national standards. Through MCEETYA the state and federal ministers have been meeting on this for six years and they have not come to an agreement. We must come to an agreed position at some time. The entire Senate committee urge MCEETYA to come to a nationally agreed educational standard and then work out between the state and federal governments, both of which have funding responsibilities in the area of disabilities, how that is going to be shared.

I commend this report to the Senate. There has been a lot of good work done. I commend the work of Senator Carr and Senator Allison, who were with me on this committee, and the secretariat. We have produced an excellent report with 19 very worthwhile recommendations. We urge MCEETYA to have a very serious look at these. Let’s see if we can advance the cause of education and the possible life outcomes for the most disadvantaged people in our community—those that have an educational disadvantage.

Question agreed to.

TRADE PRACTICES AMENDMENT (LIABILITY FOR RECREATIONAL SERVICES) BILL 2002

Report of Economics Legislation Committee

Senator McGAURAN (Victoria) (4.49 p.m.)—On behalf of the Chair of the Senate Economics Legislation Committee, Senator Brandis, I present the report of the committee on the Trade Practices Amendment (Li-
ability for Recreational Services) Bill 2002, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**ASSENT**

Messages from His Excellency the Governor-General were reported informing the Senate that he had assented to the following laws:

- Excise Laws Amendment Act (No. 1) 2002 (Act No. 107, 2002)
- Excise Tariff Amendment Act (No. 1) 2002 (Act No. 113, 2002)
- Customs Tariff Amendment Act (No. 2) 2002 (Act No. 114, 2002)
- New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002 (Act No. 117, 2002)
- Taxation Laws Amendment Act (No. 5) 2002 (Act No. 119, 2002)
- Broadcasting Legislation Amendment Act (No. 2) 2002 (Act No. 120, 2002)

**BUSINESS**

**Rearrangement**

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.49 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 2 (Medical Indemnity Bill 2002 and three related bills).

Senator Carr—Were we advised of this change in the program?

Senator Buckland—I was advised when I came into the chamber that we were doing this bill. I cannot help the Senate further than that.

Senator Faulkner—I do not doubt that there may have been some chamber arrangements, but I certainly have not been informed of them. Perhaps the minister could indicate to the chamber what the government’s intentions are in terms of programming. That might assist the members of the opposition while we check with our colleagues involved with chamber management.

Senator Coonan—My information is that this change is to accommodate those senators who need some time to consider some amendments to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and that there was an earlier agreement between Senator Ludwig and Senator Ian Campbell that we would proceed in the meantime with the medical indemnity bills.

Senator Faulkner—I thank the duty minister for the explanation to the chamber about the program. If he deems fit, Senator Forshaw will no doubt make an excellent contribution on this matter. As I understand it, there has been an agreement between the Manager of Government Business and those responsible for chamber management in the opposition to deal with this particular matter. On that basis, I warmly support the proposal that stands before the chair.

Question agreed to.
Debate resumed from 9 December, on motion by Senator Alston:

That these bills be now read a second time.

Senator RIDGEWAY (New South Wales) (4.53 p.m.)—I rise to speak on the Medical Indemnity Bill 2002 and associated bills. I want to cover three issues particularly. The first is the insurance crisis, the second is the medical indemnity insurance market and the third is the government’s response to date. Liability insurance protects the insured against the consequences of being legally liable for injury or damage to third parties. There are a number of types of liability insurance, including personal liability insurance, public liability insurance, professional indemnity insurance, medical indemnity insurance and product liability insurance. In their discussions, the state and federal governments have tended to focus on tort law reform as a response to rising insurance premiums. Other cost drivers such as September 11, the HIH collapse, the cyclical nature of the insurance industry itself, the cost of reinsurance, poor management and prudential monitoring have not been properly addressed.

As a consequence of various roundtable discussions and meetings that have been held, state governments across the country have enacted or are in the process of enacting legislation that in the view of the Australian Democrats severely limits an individual’s right to sue and their entitlement to damages. The assumption that there is a correlation between tort law reform and the cost of insurance was proved incorrect in a recent study conducted in the United States. In the USA, there was no difference in the cost of insurance at the end of the day for states that had little or no tort reform and states where large-scale tort reform took place. In the view of the Australian Democrats, a solution to the present and very public concern about the affordability and availability of public liability insurance and professional indemnity insurance requires a holistic national approach.

While the state and federal governments have tended to focus on tort law reform, this approach creates more problems and questions than it answers. Some weeks ago, when we dealt with the first in the series of bills concerning the binding agreement, I asked a number of questions. I will ask them again. I am yet to hear from the government—more particularly, the minister—what answers tort law reform provides for those who are seriously injured as a result of another’s negligence. How does tort law reform ensure that the sick and injured will be cared for in the long term and that they will be appropriately compensated? How does tort law reform encourage individuals, businesses and service providers to take greater care to prevent accidents? How does tort law reform ensure that businesses and organisations can get insurance cover when no insurer will provide a policy? How does tort law reform help prevent corporate collapse of insurance providers?

According to the Bills Digest, medical defence organisations, state government funds and commercial insurers provide medical indemnity to health professionals such as doctors. The medical defence organisations are established as not-for-profit mutual organisations for the benefit of their members, rather than for the financial benefit of shareholders. MDOs do not issue insurance contracts and are not insurers themselves per se. But in exchange for subscription income from the membership of the MDO, they do provide protection to their members.

I think it is important that the Hansard record show that there are seven major medical defence organisations in Australia. These are United Medical Protection, or UMP, one I think we all familiar with; Medical Defence Association of Victoria; Medical Indemnity Protection Society; Medical Defence Association of South Australia; Medi-
cal Defence Association of Western Australia; Medical Protection Society of Tasmania; and Queensland Doctors Mutual Ltd. Most of the MDOs rely heavily on reinsurance to protect their financial position and to provide cover to doctors and other health practitioners. MDOs can raise additional capital under their current structural arrangements by charging increased subscriptions or making a call to members for an additional amount of money.

Since 1999, four of the main MDOs have been required to call on their members for additional funds. These were UMP, the Medical Defence Association of Victoria, the Medical Indemnity Protection Society and the Medical Defence Association of South Australia. All of them have made calls to their members for an increase because additional funds were required to operate. Given those circumstances, it is appropriate to ask the question: if the medical defence organisations are having to make extra calls upon their membership, what assurance can there be that they are operating with the required prudential precautions? Considering the sequence of events that has led to the crisis in the health industry and the availability of insurance cover or professional indemnity cover, it is important to put this in context.

The medical indemnity insurance market has been in crisis for some time and will perhaps continue to be, depending upon what other responses are given by the government. The first point to note is that a provisional liquidator was appointed to UMP and its wholly owned subsidiary Australian Medical Insurance Limited on 3 May of this year. The collapse of UMP insurance would have left 60 per cent of doctors in Australia without professional indemnity cover. There has been a large increase in the cost to medical practitioners of subscribing to medical defence organisations. Medical defence organisations have not made sufficient provision for incurred but not reported claims. One of the features of liability insurance is its long tail. This means that there can be many years between an injury occurring and an insurer receiving notice of a claim. As one of the bills in the package notes, such claims are referred to as ‘incurred but not reported claims’, or IBNRs. For claims that have occurred and have not been notified to the MDO, the MDO is unable to assess the amount of money it will need in reserve to meet the costs of these claims.

The following is a list of the government’s responses to the medical indemnity crisis. On 31 May 2002, the government announced that it would provide assistance to UMP and AMIL to cover payment of claims finalised and claims for incidents occurring between 29 April and 30 June—subsequently extended to 31 December of this year—under an existing or renewed policy. On 23 October this year, the Prime Minister announced that the government would implement an additional set of measures to address the medical indemnity crisis, including an extension of the ‘claims made’ guarantee by the Commonwealth to UMP members from 31 December 2002 to 31 December 2003. This offer is contingent upon the New South Wales Supreme Court allowing UMP and AMIL to continue in provisional liquidation and authorising the provisional liquidator to accept the extension of the guarantee.

The Prime Minister went on to say that the government would provide funding for incurred but not reported liabilities of doctors in MDOs where the IBNRs as at 30 June 2002 were unfunded. The Prime Minister also said that the government would provide reimbursement for medical indemnity providers—both MDOs and medical indemnity insurers—on a per claim basis for 50 per cent of insurance payouts over $2 million for incidents notified on or after 1 January 2003 and provision for premium subsidies to obstetricians, neurosurgeons and procedural GPs who undertake Medicare billable procedures. Access to the subsidy was conditional upon practitioners attending incident management and quality assurance programs. Measures were put in place for cost recovery. For the unfunded IBNRs, there will be a levy imposed on the members. Finally, measures were announced to place providers of medical indemnity insurance on an appropriate prudential and commercial footing that will involve an expanded role for APRA.

On the last response, prudential regulation is not covered by this package of bills. The
Australian Democrats are disappointed that this area is not covered. We are extremely concerned about that, because these medical defence organisations would not have got into the problems that they had if APRA had had some capacity to be able to monitor them. As we put on the record regarding the Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002, acceptance of this legislation is something that we are forced into, given the state of the health industry and the need to provide cover for doctors and other practitioners. The medical sector is unable to function without security of indemnity, and we do not wish to be responsible for any further uncertainty in the future. That said, MDOs cannot be allowed to operate in such a way that the situation with UMP is able to happen again.

It is important to remember that UMP/AMIL was, as I have said, the largest medical insurer in Australia, with coverage of approximately 60 per cent of medical practitioners nationally and providing 90 per cent of the cover in my home state of New South Wales and in Queensland. The company got into this predicament as a result of offering unsustainably low premiums as part of its strategy to try to obtain further market share. Thus, when its returns on investments became tight and the reinsurance market began to tighten, which was quickly followed by the collapse of HIH and then September 11, UMP found itself in the unenviable position of being unable to remain solvent. It is appalling that this situation was even allowed to happen in the first place. As we know, prudent regulators like APRA do not have any power over medical defence organisations. This allowed the organisation to get into dire circumstances without coming to the direct attention of the regulator. Disappointingly, the organisation retained its market growth strategy even after knowing that it had sunk into serious trouble.

Dr Ian Lumsden McVey, Chairman of the Medical Indemnity Protection Society, put it this way while giving evidence to the Senate Economics References Committee inquiry on 10 July this year:

... a more elegant way of expressing it would be: on the data that we had, if we had priced as UMP had then we would not have been in a prudent financial position.

When asked whether he agreed that UMP had historically been operating through a process of underpricing premiums to bid for market share, he responded by saying:

I not only agree; I know it was so ...

He added:

Any premium, of whatever size, if it is not enough to cover the assumed risk, is going to lead to failure of a business. I do not think there is any difference between the prudential behaviour of the governance of an insurance industry and that of anything else ... from our experience, the rates they—‘they’ being UMP—were charging in Victoria were bound to lead them into an unfunded position, and they took a particular philosophical view that IBNRs—of which you have no doubt heard huge amounts—were not to be counted. Prudent organisations said that they are to be counted, because they are a liability ... and only one is likely to default—one out of six.

Having said that, it is disappointing that the government has once again come to the chamber with a short-term, bandaid solution when it is patently obvious that prudential control is required for MDOs. Many within the industry also believe that this must happen. If the government wants to argue that it has not had time to install this control, I would argue that there has been ample time and that even a short-term measure should be in front of us today.

In a response to this package of bills by the Australian Medical Association in a recent article in Australian Doctor, Pamela Burton, legal counsel for the federal AMA, had this to say:

The package is a significant step forward in the short term but its goals are very limited in relation to the problem of escalating claims and costs.

... We have major problems still with aspects of the package. It does not achieve the long term reforms needed to put medical indemnity on a sound footing.

... The Government’s choice to subsidise certain high-risk groups within the profession does not address the increasingly unfordable premiums of other groups.
The package of legislative reforms that we are considering is designed to ease the pressure being placed upon providers of medical indemnity. Principally, it targets incurred but not reported claims, which UMP failed to include as a liability and which ultimately got it into the position in which it now finds itself. It also targets high-cost claims, with funding support being offered to medical indemnity providers who have claims that fall within two categories: unscrupulous business activities that have led to the taxpayer having to foot the bill for yet another corporate failure, and a failure that is still without the necessary safeguards to prevent it from happening again.

The package also puts in place the arrangements for the government to provide subsidies to certain sectors of the medical profession that are seeking medical indemnity cover, but it still excludes medical professionals such as midwives and others within the medical sector that are not covered by MDOs but which are vital to the health system. These are things that I have spoken about previously. It takes little investigation to find out just how much the insurance and indemnity crisis is affecting our community.

I would like to take a moment to put on the public record the effects this insurance crisis is having on other groups and organisations that will not benefit from this package of bills. The first of those, Dharruk Aboriginal Medical Service in Western Sydney, has seen its professional indemnity premiums rise by 150 per cent. While doctors, some midwives and dentists working at the service have individual professional indemnity cover, the service does not have insurance at an organisational level for protection against vicarious liability actions where the service could be held at least partially liable for actions of those employees. The only suitable cover that could be found would have cost them $96,000, and this included a significant rise in the organisation’s excess from $2,000 to $10,000. That is an extraordinary leap from previous years.

Organisations like the Dharruk Aboriginal Medical Service and countless others across the country operate on a shoestring budget. They do not have stockpiles of excess cash or moneys to meet any of these increases in operating overheads, and the type of increase is simply not sustainable. It has, and will continue to have, an impact on these services being provided to communities. Whilst at this stage the evidence of the scale and scope of the effects on services is just beginning, members within these support services have marked it as a significant and growing problem. It is not going to go away; we are going to have to come back and revisit it. We also need to consider that these organisations are at the front line in the war against medical problems by providing medical services to those in most need in our society, yet there is no publicly funded bailout package for them.

Another organisation that I want to mention is paying $28,000 for its medical malpractice-professional indemnity insurance cover. Last year it paid only $11,000. It too has been slugged with an increase of $17,000. This is on top of its separate public liability insurance, for which it is also paying almost $12,000 in premiums for this financial year. The questions that have to be asked are: where will these already stretched organisations get the extra dollars from to be able to provide a service, and what price can we put on the health of all Australians?

Given the debate that has occurred on this particular issue and the fact that there will be more to come in the future, we ought to be making sure that the system that is there to provide health cover is affordable, has the capacity to provide services, particularly to those in remote locations and, more particularly, as I have said on many occasions, recognises the vital role that midwives play in birthing processes for children being delivered. They need support and so far that has not been forthcoming from the government. We still ought to be making that call and giving them the support that they require. I move:

At the end of the motion, add: “but the Senate:

(a) notes the fact that midwives have been left out of the package as were Indigenous and community medical centres that are dealing with enormous increases to their insurance
bills and high excess charges, and calls on the Government to take action regarding these;

(b) notes that the Government has failed to offer assistance that has made a practical difference to those others within the medical services sector, such as midwives and Indigenous and community medical centres, who remain either without indemnity or insurance cover, or who are paying unsustainably higher premiums; and

(c) calls on the Government to urgently take action to remedy this situation”.

Senator BUCKLAND (South Australia) (5.13 p.m.)—I seek leave to incorporate my speech on the Medical Indemnity Bill 2002 and related bills in Hansard.

Leave granted.

The speech read as follows—

I rise to speak today on the four medical indemnity bills before us. The rationale behind these bills is to put into place specific instruments to tackle the problems regarding the medical indemnity insurance crisis. Over the last year or so we have seen the insurance market experience a series of blows, witnessing the collapse of HIH Insurance and the terrorist attacks on the World Trade Centre Towers on 11 September 2002. These collapses and catastrophes in the insurance market have largely contributed to the current difficulties we are experiencing in the medical indemnity market.

Through these events, we have come to realise that the insurance arena is a fallible one and at some point there has been a serious lack of foresight on the part of the industry.

In summary, the Medical Indemnity insurance market is made up of Medical Defence Organisations (MDO’s), state government funds and commercial insurers which all afford medical indemnity cover to various health professionals, such as doctors.

The ethos of MDO’s is that they are a not-for-profit mutual organisations. They were specifically set up for their members rather than for the financial benefit of shareholders.

There are several major medical defence organisations in Australia, which rely heavily on reinsurance to protect their financial position.

In recent times, further capital has had to be arranged for four of these MDO’s since 1999 by ‘making a call’ to members for an additional amount of money. One would consider this as a warning sign.

Consequently with all the complexities surrounding the medical indemnity crisis, this package of legislative reforms has been designed to ease the pressure being placed upon providers of medical indemnity. It’s primary goal is that incurred, but not reported claims and high cost claims with funding support being offered to medical indemnity providers who have claims that fall within these two categories.

The package also puts into place the agreements for the Government to provide subsidies to certain sectors of the medical profession seeking medical indemnity cover such as obstetricians, neurosurgeons and GP proceduralists. However, this legislation package fails to contain measures to scrutinise the effectiveness of the Federal Government’s facilitation in reducing costs of medical indemnity. It does not contain any prudential regulatory measures to address the operations of medical indemnity providers.

Currently the bills confirm the deal previously announced by the Government and gives this arrangement legislative effect. It gives effect to those elements of the government’s policy announced on 23 October 2002.

The three main measures that this legislation package firstly, addresses is the IBNR scheme which assist the MDO’s with unfunded IBNRs as of 30 June 2002 to pay for those claims when they arise.

The second measure deals with the effect of the High Cost Claims Scheme, which addresses the issue of high cost claims and relates to medical incidents in this package of bills. It endeavours to lower premiums by reducing the potential cost of large claims to insurers.

Finally, the third measure in this package of bills gives effect to subsidies. This subsidy will be provided to obstetricians, neurosurgeons and procedural GP’s who undertake Medicare billable procedures.

The Medical Indemnity crisis has affected many doctors and has had a greater and detrimental effect on the availability and affordability of medical services for all Australians.

It is therefore a national issue and consequently requires a national response to be provided and led by the Government.

The harsh reality is that unless Medical Indemnity insurance is available to doctors at affordable
levels, doctors will no longer be able to offer bulk-billing to their patients and will no doubt also charge a co-payment.

This scenario in the GP context will result in people who cannot afford to pay for a visit to the doctor not being able to access primary and preventative care that they need.

This in itself will lead to a greater drain on future health care budgets.

We will also see a mass departure of doctors from the profession, either seeking a safer environment in respect to insurance, or taking on an early retirement.

Further, new doctors will choose not to enter high-risk specialties.

Those that will suffer the most from this are low-income earners and those in rural and regional areas.

The Howard Government has not adequately recognised the medical indemnity insurance problem and has not acted quickly enough to address its adverse effects, including higher medical costs and reduced availability of services for Australians and their families.

They have also failed to address the effects of higher medical indemnity insurance premiums on midwives, private hospitals, family planning clinics and aboriginal medical services. The United Nation’s Human Development Index released in July of this year stated that Australia’s indigenous people whose poor living and health conditions meant that Australia ranked amongst the worst in the developed world for poverty. It seems we can strut the world stage and advocate justice and democracy, but we can’t provide for our own less well off who have health needs.

The government needs to provide leadership in its role to co-ordinate reforms necessary to State and Territory laws with the aim of uniformity in tort law reforms and they also need to put in place a national scheme to ensure the long term care and rehabilitation needs of catastrophically injured Australians.

The ACCC must do all it can to ensure that whatever changes occur in medical indemnity insurance, that no unfair or unreasonable costs flow to patients by way of the cost of their health care.

The ACCC must also play a more active role in bringing together medical defence organisations and representing them in negotiations with reinsurers and support APRA with appropriate resources to fulfil its greater regulatory role in medical indemnity insurance.

It must be said that the government unfortunately been unenthusiastic about taking part in address-
nity insurance. With a more united front, Australian medical defence organisations would be more likely to succeed in obtaining more affordable reinsurance and helping to keep the cost of medical indemnity insurance from exponentially increasing.

The Government should be more proactive in making changes to the way in which medical indemnity insurance is regulated. Medical indemnity insurance is provided by a small number of state-based Medical Defence Organisations, which traditionally have offered doctors “membership” rather than “insurance”. For this reason, regulation by the Australian Prudential Authority (APRA) has until recently been poor.

The Government should also be preventing price exploitation as a result of increased premiums. There should be an increased role for the ACCC. Patients are being asked to make large upfront payments by their specialists before surgical procedures are carried out with the explicit justification that these up front fees are necessary solely to defray the increased costs of medical indemnity insurance.

At the very least, consumers should not be required to pay amounts, which bear no relationship to the increased premium costs. The Commonwealth should act to prevent price exploitation.

Labor will support the measures outlined in these Bills. It is undesirable for there to be any delays in their passage of these bills before the Christmas break.

This is not to say that the conduct of the Government in this matter has been commendable. The lack of foresight and common sense by the government on this matter has not only hindered but also complicated a resolution.

Senator BUCKLAND—I thank the Senate.

Senator HUTCHINS (New South Wales) (5.13 p.m.)—I rise to speak on the Medical Indemnity Bill 2002 and related bills. There is no doubt that the crisis in medical indemnity insurance has had a serious impact upon the provision of medical services throughout Australia. Doctors around the country either have chosen early retirement to avoid the prohibitive increase in medical indemnity insurance premiums or have increased the fees they charge patients to cover the inflated premiums. The effect of medical indemnity insurance increases has had an impact on patients and doctors around the country. Capping medical indemnity insurance premiums is essential to the future of our health system. However, there are cases where individuals have been infected with serious illnesses as a result of their medical treatment. It has been estimated that there are thousands of Australians who have been infected with hepatitis C as a result of blood transfusions using donated blood. There are a number of cases where individuals have been infected with hepatitis C at the very time they were being treated for another ailment.

Screening of donated blood in Australia was introduced in 1990. According to the Australian National Council on AIDS, Hepatitis C and Related Diseases, between five and 10 per cent of hepatitis C cases in Australia were as a result of a blood transfusion before the introduction of screening of blood for hepatitis C. The Red Cross estimates that, since the introduction of standard hepatitis C testing, the chance of being infected with the disease as a result of receiving a blood transfusion is approximately one in a million. The odds of being infected are extremely low, but for those who are unfortunate enough to be that one person in a million, the reality is a life which is seriously hampered by what is an insidious and infectious disease. Hepatitis C, in its more serious cases, can lead to chronic liver disease.

This issue was raised in question time yesterday by Senator Harradine. Currently there is an inquiry into why patients contracted hepatitis C through blood transfusions. This inquiry was commissioned by Senator Patterson in August and is being conducted by Professor Bruce Barracough, the Chairman of the Australian Council for Safety and Quality in Health Care. The Australian Labor Party supports the inquiry and hopes that it can bring resolution to what is an issue which has diminished the quality of life of thousands of Australians. It is expected that the inquiry will report in the new year. Blood supplies in Australia are almost always at inadequate levels, and any concerns regarding the quality of donated blood can only serve to undermine the public’s faith in blood supplies in the country.
One of the most concerning elements of the ‘tainted blood’ issue is that only some of the victims of tainted blood transfusions have been compensated for their pain and suffering. The Sunday program interviewed a number of patients who have been compensated but also spoke to a number of patients who feel betrayed by the organisation which provided them with the blood. These people should be adequately compensated for the financial and emotional effects of sustaining an illness as serious as hepatitis C.

Recently, Canadian police filed charges against a blood supplier and a pharmaceutical company for criminal negligence causing bodily harm for their part in the transmission of HIV and hepatitis C during blood transfusions. In total, 1,200 people were infected with HIV and thousands were infected with hepatitis C. While I doubt the value of suing organisations which provide a valuable service to the community, the manner in which countries such as Canada are dealing with this issue demonstrates the gravity of the situation. As yet, very few Australians have tested their cases in the courts.

We should not forget the objective of any type of insurance when considering these bills, which is to provide people with adequate compensation for any suffering they endure. While medical indemnity insurance must be brought into line so that our health system remains accessible, we must keep in mind the people who have suffered serious consequences as a result of their medical procedures. The medical indemnity insurance crisis is one which must be dealt with as quickly as possible. The integrity of our health care system must be dealt with swiftly and effectively. The bills we are debating are long overdue.

Senator LEES (South Australia) (5.18 p.m.)—I want to place on record my disappointment in the Medical Indemnity Bill 2002 and related bills, their narrow scope and what they highlight about the vested interests in our health system. They should in fact be renamed the ‘doctor indemnity bills’, as the only section of the medical work force that they actually deal with is doctors. I do not deny that professional indemnity insurance for doctors is a very important issue, and that is why this chamber will no doubt pass these bills today. However, what concerns me is a wide range of other health professionals who simply have not been considered by the government or, if considered, the whole thing has been determined to be too difficult and has been put in the too-hard basket.

I note that on 28 March this year the government announced that it would provide a short-term guarantee of up to $35 million to United Medical Protection and Australasian Medical Insurance Ltd, UMP-AMIL—the insurer of about 60 per cent of Australia’s doctors. Some $35 million was very quickly offered to sort out this problem. Remember that figure; I will come back to it later.

The current package of bills being debated by the chamber gives effect to the government’s policy announced on 23 October this year. The announcement included an extension of the guarantee to UMP-AMIL to the end of next year. It involves subsidising the insurance premiums of obstetricians, neurosurgeons and GPs performing procedures. It is a scheme to meet 50 per cent of the cost of claims of payments greater than $2 million. It involves funding of the incurred but not reported liabilities, the IBNRs, by those medical defence organisations. It also includes a levy, over an extended period, to recoup the cost of funding these liabilities for members of the relevant MDOs.

I am pleased to note that the Australian Competition and Consumer Commission will now monitor medical indemnity insurance premiums to determine for us whether or not what is being charged is justified, and that is certainly positive. But what is all of this going to cost? It seems that it will cost around $246.5 million over four years. That is what the government has allocated in the mid-year review. As I stated earlier, I do not deny the need for the government to act in this area. However, I want to know why—and the midwives and parents, young mothers-to-be in particular, want to know why—this government has leapt to the aid of doctors but has not been prepared to look at the problems faced by other health professionals.

Prior to the withdrawal of insurance for midwives last year, there were about 150
midwives, all women, practising independently in this area—that is, those practising outside of hospitals. I am aware of the fact that a number of these women have continued to practise without insurance—a very risky thing indeed. But the problem has extended into our universities. While some of these issues have been dealt with, we still have problems with midwifery students and some nursing students actually getting insurance so that they can do their clinical placements and then graduate.

For those people who argue that midwives cannot get insurance because they pose too high a risk or that we really should not worry about insurance for midwives because Australian women prefer the medical model, I want to dispel those myths. Firstly, independent midwives cannot get insurance, despite the fact that midwife assisted pregnancy and delivery for healthy women is the preferred option for many women if that choice is available and despite the fact that there has never been a successful litigation against a registered midwife in Australia. The WHO recommends the midwife as:

... the most appropriate and cost-effective type of health care provider to be assigned to the care of normal pregnancy and normal birth.

The OECD countries with the lowest perinatal mortality rates have maternity care systems in which midwives provide primary care for up to 80 per cent of pregnant women. The truth is that maternity services primarily delivered by midwives are safer, the rates of intervention are significantly lower, the rates for breastfeeding are significantly higher and Indigenous babies in particular seem to benefit, with fewer born underweight.

Now that we have dispelled the myths, let us go back to the government’s approach. The health minister’s comments in this area have not been consistent. She said:

Medical indemnity, like all insurance, is facing significant issues. We have the state health ministers coming together with the medical defence organisations and leaders in that industry, with the medical profession itself, to address the medium, short and long term ... I think we need to look at the whole area, the whole field. It’s very important we address the issues across the board.

Most of us took that to mean the issues across the board, and working with the states to look at a true medical indemnity insurance package—not a doctor indemnity insurance package. Addressing the issues across the board would involve a closer look at why we have this medical indemnity crisis. If the government had begun to look at why, I think it could have sorted out some of those problems, particularly in the high-risk area of obstetrics. Why are the premiums for obstetricians spiralling? I understand that some of them pay up to $60,000 a year. Why are more women suing their obstetricians? What is the problem out there?

There are a range of other issues, besides ones relating specifically back to maternity services, such as the availability of other supports if the baby is facing long-term needs. We all know the disability payment for children is very small and quite difficult to access. Let us concentrate for a moment on the actual medical issues. Recent media reports suggest that up to 70 per cent of specialists will have left this area by 2012. I do not know whether this is simply scaremongering, but it is a constant reporting back of the number of specialists who feel like just walking away from the profession. I make it clear that I am certainly not attacking those professionals who are doing a tremendous job delivering babies, particularly those facing very difficult circumstances in rural and remote areas. They definitely deserve all our support. However, I think we need to look at the way we deliver maternity services as a whole in this country, because it is a huge part of the problem. It has to be addressed if we are to make any long-term changes.

For a range of reasons, Australia is locked into a highly specialised medical model for delivering normal babies. According to recent research by the University of Newcastle, the use of surgical procedures and drugs in childbirth is now so common that many women are doubting their ability to give birth naturally. Again, I am not criticising the doctors. It is becoming an expectation. Women are actually asking to have a caesarean. If their friend had a baby delivered by caesarean they think that is the way, so they ask their obstetrician. It is very difficult, in
this litigious environment, for the obstetrician to say no.

If we look at the cost of this model, we see that it is wasting millions of dollars by treating healthy women, with normal pregnancy, as specialist cases. According to the author of some research from the University of Newcastle, Professor Kathleen Fahy:

Women under the care of obstetricians will have twice as many caesareans as those being cared for by midwives. There is an absolute correlation that the more medical intervention there is, the more complications you will have ... With less medical intervention, you’ll make less mistakes.

We have an alarmingly high rate of obstetric intervention in Australia, and from the statistics it now seems that something like 80 per cent of births have some sort of medical intervention. That is a staggering figure given that the WHO suggest it should be somewhere around 15 to 20 per cent. In addition, our very high rate of caesarean births is some 15 per cent higher than the WHO target. Going with this high rate of intervention, the most recent maternal mortality report shows increased numbers of maternal deaths. Australia’s high rate of intervention in childbirth is unsustainable. Each intervention increases the cost of maternity services as well as the risk of litigation.

I take this opportunity to suggest an alternative—it is only part of the solution to the professional indemnity crisis but it is something this government should consider working through with the states, because it would save an enormous amount in public health expenditure—and it is community based midwifery. We are not talking about a situation in which, when a woman turns up at the hospital, the first person she sees as she is about to give birth is the midwife—until the doctor arrives. We are talking about community based midwifery, where she is supported throughout her pregnancy by the midwife. The midwife ensures that the home is ready for baby. The midwife will be there at birth, whether the woman chooses to give birth in hospital—which is what happens with the midwifery program in the northern suburbs of Adelaide—or the family chooses for the birth to happen at home. The midwife will then follow the woman through for the first few weeks of baby’s life.

In New Zealand, this program of choice sees some 70 per cent of women choosing the community midwife as their primary care giver. Firstly, it delivers substantial costs. We have the potential in Australia to save an enormous amount of money for the state and federal health budgets. Secondly, it overcomes the problem of the withdrawal of obstetric specialists, by providing community midwifery services to complement them in their role in the health system. If it is right that in 10 years we will have only about 30 per cent of the current work force of obstetricians left, those who can take their place are the community midwives. The obstetricians will be there for those women who do need some surgical intervention and some specialist medical support.

Thirdly, it would improve the risk profile of Australia’s maternity services by lowering intervention rates and reducing the likelihood of litigation. The experience in New Zealand has shown that the insurance problem can be largely resolved by providing women with the choice of a known midwife, by ensuring ongoing information and support throughout a pregnancy and by establishing appropriate counselling and mediation systems, where a woman’s grief over a difficult birth where a healthy baby is not the end result is treated with respect. The woman is well supported to understand what happened and why rather than being treated defensively as a potential litigation risk.

Fourthly, it would bring Australia into line with international best practice. Fifthly, it would better meet the needs of Australian women. It would give them and their families a choice in terms of greater continuity and one-to-one care. Finally and sixthly, it would address the dramatic decline in regional maternity services in recent years as community midwifery services can be readily and cost-effectively established in urban and rural and regional settings.

To return to the amount of money I mentioned at the beginning of my speech, which was $35 million from the government, all the Australian College of Midwives wanted when they approached the federal govern-
ment earlier this year was $1 million. At that stage that would have ensured the provision of insurance to community midwives then struggling to get insurance. And they were not struggling because of any risk. They were struggling to get insurance because insurance companies decided that they could not be bothered—there were not enough of them and they would simply write that whole area off their books to save any hassles and, indeed, any paperwork.

My final comment about this issue and this legislation is that the decision by the federal government to provide professional indemnity insurance for only a portion of the medical profession—only for doctors—appears to contravene the spirit of the national competition policy. It also directly conflicts with the many recommendations of some 30 state, territory and Commonwealth inquiries into maternity services since 1985. They have stated the need for midwifery-led community based care to enhance the care now provided by obstetricians. I believe that the time is now well and truly overdue for this government to take some leadership on this issue, to work cooperatively with the states and to tackle the professional indemnity problems for all health professionals and not just the chosen few. I foreshadow that I will move a second reading amendment—it has been circulated—which specifically deals with the lack of interest this government has in supporting midwives.

Senator WEBBER (Western Australia) (5.32 p.m.)—Like the previous two speakers, I rise to express some concern about the narrowness of the government’s response to the medical indemnity crisis confronting this country. In my view, these bills underpin the government’s response to the medical indemnity crisis. They illustrate the bandaid approach that it adopts on most difficult issues. This reflects a very conservative approach to governing Australia. I think it was Woodrow Wilson who once said, ‘A conservative is a man who sits and thinks, but mostly sits.’ This solution is the best that the government can come up with for a problem that has been confronting our country for quite some time. In a shallow view of the problem, the government addresses only the immediate difficulties confronted by UMP, AMIL and their members. The government does not examine whether the entire system of professional indemnity coverage is broken and in need of major reform. Rather, it uses this opportunity to apply a bandage and hopes that the system will limp along. The government does not seem to concern itself with the problems inherent in the system; it just concerns itself with papering over the cracks.

In my view, there are two issues working within this crisis. The first relates to the need to provide medical indemnity coverage for UMP, AMIL and their members and for other organisations. The second relates to other professionals, particularly other health professionals, who are denied any form of cover at all. In the case of the members of UMP the bottom line is that this problem stems in part from one simple premise: it is not just the underfunding or the lack of fully funded policy but that, as with most medical defence organisations, their members pay the same fees for coverage regardless of their claim history. It is common practice in other forms of insurance that your claim history determines your level of risk and therefore your premium. It is incumbent on individuals and organisations, therefore, to reduce their risk—to engage in risk management as the main method of reducing premiums.

Most medical defence organisations take a different approach. Whether you have no claims, one claim or 100 claims, you get to pay basically the same premium. There is no benefit, therefore, in being a good doctor—one who has no claims made against them and one who has engaged in transparent and accountable risk management practices. You get to pay the same as the doctor down the road who has had claim after claim lodged against them. As I have mentioned before, the apologists for the current system and for the proposal to paper over the cracks will tell you that that is because this is not really an insurance scheme. We are told instead that it is a medical defence fund. It seems to me that professional indemnity coverage needs to be like any other kind of insurance fund and there needs to be a fully accountable and transparent process. When we are told that it
is a medical defence fund, as I have said, we are told that if people have claims of negligence made against them then the fund steps in and either contests the action or settles the claim. Strictly speaking, that is correct. However, the general principles that hold true for other types of insurance should hold true in this case—including that if you take steps to minimise the causes of litigation then litigation is reduced.

Insurance companies expend enormous effort in ensuring that risk is minimised to limit costs. A medical defence fund should operate on the same basis. As John Castles, the President of Professions Australia, has said recently, ‘Good risk management averts litigation.’ So here the government has a chance to address a major failing of the system. Why did the government not insist that UMP and other like organisations look to risk management as a means of operation? Instead, from day one the government focused on using a bandaid to address this crisis. The government initially sat on its hands and then extended support to the fund to allow it to continue operating only when it looked like it was going to fall over. The government claims that the problem was that the cost of membership of UMP and other funds had reached the point where the indemnity cover was becoming unaffordable. The perceived result was that doctors would withdraw from practice or restrict their activities to low-risk procedures.

But the fact remains that this government has singularly failed to take full advantage of this opportunity to fix the entire system. A scheme should have been created that rewarded those doctors who engaged in risk management. Indeed, a scheme should have been created that covered all health professionals, not just doctors. A scheme should have been created that rewarded those doctors who did not make any claims. Instead, we get another bandaid approach, the Australian taxpayers get to foot the bill and still we have no firm commitment as to what it is going to cost in the long run.

This approach is similar to that which has been adopted with insurance generally—that is, the major reform to the system will restrict the rights of individuals to seek redress for injury as a result of negligence. But did the government fully examine all of the other options? We are told that they did, but the bottom line is that the government decided that real reform of this system was way beyond them. What we get instead is window-dressing. We get a cobbled together solution that does not address the underlying problems and solves only the immediate need of ensuring that all doctors—and, as Senator Lees has pointed out, only doctors—who are members of medical defence organisations have medical indemnity cover.

The second failure of this government is in not addressing the needs of health and other professionals. There is a crisis; there is no doubt that there is a crisis. But this crisis extends much more broadly than just to doctors. All this government has addressed so far in this debate is the specific issue confronting doctors. As Senator Ridgeway has raised in this place a number of times and as Senator Lees has spoken of more recently, the crisis of cover extends to other professionals, especially to independent midwives. I have had several meetings with independent midwives in Western Australia in relation to this problem. Without the foresight of Western Australia’s own Minister for Health, Bob Kucera, and his willingness to find a solution, there would now be no independent midwives practising in my home state.

The government’s short-term expedient solution only works for doctors. One has to wonder whether it is because they are running scared from the AMA. Solutions in this day and age should not be constructed in isolation; solutions should require an approach that addresses all elements of the problem. The government provide a single approach for a very complex issue. They will fix the immediate concerns of all doctors who are members of UMP, AMIL and so on, and the rest of the medical professions can look after themselves. Just like their approach in other portfolios, they shift the responsibility to others—in this case, the states. The states can go out and fix tort law and limit or extinguish individuals’ rights to seek redress. Rather than look at the whole system, we get a stop-gap, short-term solution.
Why did the government not consider a system that addressed these problems for all health and other professionals? One has to wonder whether it is because it was all too hard. The key, as Professions Australia point out, is not to do with proportionate liability, because that approach is all about benefiting mainly the professions, not the community they serve. Rather than just accepting a stop-gap, bandaid approach to the problem, this group seem to be prepared to offer alternatives. The alternative offered by Professions Australia, which they recommended to COAG recently, is the adoption of a risk management strategy as it applies in New South Wales under the Professional Standards Act. As their recent correspondence to most of us in this place states:

Professional standards schemes are designed to help protect consumers. They are legally binding arrangements which aim to improve the standards of members of professional and other occupational groups.

Whereas the government’s response is about propping up, as a temporary expedient, a system that is not working, Professions Australia recommend changing the system entirely to allow it to operate more effectively in the future. Rather than simply restricting consumers’ rights, surely the government should be keen to look at any change to the system that would reduce the number of cases litigated. Risk management and other reforms have a major impact on the number of cases and the way they are litigated. But, perhaps again, that is all too hard. Professions Australia go on to say:

Risk management has other benefits too. Having effective complaints and discipline arrangements means that shonky practitioners can be weeded out following customer complaints, be expelled from their association, and become ineligible for limitations on liability.

In other words, it is not just about reducing the rights of individuals to seek redress, it is not just about getting the states to engage in law reform, it is not just about propping up the existing system.

The government had an opportunity with this legislation to bring about very real reform. There was an opportunity to look at the success of the New South Wales Professional Standards Act and how it has reduced litigation. The government also had the opportunity to develop a transparent and accountable mechanism for regulating professional conduct. Instead, the government took the soft option. It refused to take on the members of what is perhaps Australia’s most militant union, the AMA, and just bailed them out with little or no requirement for them to make any real changes.

In my view, this legislation fails on two grounds. Firstly, it does not fully attempt to enforce risk management or other strategies to limit litigation. There is no real attempt to identify the shonky practitioners or identify procedures that would minimise risk. Secondly, there is no attempt to address the legitimate concerns of other professionals, particularly midwives. This legislation is, of course, required because the government has taken so long to address this problem and has done nothing. Without this legislation there is a very real risk that Australians will be without adequate medical practitioner coverage. Instead, the government refused to take on the members of what is perhaps Australia’s most militant union, the AMA, and just bailed them out with little or no requirement for them to make any real changes.

Senator RIDGEWAY (New South Wales) (5.44 p.m.)—On behalf of Senator Allison, I seek leave to incorporate her speech in the second reading debate on these medical indemnity bills.

Leave granted.

The speech read as follows.

I rise to speak on the Medical Indemnity and Associated Bills 2002

The explanatory memorandum states that these Bills provide for

- Commonwealth payments in relation to claims forming part of unfunded incurred but not reported (IBNR) liability of medical defence organisations as at 30th June 2002;
- Commonwealth payments in relation to the part of the cost of large claims against MDOs or medical indemnity insurers in relation to incidents notified after 1 January 2003;
- Subsidies to assist medical practitioners in meeting the cost of indemnity coverage;
- Payments by members of MDOs to the Commonwealth to cover the cost to the Common-
wealth of payments in relation to unfunded incurred but not reported liabilities;
- Payments to members of United Medical Protection Limited (UMP) to the Commonwealth to cover the cost to the Commonwealth of any payments under the deed of indemnity between the Commonwealth, UMP, Australasian Medical Insurance Limited (AMIL) and the provisional liquidator of UMP/AMIL.

The package of legislative reforms is designed to ease the pressure being placed on providers of medical indemnity. However there are grave concerns that the Bills do not prevent the situation providers have found themselves in, from happening again.

This situation is a direct result of the business practices of MDO’s who have failed to ensure that their risks were covered. There has been a total failure of insurers who had a responsibility to the doctors and specialists who were paying them and to the general public who were relying on the doctors.

The general public already pay, they pay for Medicare and in many cases as is encouraged by this government pay for private health insurance. They have an expectation that the doctors and specialists will be there to treat them.

The crisis in Medical Indemnity insurance has shaken that expectation. People can no longer be confident that their doctors will be available. They certainly cannot be confident that midwives will be available for home births. This affects all areas of health provision, from specialists to GPs and midwives, from public to private hospitals.

There are essentially two options open to the Government: take no action, and let market forces determine a solution; or intervene to address the IBNR issue, reduce uncertainty around large claims, and ensure that doctors could have access to affordable indemnity cover.

Not taking action in relation to UMP would lead to large numbers of doctors covered by UMP becoming uninsured and consequently withdrawing from providing medical services. It would also result in many persons with successful claims against doctors arising from past incidents arising in the course of medical practice being unable to recover damages except from the doctor’s own assets.

One of the features of liability insurance and the main cause of the current crisis, is the many years between when an injury occurs and the time an insurer receives notice of the claim.

These claims have occurred but cannot be notified to the Medical Defence Organisations. The MDO is unable to access the amount of money they will need in reserve to meet the costs of these claims.

Medical Defence Organisations chose not to calculate the costs of these IBNR’s when they were charging for insurance. This failure has led to the collapse of the industry and the need for the government to help these MDO’s to pay for claims, which they had not adequately provided for in the past.

The Medical Indemnity Bill 2002 puts in place a scheme to fund the incurred but not reported liabilities of medical defence organisations where they do not have adequate reserves to cover these liabilities.

It is estimated that one MDO alone; UMP which has insured over 60% of the medical workforce, has unfunded IBNR’s of $460 million. Meeting the cost of unfunded IBNR’s as they emerge will remove the liability in relation to these costs from the balance sheets of MDO’s that have not fully provided for these liabilities and ensure that these claims will be met as they emerge.

The Government has said it will fund IBNR’s of doctors that were in MDO’s at 30 June 2000 where the IBNR’s are unfunded. For unfunded IBNR’s there will be a levy imposed on the members. A contribution, spread over a number of years, from members of medical defence organisations with unfunded IBNR’s to cover the cost of Commonwealth assistance in meeting those liabilities.

Beginning in 2003-2004 financial year, the levy payment by doctors to meet the cost of IBNR payments will run over five years. Doctors who have to pay the levy, which will be limited to 50% of their 2000-2001 premium, can either pay a lump sum, pay by instalments or they can defer payments for a year.

There is no doubt that this will place our GPs under additional financial pressure, in fact the government has recognised this, that is why they are attempting to ease the pain by spreading the contribution out over a number of years.

There has already been a large increase in the cost to medical practitioners of subscribing to MDO’s. In some cases doctors have been paying over a third of their income for indemnity cover, and deciding to leave the profession altogether or cease certain high-risk procedures such as obstetrics.

The second systemic issue is that the uncertainty around large claims had led to commercial insurers either deciding not to enter the market or else deciding to leave the market, thus reducing competition.
Increased financial pressure is the last thing doctor’s need. We are already seeing a crisis in bulk billing due to the costs facing doctors.

We have seen the second consecutive largest annual decline in GP bulk billing.

Australian families are paying more for a trip to the GP than ever before. Health Insurance Commission figures for the September quarter saw the average cost to see a doctor who does not bulk bill is now $12.57. Up 51 since the Howard Government came to office.

The government has made much of the argument that bulk billing is still practiced by an average of 70% of doctors. An average figure means little to those who live in rural and regional areas, little to those who live in suburbs where they have to travel to find the doctors that do bulk bill.

In rural areas the odds of seeing a bulk-billing doctor are stacked against you. There are few doctors available and those that are cannot afford to practice bulk billing.

These people don’t have the luxury of making the choice many people are being forced to make; that is of travelling out of their way to visit a doctor who bulk bills. The reality is that if your area doesn’t have a bulk-billing doctor you have three choices; pay the money, go to the public hospital or don’t see a doctor.

Medicare was not designed to give access to a health system through the public hospital system. There is simply no way a hospital can run a medical service similar to the local doctor surgery and it should not have to, but increasingly that is what it has been forced to do.

So we have a rolling effect, the problems with medical indemnity have added to the pressure on GPs who are already under enough pressure and have already begun to cut back on bulk billing, those who can’t afford to see a doctor go to the public hospital and add to the problems the public hospital is experiencing by clogging up the emergency section with ailments that should be seen to by a GP.

Whilst the debate on these bills has focussed quite rightly on catastrophic injury claims and access to specialists, I would like to draw you a simple example of the effect of the loss of bulk billing to your average family in any part of Australia.

A trip to the doctor can cost between $32-$41. Many will send the claim straight off to Medicare for you, but many don’t so that means paying upfront. Now $32 may not mean much to those of us here, but it can be quite a bit out of one’s budget. Anyone who has had children will know that they often need to go back to the doctor within the same week, bringing the cost to $64.

Most families will tell you that when one child is ill the others tend to follow so a family of three or more can face costs that go over $96 for doctors’ visits. Add prescription medicine to that cost and you have quite a hole in your weekly expenditure.

I would like to remind the Senate that one of the first actions of this government was to close Medicare offices around Australia. This has made it almost impossible to recoup money quickly enough to assist the weekly budgeting of the average family. This has affected those with small children; it has affected the elderly, those who work and those without transport. They now have to add the stress of travel to Medicare offices to the stress of coping with an illness.

Many parents faced with this stress won’t take the kids back for the second check up, they may not collect the second lot of antibiotics and they risk their children developing illnesses such as ear infections which can lead to long term levels of deafness. It can lead a parent who has two sick children already to hold off taking the third to the doctor when they need to. Or lead to three children waiting for hours at night in the public hospital emergency room to see a doctor.

Medicare was put in place to protect these people. Too often we hear of the necessary but dramatic examples of people needing doctors when we talk of Medicare but we need to stay aware of the day-to-day burdens on GP’s and families. Your GP is your first line of defence in protecting you and your children. A childhood illness or illness affecting the elderly can develop into a medical emergency all to easily. A GP should be able to present an accessible determination and treatment before that stage.

Medicare was designed to be a universal system to provide access to health regardless of your ability to pay. It was built on the premise that people in a country like Australia, should not have to risk their health or their family’s health because they cannot afford a doctor.

We need to be protecting this premise, and as a government working to restore the public’s faith in a system designed to assist them. Our nation cannot afford to be in the situation it finds itself today.

In closing I would like to note that although the Government has undertaken to keep the medical indemnity sector under review and ask the ACCC to monitor the costs of medical indemnity cover. This package does not contain measures to monitor the effectiveness of the Governments assistance in reducing costs of medical indemnity.
or any prudential measures to address the operations of medical indemnity providers.

Senator Ridgeway has carriage of this legislation for the Democrats but I will be moving an amendment in the committee stage on the subject of tobacco smoking. It may be the case that the definition of recreational services under the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 does not include smoking but we would like to be absolutely sure that this is the case.

Senator HARRADINE (Tasmania) (5.44 p.m.)—I rise to speak on the Medical Indemnity Bill 2002 and related legislation before the Senate. This legislation was brought on by the collapse of United Medical Protection and its subsidiary, Australasian Medical Insurance Ltd, on 3 May this year. Most of my concerns relate to a bill yet to reach the Senate, but these matters are all closely related. I understand that the Assistant Treasurer, Senator Coonan, will be consulting further with Tasmanian practitioners and the Tasmanian government to work through some of these concerns.

In my own state of Tasmania, the Medical Protection Society of Tasmania, which covers 80 per cent of practising doctors, has not had any financial problems and has been offering coverage to doctors for over 100 years. Under the changes proposed by the government, the Medical Protection Society of Tasmania and other discretionary medical defence organisations will have to move to a new insurance model. While I support making the regulatory system stronger to protect doctors and their patients from the risk of a medical defence organisation collapsing, I am concerned that this might mean fewer benefits to members for an increased cost, especially when the Tasmanian organisation has been run without apparent difficulty under the current legislation.

I am concerned that the legislation encourages medical defence organisations to offer the more limited ‘claims made’ cover rather than the ‘claims incurred’ cover offered by the Tasmanian MDO. Under a ‘claims made’ cover, a doctor must be a member of the medical defence organisation not only at the time an incident occurs but also at the time it is reported to the defence fund. ‘Claims incurred’ cover would allow doctors to be covered whenever the claim is incurred as long as they were members when the incident occurred. This is obviously a more flexible option. The ‘one-size-fits-all’ insurance model will benefit those medical defence organisations which have found themselves in financial trouble but will lead to increased costs for the many successful groups offering coverage to doctors.

Once again, I support minimising risks through a good regulatory regime, but I am concerned that the poor management of some MDOs is impacting negatively on the cost of coverage for Tasmanian doctors. I understand that the Australian Prudential Regulation Authority has agreed that the new insurance model means that doctors may have court decisions awarding damages against them that are higher than their policy cover. That is obviously something that concerns medical practitioners and is something that will need further discussion with the Minister for Health and Ageing.

The new legislation is expected to lead to a rise in premiums for many doctors who had cover with funds who were not in financial trouble—who had made provisions for liabilities arising from incurred but not reported claims and who would be able to cover claims against their members. The Medical Protection Society of Tasmania estimates that its expenses in moving to the new model will be approximately $1 million in set-up costs, extra administrative fees of $500,000 per annum and an extra $5 million in capital. This is likely to cost each member of the Tasmanian group around $1,500 per annum for four to five years—and this is of concern to patients down the track. In the end, those patients will bear some of the impact from these increased costs. It is, of course, good that there will be protection against the possibility that an MDO may collapse, but the average Tasmanian will be paying for this as costs are passed on to them. The Medical Protection Society of Tasmania is not unregulated; it is subject to Commonwealth and state corporations legislation. Perhaps a system of prudential regulation can be negotiated which can build on this regulation while having a smaller
impact on costs, or the impact of the transition to the new regime can be minimised.

I will not repeat what I have said before about midwives but, as I have also said before, I am very disappointed that midwives are not included in this medical indemnity package, and I urge the government to do so for all the reasons that have been given. I fully support the need for the government to address the problem of medical indemnity but I want to highlight the impact of these changes and the concerns of my constituents. I urge the government and, in particular, Senator Coonan to talk to the Medical Protection Society of Tasmania, the state branch of the AMA, and other interested bodies so that their concerns can be taken into account in establishing this new legislative regime. I have received correspondence from Senator Coonan to say that that is her intention, and I look forward to hearing further on how the consultations are proceeding.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.50 p.m.)—I want to take a bit of time to respond to some of the issues that have been raised, because I presume that we are not going to have a long committee stage. I think it is appropriate that, in summing up, I therefore respond to some of the comments that have been made.

The Medical Indemnity Bill 2002 and related bills deal with many of the issues facing medical indemnity insurance. It is probably the most difficult thing that has not been totally health related which has faced Health. It has crossed portfolios—not just Health but Treasury, Attorney-General’s, and Prime Minister and Cabinet—with the Prime Minister seeing it as such an important issue that he appointed Mr Max Moore-Wilton to chair the interdepartmental committee to address this issue.

Not only was it an issue for the Commonwealth; it was also an issue for the states in addressing tort law reform, and I have to give credit to Senator Coonan for the role she has played in driving the issue of tort law reform in the states. We had a meeting here in Canberra on, I think, 23 April with about 80 people, including all the health ministers from every state and territory, all the medical defence organisations, the chairmen and presidents of all the colleges and the plaintiff lawyers. Anybody who was anybody and who had anything interesting to say about medical indemnity was gathered in that room just after Easter to try to address the issue.

Some of the comments that have been made here are very far from the truth in the sense that the government has not consulted and has acted in haste. We have done a huge amount of work. It is not normal in the chamber to pay tribute to senior public servants, but some people in both Treasury and Health have worked inordinate hours since Easter. Some of them—this issue rose just before Easter; I think the Prime Minister had a meeting with some senior medical people on Easter Thursday—worked all over Easter and have worked weekends and day in, day out since then. For anybody to come in here and say that it is a knee-jerk reaction or it is a quick and dirty fix does not understand the process that has gone on behind the scenes.

Sometimes we were hindered. For example, with the guarantee, we had to wait until the Supreme Court in New South Wales could accept the guarantee because the court had to be sure that the various creditors of UMP-AMIL were being treated equally, not just the doctors. Some doctors thought there was something untoward about our guarantee when it was a need to make sure that all creditors were dealt with. It has been a very long process. I want to put on the public record my appreciation to my colleague Senator Coonan for her cooperation, to Mr Max Moore-Wilton, who chaired the committee, to all those officers who worked on the RDC and to all the officers who supported it. It has been an inordinately difficult task to address. I remind people that the issue was of no making of any government but arose for a whole number of complex reasons.

The package of legislation deals with many of the issues facing medical indemnity insurance. It removes the burden of unfunded incurred but not reported liabilities from the industry. This means that medical defence organisations that have properly provisioned for these liabilities can make a fresh start and have their slates wiped clean. If the government had not acted in this way, in all likelihood UMP would have been placed in full
liquidation by now, with an excess of liabilities over assets of $460 million. Inordinate calls would have been made on those doctors who are members. It would have left the Australian community facing enormous difficulties in getting medical services. Some 60 per cent of doctors across Australia would have been uninsured for incidents arising from their practice over many years. We would have faced the imminent prospect of these doctors withdrawing from service until they could find appropriate cover. The remaining six medical defence organisations could well have faced considerable pressures in dealing with an influx of doctors trying to buy alternative cover.

The legislation allows UMP and any other medical defence organisation with unfunded incurred but not reported liabilities to move forward into the future in a much better financial position and ensures that they are better placed to continue to offer medical indemnity cover to their members. Some doctors have expressed concern at the prospect of having to pay for the incurred but not reported liabilities over a period of years through the contribution legislation. Frankly, without the government’s action, UMP doctors would have been facing a loss of cover and considerable uncertainty. They would not have had any idea what their premiums would have been to cover these incurred but not reported liabilities. Now they are able to predict, based on what their premium was last year. For members of other medical defence organisations with some unfunded incurred but not reported liabilities, they could well have been facing a call involving a payment of an additional year’s premium.

The legislation ensures that the contribution is affordable for doctors. It will be spread over a number of years and is limited to a maximum of 50 per cent of the premium that doctors paid in 2000-01—the sort of predictability that they would not have had we not given them this guarantee. It is also important for the Senate to note that the only reason that doctors are having to make an additional contribution now is that the premiums they were paying in the past were not sufficient to cover these incurred but not reported claims. I understand that many members of one professional group withdrew from UMP several years ago because they were worried that their premiums were too low, and they looked for insurance elsewhere. It is unfortunate that the board of UMP did not share the same insight. I recently met a doctor in Queensland who had been concerned about not having had her payments taken automatically out of her bank account for two years, and she suddenly found she was not insured. She withdrew from UMP-AMIL and moved on to another insurer. So some people have looked and have decided to go elsewhere.

The legislation provides for the Commonwealth to co-fund half of all payments by medical defence organisations over $2 million in respect of claims notified after 1 January next year. This is an important measure as it will reduce the uncertainty around high-cost claims and remove one of the factors discouraging general insurers from entering the medical indemnity market. It should exert a downward pressure on premiums, as it should allow medical defence organisations to negotiate considerable reduced reinsurance premiums as their reinsurance contracts come up for renewal. This, in turn, will lead to benefits for members, with reductions in premiums that would otherwise have been payable by them.

In addition, the legislation also allows for the government to pay premium subsidies to doctors. We have already indicated that these subsidies are intended to apply to obstetricians, neurosurgeons and procedural GPs. Under the subsidy scheme, selected doctors will be subsidised half of the difference between the premiums they pay and the premium of a comparative group. The government’s medical indemnity package is not limited to the legislation before the Senate today. Action is also occurring in other areas.

Legislation to give statutory backing to the guarantee to the provisional liquidator of UMP was passed earlier in these sittings. Legislation to bring medical indemnity insurers under an improved regulatory regime will be introduced into parliament this week.

As senators will be aware, the Commonwealth continues to work with the states in support of coordinated national tort law re-
form. I cannot put enough emphasis on the fact that states really need to make sure they keep that commitment they made in that recent meeting—to come together and get tort law reform as coordinated as possible between the states. Some are moving a little faster than others. All senators here need to make sure that their states are pulling their weight. Senator Coonan established the IPP review of the law of negligence, and we continue to encourage the states to implement its findings through the ministerial meetings on public liability insurance. As I said, it is being chaired by Senator Coonan, the Minister for Revenue and Assistant Treasurer. I do not think she could have done any more from when we met on 23 April when we tried to make sure that the states understood the need for consistent tort law reform. Senator Coonan has pursued this relentlessly over the past year. Moreover, the Australian Competition and Consumer Commission has been asked to monitor medical indemnity premiums to make sure that they are soundly based.

A number of senators have said that the government have not been active in this area. We have been very active in resolving these medical indemnity issues as they have emerged over the past year. They are complex problems to resolve and we have worked long and hard, and as quickly and as carefully as possible, to resolve them. We did not play any part in creating the problems in the medical indemnity market, but we have responded quickly from the time that problems with UMP emerged earlier this year to ensure that doctors could continue to practise and that the Australian public had continued access to services. We offered a guarantee to UMP before it placed itself into provisional liquidation. We offered a guarantee to the provisional liquidator to allow him to continue to make payments and accept renewals once UMP had gone into provisional liquidation. We have also passed legislation to give statutory backing to that guarantee. The government have not developed this package of measures in a vacuum. We have consulted widely and at length with a range of medical, insurance and other groups so that we could develop a workable solution to the problems in the medical indemnity area. The results of that process are in the legislation before us today.

A number of senators have talked about the issues of midwives and Indigenous community services. The focus of the legislation today is on ensuring that private medical services can continue to be provided to the Australian community and that medical indemnity cover is affordable for members of medical defence organisations. It is fair to say that midwives do not purchase medical indemnity insurance from medical defence organisations. When they purchase cover it is usually from a general insurer. That said, birthing services are still available in the community. Nearly all midwives can continue to provide services to pregnant women and their babies. This is because some 97 per cent of midwives are employees, so they are covered by their employers’ indemnity insurance. They work either for public or private hospitals or for an agency. But, in any event, their employers ought to indemnify them.

I am aware that some self-employed midwives have had difficulty in obtaining cover. I appreciate that these midwives face issues of availability of indemnity cover rather than of its affordability. However, I do not believe that the Commonwealth should be in the business of providing cover as some sort of insurer of last resort. Indeed, not even the Midwives Association is suggesting that as an option. I was pleased to hear that the Western Australian and ACT governments have apparently extended the coverage they offer employed midwives to self-employed midwives. I would encourage other jurisdictions to consider making similar arrangements. Importantly, the legislation before the Senate does provide that the high cost indemnity arrangements extend to all health professionals required to be registered under state law. Hopefully, this will result in some downward pressure on premiums for midwives.

The Commonwealth proposes to subsidise only obstetricians, neurosurgeons and procedural GPs. It has no plans to extend premium subsidies to midwives. There are a number of reasons for that. It has been suggested that it is discriminatory to treat midwives differently from obstetricians. However, the reality
is that midwives, like most other non-medical health professionals, are not covered under Medicare. Consequently, there is no reason to extend premium subsidies to them and not to other non-medical groups that are facing large increases in premiums. The High Cost Claims Scheme should provide downward pressure on premiums in the short term while tort law reform measures are put in place and begin to work. There is a need for all senators to make sure that their states are keeping up their side of the bargain in tort law reform.

With respect to comments made by Senator Ridgeway regarding Indigenous medical services, the government recognise the important role played by Aboriginal medical services. That is why we have allocated $257 million in funding to them for the year 2003-04, which is an 89 per cent increase in funding since 1996. My information is that the insurance premiums of Aboriginal medical services still represent only a small percentage of the funding we provide. My understanding is that all of these services have managed to find insurance and continue to operate. The whole community is currently experiencing the effects of the global downturn in the insurance industry in the form of higher premiums and more limited availability. Again, this is not a situation of the government’s making, but we are working hard to address the broader issues of professional indemnity and public liability insurance through the joint Commonwealth-state processes chaired by my colleague Senator Coonan. In the meantime, we agree that it is regrettable that these services are suffering from increased insurance expenses, but an 89 per cent increase in funding should assist in offsetting this.

Senator Ridgeway also talked about the lack of prudential regulation in the package. In answer to Senator Ridgeway, this issue has been addressed by the government today. A bill has been introduced which sets out a comprehensive package of reforms for the prudential regulation of defence organisations. I believe that all of the concerns raised by the Democrats have been addressed in that bill.

The government considered the issue of a long-term care scheme in detail. I am aware of the personal impact on people with catastrophic injuries and those who care for them. However, we have concurred that to try and develop a long-term care costs scheme at this stage is not the best way of dealing with the current issues around medical indemnity insurance. The real impact of long-term care costs on medical indemnity is the uncertainty that such costs create for insurers. What needs to happen right now, amongst other things, is to ensure that adequate cover is available where incidents result in a catastrophic injury to a patient. This means addressing the fact that insurance markets at present have little appetite for taking on large and uncertain risks such as medical indemnity. This legislation addresses the insurance issue by meeting 50 per cent of the cost of payouts by medical indemnity providers above $2 million. This will significantly reduce the uncertainty associated with high-cost claims in medical indemnity insurance.

In reality, the vast majority of people needing long-term care are injured at work or in motor vehicle accidents, not in medical incidents. These people are covered by workers compensation and traffic accident schemes run by the states. Even now, states such as Victoria and Tasmania, which have effective long-term care schemes for traffic accident victims, could add to their scheme people with long-term care needs arising from medical misadventure if they wished to. The Commonwealth will continue to work with the states and territories through the Heads of Treasuries Insurance Issues Working Group in exploring options around long-term care costs. But we do not see action in this area as a short-term solution to medical indemnity issues.

I hope I have been able to at least deal with some of the issues that senators have raised. Senator Harradine raised an issue about a Tasmanian medical defence organisation.

Senator Harradine interjecting—

Senator PATTERSON—I was just trying to respond because you mentioned it. UMP thought that they could cover the claims that
were going to be made against them, too, and it was quite obvious when they had a very large claim that that was not the case. We will most likely have another opportunity to debate this, but I did not want to ignore your raising of the issue.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The question is that Senator Ridgeway’s amendment to the motion for the second reading be agreed to.

Question agreed to.

Senator LEES (South Australia) (6.08 p.m.)—I move my second reading amendment:

At the end of the motion, add:

“and the Senate calls on the Government to make provision immediately for indemnity insurance cover for other health professionals, particularly midwives and nurse practitioners”.

Question agreed to.

Original question, as amended, agreed to.

In Committee

MEDICAL INDEMNITY BILL 2002

Bill—by leave—taken as a whole.

Senator NETTLE (New South Wales) (6.09 p.m.)—The Greens circulated an amendment which was designed to put a sunset clause in place for the public subsidies in relation to the medical indemnity premium subsidy, the high-cost claims and the underwriting of the IBNR liabilities. At this stage, due to discussions with the government, it appears that there are strong arguments for not proceeding with the amendment in relation to the IBNR liabilities. Given the difficulties of being able to differentiate the IBNR sunset clause from the other sunset clause, we will be withdrawing our proposed amendment to the Medical Indemnity Bill 2002.

Bill agreed to.

MEDICAL INDEMNITY (CONSEQUENTIAL AMENDMENTS) BILL 2002

MEDICAL INDEMNITY (ENHANCED UMP INDEMNITY) CONTRIBUTION BILL 2002

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION BILL 2002

Bills—by leave—taken as a whole.

Senator NETTLE (New South Wales) (6.11 p.m.)—The Greens will withdraw the circulated amendments that relate to this medical indemnity legislation for the same reason that the amendment to the Medical Indemnity Bill 2002 was withdrawn. The amendments put in place a mechanism for fiscal responsibility with the public subsidy proposed in this legislation.

Bills agreed to.

Medical Indemnity Bill 2002 and Medical Indemnity (Consequential Amendments) Bill 2002 reported without amendments, Medical Indemnity (Enhanced UMP Indemnity) Contribution Bill 2002 and Medical Indemnity (IBNR Indemnity) Contribution Bill 2002 reported without requests for amendments; report adopted.

Third Reading

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.12 p.m.)—I move:

That the bills be now read a third time.

Question agreed to.

Bills read a third time.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

In Committee

Consideration resumed from 21 October.

Bill—by leave—taken as a whole.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.13 p.m.)—On behalf of the opposition, I move amendment (1) on sheet 2764:

(1) Page 2 (after line 11), after clause 3, add:

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 3 years after Royal Assent.
What we are about to consider in the committee stage of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 is the outcome of three committee reports. It is also the outcome of vigorous debate in the community, and it is the outcome of consultation between the opposition and the government.

I note that the Attorney-General, Mr Williams, has today put out a press release outlining some technical amendments that the government will be moving to this bill. The opposition welcomes the slight movement demonstrated by the government and we will be supporting most of the amendments. But it has to be said that there are still significant differences between the government and the opposition on this bill. There is a range of issues that in our view require being addressed by this committee. These include that this must be a questioning regime not a detention regime; that those being questioned must have access to a lawyer of their choice; that children under the age of 18 should not be subjected to this questioning regime; and that there must be a sunset clause. Later in this committee stage, the opposition will be moving amendments to overcome these concerns.

In the debate on the ASIO legislation the Senate will have the opportunity to give ASIO much-needed new powers to counter the enhanced terrorist threat that we face. Most importantly, we will also have the opportunity to ensure that those who are subjected to these powers will have appropriate protections. Our obligation in this parliament is to get the balance right on this legislation. We achieved that, I believe, earlier in the year on the antiterrorism bills, and it is just as important that we work towards getting the balance right on this legislation. I do not believe that such a task, such an objective, is beyond the capacity of the Senate, and I hope that at the end of this committee stage we will have achieved that important objective.

In relation to the amendment before the chair, senators would be aware that the Parliamentary Joint Committee on ASIO, ASIS and DSD put, in their unanimous advisory report, a very strong case for inserting a sunset clause into this bill. We say that such a sunset clause, such an approach, is an appropriate and simple but absolutely essential accountability mechanism. It sends a very powerful message to the public that the government will need to account for, and argue the case for, the continuation of these unprecedented laws. A controversial piece of legislation which has a sunset clause has to be publicly debated, and a government is obligated to defend the continuation of such laws. Of course, a sunset clause is very simple in design but it sends, I think, a confidence boosting message to the Australian public. Such clauses in this area are not without precedent, and it is worth this committee noting the fact that a sunset provision applies in the USA PATRIOT Act. The use of a sunset clause and the review of the act by the PIC, as is proposed by the Attorney-General, should be linked to maximise the quality of the review. The timing of the committee’s review will ensure that the government could, if necessary, prepare and introduce a replacement bill when the relevant part of the act expires.

The opposition strongly supports the inclusion of a three-year sunset clause. Let us be clear what it means. It means that at the end of three years the act will terminate. If such a sunset clause is agreed to, it will be up to the government of the day to argue for the continuation of these unprecedented laws—the proposed powers in this legislation. This is an absolutely essential safeguard in this legislation. I commend this amendment to the committee. It has received strong support throughout the parliamentary committees that have examined this legislation. The good sense of this approach with such unprecedented laws commends itself to the parliament, and I urge the committee to support the amendment.

**Senator ROBERT RAY (Victoria)** (6.21 p.m.)—I have a question for the minister. The Joint Parliamentary Committee on ASIO, ASIS and DSD put down a report on this bill on 29 May in the House of Representatives and some two weeks later in the Senate. Is the government going to formally respond to that report? That is normally done within three months, although this is not a classic report in the sense that it is from a
reference committee or a legislation committee. I am not sure whether the government is absolutely obliged in a legal sense to respond. Even if it is not, I would be interested to know whether it is going to respond to that report, given the fact that the government itself commissioned the report, given the fact that it urged the committee to get on with its report and given the fact that the committee was able to bring forward its report to assist the government. Looking at this legislation, it is apparent that 10 of the recommendations have been picked up, two have been partially picked up and three have been rejected. We do not know the specific reasons why some have been picked up and others rejected or only partially picked up. It may assist the committee in its later deliberations if you can let us know that, Minister.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.22 p.m.)—I am advised that during the debate in the other place the government put forward amendments as a result of that parliamentary joint committee report. It was explained then which recommendations were accepted, which ones were not and why. The government responded in that manner rather than by a formal response tabled in this place or the other place. It took up some recommendations in whole or part and rejected others.

Senator NETTLE (New South Wales) (6.23 p.m.)—I rise to speak to the amendment. As Senator Faulkner outlined, this is an extremely controversial piece of legislation. Even if the amendments proposed by the Australian Labor Party and the government proceed, we are left with legislation that allows for the detention of nonsuspects—that is, it allows for the detention of people who are not even suspected of being involved in any terrorist activity. This goes far beyond the scope of legislation put forward in the United Kingdom and in the United States in response to September 11. When in the course of the committee stage we speak about the amendments put forward by the Labor Party I am sure that we will have the opportunity to look at this further. These proposals do not change the nature of this bill to make it just about a questioning regime; they continue to allow for the detention of nonsuspects. We will have the opportunity to get on to that in the course of the debate on the proposed amendments in the committee stage.

The legislation before us fundamentally undermines the basic tenet of our legal system that nobody should be detained unless they have come before a court and have been found to be reasonably suspected or guilty of committing a crime. We now have an amendment that seeks to put a sunset clause in place. The Australian Greens will be supporting this sunset clause. In the process we have been through with this bill, a phenomenal amount of evidence has been put forward about the ways in which our current criminal justice system allows for the government’s and ASIO’s concerns about questioning people. In the course of putting forward this legislation, the government have not put their case as to why we need to change what we already have in our criminal justice system to deal with these sorts of concerns. We welcome the proposal to put in place a sunset clause that means the government have to try again in three years time to put their case for needing these extended powers. As such, we will be supporting this opposition amendment.

Senator GREIG (Western Australia) (6.26 p.m.)—Hindsight can be a wonderful thing. The insertion of a sunset clause will present an opportunity—it will make hindsight mandatory—for a parliamentary review three years hence of this controversial legislation which has caused considerable anxiety in sections of the community. A sunset clause of this nature will mean that the next federal government, be that a coalition or a Labor government, will have to completely review this legislation with a view to leaving it off the statutes altogether or reforming it in some way. If implemented, this three-year sunset clause will take us beyond the next election. In that context, I ask Senator Faulkner as the mover of the amendment if there is any historical precedent for a three-year sunset clause as opposed to, for example, two years or five years. Was the object of this amendment in part to take the legislation beyond the next federal election so that it would be a new parliament reviewing it in
three years time, or is there some precedent for the specific time period of three years? We Democrats will certainly support a sunset clause, but I ask why is it a period of three years as opposed to some other time frame?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.28 p.m.)—I hope that Senator Greig is not suggesting the opposition would have opportunistic motives relating to the electoral cycle. I know Senator Greig is a very good mathematician, and of course it is true that if a three-year sunset clause were established it would take effect in a political cycle subsequent to the current one. The substantive point that the senator makes is an accurate one, and all of us who understand that we have three-year terms for the federal parliament in this country realise that a three-year sunset clause inevitably means that it would apply in a subsequent political cycle.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator FAULKNER—We were talking before the break about the proposal that a sunset clause be added to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. Senator Greig, I think appropriately, questioned the decision of the opposition to propose a sunset clause with a time period of three years. We agreed before the dinner break that this would be likely to come into effect in the middle of the next political cycle. We can certainly say definitively that it would be after the next election. I think it is also fair to say that a period of three years does give an adequate period of time for us to see how effectively this legislation works, and three years is of course the time period that has now been recommended by three parliamentary committees. The Parliamentary Joint Committee on ASIO, ASIS and DSD have made this recommendation as have the Senate Legal and Constitutional Legislation Committee and the Senate Legal and Constitutional References Committee. I think it is an appropriate period for a sunset clause.

It is also fair to say that it is not common for the parliament to agree to sunset clauses in legislation. It is a most unusual circumstance, particularly in legislation like this. There are times when parliament agrees to a sunset clause for legislation on superannuation or tax, or agricultural levies and the like. But it is unusual—and I do think this is a proper point to make—for the parliament to agree to a sunset clause effectively because legislation is controversial. That is, of course, a key reason why this amendment is being proposed. It will give us an opportunity to consider how effective this regime has been after a reasonable period in which to make an assessment. It will require the parliament to agree to the regime if it is to continue after a three-year period. It will give us a capacity to review its effectiveness, and it will require the government to put forward a case for the efficacy of the legislation and both houses of the parliament to agree to such a regime continuing in force.

I say quite seriously that, even though the legislation itself is absolutely unprecedented—it does give unprecedented powers to ASIO—it is almost unprecedented for parliament to agree to such a sunset clause in legislation like this. It is not proposed lightly by the opposition—which, for example, as this committee would recall, would not contemplate a sunset clause in the antiterrorism legislation that was dealt with earlier this year. Those are some of the sorts of issues that were weighed up in determining the appropriate time period. I can say to Senator Greig that committees of the parliament did receive evidence on this and I feel that the amendment I have moved on behalf of the opposition puts forward a sunset clause of an appropriate time period. I lay the basis for the government’s amendments to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 which we will propose in this committee stage and, in doing that, touch on the question of a sunset clause. The government have circulated a number of amendments to this bill. These amendments cover some of the recommendations made by
the Senate Legal and Constitutional References Committee in its report last week. We also propose some other amendments, which include technical amendments to the bill. The government note that there have been no fewer than three parliamentary inquiries into this bill—by the Senate Legal and Constitutional Legislation Committee; the Parliamentary Joint Committee on ASIO, ASIS and DSD; and, more recently, the Senate Legal and Constitutional References Committee. The government’s position is that we do not see that such a number of inquiries by parliamentary committees was necessary, but we have nonetheless taken on board what those committees have said. We have repeatedly said that we will entertain proposals that are constructive but not those that would render this bill inoperative or unworkable. We believe that the majority of the proposals by the Senate Legal and Constitutional References Committee would not be appropriate, for those reasons.

This bill is the final part of our counter-terrorism legislation package, and one which is extremely important. It is designed to give ASIO a greater ability to collect information about potential terrorist attacks so that we can better prevent them before people are hurt or killed. I think that is something that all Australian people would expect of government. On top of the significant changes made in response to the earlier joint standing committee, these amendments reflect the government’s commitment to consultation and to obtaining passage of this important bill. The government believes that the time has now come for other parties opposed to this bill to do just that. We cannot afford any further delay. We certainly need to have this bill in place, particularly in the environment in which we find ourselves with the threat to our security.

The government will not be accepting the opposition’s proposed amendments to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. The opposition proposes an alternative model for a compulsory questioning regime that fundamentally changes the nature of the investigations to be conducted under the bill. The government’s bill is about intelligence gathering in the extraordinary circumstance that we see now. It is designed to enhance the capacity of authorities to combat terrorism and to prevent and deter terrorist activities. We remain of the view that the opposition’s proposals would not enhance the operation of the bill, would render it unworkable and would undermine the bill’s effectiveness.

We believe that the opposition’s amendments would change the fundamental basis of the bill. They would hamper the ability of ASIO to exercise the necessary powers to protect the community at exactly the point at which the community is likely to need it most. The opposition’s proposals would take a regime dealing with warrants of last resort that allows detention for the purposes of questioning in order to protect public safety, and replace it with a weak questioning regime that simply will not deliver the goods. Therefore, we believe that accepting the opposition’s proposals would frustrate the objectives of this bill. The government are committed to giving those at the front line against terrorism the tools they need to do this very important job, and we have seen in an agency such as ASIO the professionalism and responsibility and the capacity to do just that.

We have seen provisions that have been introduced in other places around Australia. A striking example is the power given to New South Wales Police to strip-search children as young as 10 years without the need to obtain a warrant or without any judicial oversight into the process. We believe that is not appropriate. However, there are people in this parliament who criticise the government, saying that our measures go too far and that there is no balance. The government have tried to adopt a flexible approach wherever possible and have proposed amendments that pick up recommendations of the references committee. Those are contained within the government amendments that we have here today.

It is interesting to note that even in the Legal and Constitutional References Committee it was acknowledged that there are a
number of safeguards built into this bill, and they listed some of them. They said there were limits on the period of detention, limits on the period a person may be held incommunicado, a requirement that questioning must be videotaped and a copy provided to the Inspector-General of Intelligence and Security, a requirement that the prescribed authority explain that the person has a right to complain to the Inspector-General of Intelligence and Security and to the Commonwealth Ombudsman, a requirement that questioning be conducted in front of a prescribed authority and a requirement that the Director-General of ASIO satisfy the Attorney-General that there are reasonable grounds for believing that issuing the warrant will substantially assist in the collection of intelligence that is important in relation to a terrorism offence. As the committee stated, these were some of the more important qualifications. It was by no means an exhaustive list, as even the Senate committee recognised.

So it is that we approach this first opposition amendment, which proposes a sunset clause. It is one that we believe would render this bill ineffective. I say that for a number of reasons. We have an environment of threat, and no-one knows when it will go away. In fact, recently a respected former Prime Minister of Singapore, Lee Kwan Yew, said that, in his opinion, this threat would be in the region for at least the next 10 years. Of course, we do not know when this environment will dissipate, if ever. Therefore, it is important that we do not have a sunset clause but instead that we have a review. That accommodates the concerns that people have with legislation that is needed, such as this. We have announced that the proposed legislation be reviewed after three years by the Parliamentary Joint Committee on ASIO, ASIS and DSD. In fact, the Attorney has also said that the legislation would be looked at after one year of operation.

What we have in place are safeguards. We also have the mechanism of a review. A sunset clause is not the way to do it. Once passed, this bill will continue to be the subject of extensive parliamentary and community scrutiny. I have mentioned already the reviews that the government has announced. To those who are concerned, we say that we have put in place these mechanisms, these safeguards; unlike other pieces of legislation that you see in other domestic jurisdictions—and we do not seem to see the same level of criticism of those regimes. What we have here is a balance, with the required checks and accountability. We therefore oppose the opposition’s sunset clause amendment. I also table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 10 December 2002.

Senator ROBERT RAY (Victoria) (7.44 p.m.)—The opposition have approached the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 as if we were in government. That has been our philosophy: if we were in government, what would we do to deal with the particular issues? We have not approached it from an oppositionist point of view. We have approached it by saying what we would do in government. Of course, that brings critics in from civil libertarian groups et cetera that then try to push us into a different position, and we have not been pushed into a different position.

The Minister for Justice and Customs says that there have been three parliamentary inquiries into this. In reality there have been two. The original Senate Legal and Constitutional Legislation Committee barely looked at this. The minister should know that, because at the same time there was a concurrent inquiry by the Joint Standing Committee on ASIO, ASIS and DSD. So we have had two parliamentary inquiries in reality. The first inquiry was instituted by the government, so they cannot complain about that. We were not even consulted about it. Mr Williams went into parliament at 10 past six and announced that the bill would be referred to the joint committee. The reason I know we were not consulted—well, we were told 10 minutes before at a joint committee meeting that this might be the case—is that at the same time this matter was being referred to a legislation committee in this chamber, and we do not like such a double-
up. So we were not consulted on it but, nevertheless, Mr Williams's action in referring it to the joint intelligence committee was a correct one.

The timetable for the committee was ridiculously short. The committee itself ignored the timetable and put a resolution through both houses of parliament extending the reporting date to allow reasonable time for public submissions. You cannot cut off public submissions, having advertised for them two or three days before. That was the original intention. As it was, the committee did work very hard. It received exemplary cooperation from witnesses, including Attorney-General's and ASIO. We listened to a whole range of critics and were able to bring forward our report in plenty of time for it to be considered by the government for the June sitting. So when the minister comes in here today and says, 'We cannot afford any more delay,' some of the delay has been due to government procrastination about amendments and other things. But I think on that point the minister is right—it is now time to finalise these issues before we have the summer break—and I do not think many people in this chamber would necessarily disagree with that.

The fact is that the second inquiry really came about because of the government's indication as to how they would respond to the first inquiry, in which people decided to at least have a look. I must say that I was dubious about whether there is an alternative regime to all of this. There is concern in the community and in this parliament that ASIO should not be a secret police force. The opposition has attempted to create a division of powers between the Federal Police and ASIO that balances and counterbalances the powers in such a way that you will not have evolving a special branch in the Federal Police or a secret police force under ASIO, that there is a mix-and-match. I think that approach has a lot of appeal.

One of the great points in all of this is that if you go back to the original legislation you will see why there has been a need for parliamentary intervention. A whole range of things are now conceded by the government. Things that were regarded as right, correct and proper by them in April this year suddenly are no longer right, correct and proper—in other words, we are not worried about what the states can do, our responsibility is federal. Authorities could strip search a 10-year-old girl under your original legislation. You could have it that people would be detained indefinitely, without any limits at all, if authorities were able to succeed in extending the warrants every 48 hours. You could have a situation where there was no legal representation whatsoever in any part of this process. You could have had a position, because of a technical defect in the drafting of the bill, where people could be detained but the clock would not start ticking until they were questioned. Under this legislation they could have been detained for five years before the questions started. But, again, that has been remedied by way of amendment to this bill in the House of Representatives. We could go back over a whole raft of errors, misjudgments or poor principles that were in the original bill which the government have now corrected. But what we say is that the government have not yet gone far enough.

I think the minister has repeated the worst canard in this debate by basically accusing the opposition of misunderstanding the purpose of the bill. There is misunderstanding about the purpose of the bill. We have spent a lot of time explaining to people that what this bill is about is assisting in the collection of intelligence, not evidence. We understand that. There is no need to patronise us on this, Minister. We have understood that from the start, but we acknowledge that a whole range of critics have never understood that. We have had to fight on two fronts: fight the excesses of the government on the one side and the stupidity of critics on the other side that do not understand the purpose of this legislation. The purpose of this legislation is to enhance the collection of intelligence. It is to protect people's lives by doing so. And it has to be acknowledged that in the process certain traditional rights and responsibilities that citizens have will be curtailed, especially the right to silence—not for the first time but in its most dramatic form yet in legislation presented to this parliament. But we believe that that is a necessary step. It is a hard step for
us to take, but we have jumped that hurdle and we have agreed with the government to do so.

These issues should be decided on balance—not out of panic, not out of a sense of who is the most macho on an issue. There has to be a degree of balance within the legislation. The difference at the moment between the government and the opposition is where that line of balance should be. It is no longer a massively dramatic difference; it is a matter of differences over four or five key principles to get the balance right.

It should be noted that support for the sunset clause in the joint intelligence committee was unanimous. The Labor Party, in opposition, did not insist on a sunset clause in the five antiterrorist bills that were passed in the chamber, because we believe they had the correct balance and they were there for the ages. In regard to this legislation, which is more dramatic—I do not want to say ‘more draconian’, but it is more dramatic—one wants to see how it operates. Putting a sunset clause in does not preclude a government from reintroducing this legislation and passing it again, with or without a sunset clause, in the year 2005. The committee was quite sensitive to the issue of electoral timing. That is why we recommended a three-year sunset clause. So if this legislation has to be revalidated in the parliament, it will come up in the first year of a new government, be it Labor or coalition, which in terms of the electoral cycle makes it much easier to deal with these things.

If, as the minister asserts, this legislation is going to work and work well, then there will be very little difficulty in this parliament revalidating that legislation posthaste, without the sorts of committee references and the time that this has taken. It will mean that, six months before the sunset clause, the minister will probably refer it for inquiry to the joint intelligence committee and give the committee two or three months to report back on the effectiveness of it. But there are things that we do not know. We do not know how many warrants are going to be issued under this piece of legislation. It could be as low as 10 over a three-year period, yet it could be several hundred. We need to know that in order to know whether this legislation is working appropriately. I am glad that the government has agreed to pick up the recommendation that says there will be an annual disclosure of the amount of warrants that are issued.

But, if you really want to be convinced that this legislation needs absolute scrutiny, go back to it in its original form. How could a government have introduced such wide-sweeping legislation with no protocols whatsoever as to the questioning process? Under the original bill, we did not know where people would have been detained. Were you going to reopen Boggo Road? Were you going to reopen Pentridge? Where were you going to detain these people? Were they going to be detained in prisons? Were you going to put them up at the Hyatt? Exactly how were you going to detain them, and where? How long were you going to question them for? In the original bill, there was nothing to stop you questioning someone for 48 hours in a row. There was absolutely no provision for a questioning regime.

I prefer for the government—and I think they are now going to accept this—to develop protocols around the questioning regime that are disallowable instruments in this chamber, then we as a parliament do not have to dictate exactly what the questioning regime is. It also gives the government flexibility if they find that their tabled questioning regime is insufficient, is not working, to re-regulate in this area without having to go through new legislation. It is all there for the government to do if they want to. They should just reflect, when they categorically knock back the proposed opposition amendments now, that if they had taken that position in regard to the original bill with all its faults we would have had a terrible piece of legislation pass this place.

I do not know why the government are not willing to further negotiate on this. It seems to me there is a lot of good faith about. I can only presume they are acting under the instructions of the Prime Minister. He has decided to dig his toes in on this issue and no longer negotiate. It seems to me we were bubbling along reasonably well, in a cordial and productive way. All of a sudden there
will be no more negotiations. You will just say that this bill is pristine pure now and there can be no amendments. You will not even consider the amendments and it will be thrown out.

Coming back to the sunset clause, this is one of the major protections to give people certainty that this adventurous piece of legislation can in fact work. If it does not work, this parliament will not revalidate it, and nor should it. But, once the legislation is in, if it does not work you do not get a second shot at the title. It sits there forever, or until there is a change of government, or a regime change, in this country. If this legislation goes off the rails, if it does not work, there is nothing this parliament can do about it. That is the exact reason you introduce a sunset clause: because you do get a second shot at the title if it is not working. It is a little inconvenient. You would rather have certainty into the future, but you have a pretty good indication from the opposition that, if over the next three years this regime works and works well, we will certainly give it a tick. We are not going to give it an automatic tick but, if you can show that it is working well, that it is being administered properly, that the safeguards put in are all there and are tuned and are going in the right direction, you will get the legislation again. You will get it pretty quickly. I doubt you will get it in non-controversial legislation time, because our colleagues from the Greens, the Democrats—I do not know about Senator Harris and a few others—would probably not allow that. But I think it would be a much more disciplined debate the second time around, much more focused, without the need for an extensive committee inquiry. The opposition will persist with our insistence on a sunset clause. I point out again that we did not do so with the five terrorism bills, because we did not think it was appropriate. We are not doing this to be narky; we are not doing this to needle the government; we are doing it because we think on this occasion that it is good public policy.

Senator HARRIS (Queensland) (7.57 p.m.)—I rise to indicate that One Nation will support the opposition amendment for a sunset clause. I will start my remarks by looking at the title of the legislation. The bill is titled the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. As Senator Ray so eloquently put the argument, we have an organisation that is primarily in place to ensure the security of Australia, through its ability to use intelligence. What the government is doing with this legislation is taking that organisation and giving it a head of power that One Nation believes it was not intended to have when it was brought into existence. We have the Australian Federal Police, which plays an exemplary role and works concurrently with ASIO. That is how the process should continue. ASIO is there to do the intelligence surveillance, and the Australian Federal Police’s role, as a result of ASIO’s investigations, is to carry that further.

It saddens me to some degree that the Labor Party did not support a sunset clause in another particular piece of legislation, the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000. The cross-benchers unanimously believed that that legislation should have been exposed to exactly the same process that Senator Ray has argued for in relation to this legislation. If we look at the government’s bill in total, it has the ability, I believe, to achieve what the terrorists have not. The terrorists have not been able to break the spirit of the Australian people. They have not been able to break us as a nation. And yet, sadly, this government’s legislation is going to place restrictions on the rights of Australians that no terrorist could ever dream of. It brings in the ability to apprehend a person and hold them without representation. It brings in punitive clauses where, if a person does not answer questions, there is the threat of a jail term. So the government is succeeding in removing the rights of Australians in a way that the terrorists have not. Very clearly, One Nation does not support the government’s legislation. One Nation supports Labor’s sunset clause because in actuality it will bring this legislation to a close in three years.
ate) (8.02 p.m.)—I move opposition amendment (2) on sheet 2764:

(2) Schedule 1, item 8, page 4 (after line 14),
before the definition of terrorism offence,
insert:

terrorist act has the same meaning as in Part 5.3 of the Criminal Code.

This is what I would describe as a minor technical amendment. I do not entirely understand why it has not been proposed by the government. Perhaps the minister can explain that to us. It is a minor amendment. Effectively, what it does is insert into the ASIO bill the definition of a terrorist act that now appears in the Criminal Code. This particular definition was included in the Criminal Code as a result of the antiterrorism legislation passed in this chamber in June of this year. I think this amendment, albeit a minor one, is an important one and it stands on its merits. I believe that the Senate has indicated its will previously in relation to the substantive terms of the definition. I commend the amendment to the committee.

Senator GREIG (Western Australia) (8.04 p.m.)—My recollection is that the Democrats opposed the definitions of ‘terrorism’ and ‘terrorist act’ that were, as Senator Faulkner referred to, debated in the original suite of bills. We had concerns about the potential for those definitions to impinge on benign activities and benign organisations, and we had that debate at the time. While we as a party and I personally differ from the government and the opposition in terms of those adopted definitions and still oppose them in principle, I can concede the need for consistency in this legislation and the previous suite of bills, notwithstanding the difficulties we have with the definitions adopted. So, on the basis of legislative consistency, I can support this amendment on behalf of the Australian Democrats.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.05 p.m.)—The government oppose this amendment on the basis that it is related to opposition amendment (25), which purports to omit section 34F and substitute it with a new section entitled ‘Conduct of questioning’. We say that this amendment forms part of a wider regime—that is, that the bill should be based on a compulsory questioning regime rather than a compulsory detention regime. The term ‘terrorist act’ is used in section 34F. Therefore this keys into that regime which is being proposed by the opposition. So it does not necessarily stand alone; it has relevance elsewhere. That is why the government oppose the opposition amendment.

Senator NETTLE (New South Wales) (8.06 p.m.)—I rise to indicate the position of the Australian Greens on this amendment. We will be able to support this amendment that mirrors the amendment put forward by the Australian Labor Party at the time of the previous antiterrorism bills, which also referred to the term ‘terrorist act’. We did not support those bills as they went through and we continue not to support these bills. We recognise, as do Senator Greig and the Democrats, the need for consistency with the previous legislation. With regard to the comment made by the minister that this definition relates to another amendment to be moved by the Australian Labor Party on a questioning regime, we will have more opportunity to talk about that at the appropriate time when we get to that amendment. Whilst not wholeheartedly supporting the questioning regime put forward by the opposition—and we will get onto that later—we recognise that it is an improvement on the government’s compulsory detention regime. We will be in a position to support this amendment and, this amendment being consequential to an upcoming Labor Party amendment, we will also be in a position to support that amendment.

Senator HARRIS (Queensland) (8.07 p.m.)—I rise to indicate that One Nation will support Labor’s amendment. I also want to place on record that I find it quite intriguing that the government has spent an inordinate amount of the time of this chamber over the past 12 months in bringing in legislation to make them concur with the Criminal Code and here we have the opposition actually setting out to bring the same regime into place in the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and we have got the government opposing it. It is almost to the point of being quite amusing that the government
could, day after day, bring legislation into this place—I will add that it had the support of the Senate—to ensure that all of that legislation, in terms of definitions and function, complied with the Criminal Code. I would be interested to find out why, in this case, the government is opposing the opposition’s amendment. It seems that the opposition’s amendment is actually achieving what the government has been carrying out all year.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.09 p.m.)—by leave—I move government amendments (1) and (22) on sheet DT377:

(1) Schedule 1, page 6 (after line 18), after item 23, insert:

23A After section 25
Insert:
25AA Conduct of ordinary or frisk search under search warrant
An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.

(22) Schedule 1, item 24, page 20 (after line 25), after subsection 34L(1), insert:

(1A) An ordinary search of the person under this section must, if practicable, be conducted by a police officer of the same sex as the person being searched.

Government amendment (1) implements recommendation No. 21 of the Legal and Constitutional References Committee’s report. The amendment clarifies that an ordinary or frisk search of a person near or at premises that are the subject of a warrant granted to ASIO must, if practicable, be conducted by a person of the same sex as the person being searched. Government amendment (22) clarifies that an ordinary search of a person detained under a warrant must, if practicable, be conducted by a person of the same sex as the person being searched.

These provisions mirror the standard search procedures contained in the Crimes Act. The government has always intended the conduct of ordinary and frisk searches under the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 to be consistent with accepted standards for such searches. The inclusion of these two provisions in the bill will make it clear in the legislation that this is the case. I reiterate that this follows recommendation No. 21 of the committee, which stated:

The Committee recommends that the Bill should include a requirement that ordinary searches and frisk searches, as far as practicable, should be conducted by an officer of the same gender as the person being searched.

I reiterate that the government have always been open to constructive suggestions, and we have taken those up from the various parliamentary committee inquiries. But we stress that we cannot take on board amendments which will make this bill unworkable. In this case, the recommendation by the Legal and Constitutional References Committee is a reasonable one and we reflect it in these amendments.

Senator NETTLE (New South Wales) (8.12 p.m.)—I rise to speak about these amendments. It is pleasing to see that the government has taken on board the suggestion from the Legal and Constitutional References Committee in proposing these amendments.

This alteration was suggested to the committee by one of the many Islamic groups which appeared before it to talk about the impact of this legislation on their community in particular. This was one of the suggestions that they put forward. They put forward other suggestions that related to the way in which frisk searches should be carried out and where ordinary and frisk searches could occur—that is, whether they occurred at or near a premises at which a warrant was being carried out. They also put forward other suggestions as to the way in which those searches occurred—that is, whether they occurred in view of all people present at those premises. So there were a number of amendments that the Islamic community suggested, in particular, because they were well aware of the potential use of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and the impact that it could have on their particular community.
I acknowledge that the government has taken up one of the many suggestions that were put forward by the Islamic community when discussing their concerns about the way in which the implementation of this bill could directly impact on their community and add to the level of fear that already exists within that community about them being singled out in relation to these issues.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.13 p.m.)—I too believe that these are positive amendments from the government. I indicate to the committee that they will be supported by the opposition. I might say, of course, and it is worth pointing out, that we have been told and informed that the Senate Legal and Constitutional References Committee hearings and their report were a complete waste of time. But here is the first example—and there will be quite a number as we deal with this committee stage debate—where the government itself picks up recommendations from the Legal and Constitutional References Committee and proposes amendments in this committee stage. But this is a step in the right direction. These are positive amendments that improve the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and they will have the support of the opposition.

Senator GREIG (Western Australia) (8.14 p.m.)—These are sensible amendments from the government, and they will be supported by the Democrats because they address what I would call gender sensitivities as well as cultural sensitivities. We heard from many people in various Senate committee hearings, particularly the Senate Legal and Constitutional References Committee hearing on this issue, and I would like to quote briefly from a submission we received from Mohammed Waleed Kadous and Agnes Hoi-Shan Chong, who made the following observation on this issue:

All of the above issues—and they are referring to an earlier part of their submission—apply general to the whole of the community, and any member of the community could be affected by it; although the Muslim community is likely to bear the brunt of the issues. However, one particular issue of concern to Muslim men and women is “frisking searches” by police officers.

They go on to state their case that Islam has strict regulations about the interaction of Muslim men and women. They said:

In an ideal Islamic environment, physical contact between men and women is minimised. This extends even so far as to a matter such as handshakes and so on. This applies to both men and women.

In the context of frisk searches that are deemed necessary, ideally male officers should frisk male Muslims, and female officers frisk female Muslims. The reverse would cause great offence to people of Muslim background; in particular, the idea of male police officers frisking female Muslims, is particularly offensive in all Muslim cultures.

And so it goes on; you can get the flavour of their argument. They go on to argue later in their submission that the legislation be amended further so that male officers should frisk males and female officers frisk females. They say that this is similar to the regulations regarding strip searches and that strip searches specifically prohibit touching of areas between the navel and the knee. That latter part is not something that I could support. I do not think we should take religious sensitivities to the extreme of not frisking people thoroughly but, in terms of gender and some religious sensitivities, these amendments make good sense and have our support.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.17 p.m.)—by leave—I move government amendments (2) to (8), (13) and (16) on sheet DT377:

(2) Schedule 1, item 24, page 6 (after line 28), after the definition of Federal Magistrate, insert:

former judge means a person who has been (but is no longer):
(a) a Judge; or
(b) a judge of a Supreme Court of a State.

(3) Schedule 1, item 24, page 7 (after line 2), after the definition of issuing authority, insert:
listed former judge means a former judge included in a list kept under section 34AC.

(4) Schedule 1, item 24, page 7 (line 26), omit “Judge.”, substitute “Judge; or”.

(5) Schedule 1, item 24, page 7 (after line 26), at the end of subsection 34AB(1), add:
   
   (c) a listed former judge.

(6) Schedule 1, item 24, page 8 (after line 3), after section 34AB, insert:

34AC List of former judges consenting to appointments

(1) The Minister must cause to be kept a list of names of former judges who have consented to being appointed as issuing authorities, prescribed authorities or both.

(2) The Minister may invite a former judge to consent:
   
   (a) to being appointed as an issuing authority, a prescribed authority or both; and
   
   (b) to having the former judge’s name included in the list.

(3) If the former judge consents, the Minister must cause the former judge’s name to be included in the list, together with an indication of whether the former judge consents to being appointed as an issuing authority, a prescribed authority or both.

(4) If a former judge whose name is included in the list requests the Minister:
   
   (a) to have the former judge’s name removed from the list; or
   
   (b) to have the list indicate that:
      
      (i) the former judge no longer consents to being appointed as an issuing authority; or
      
      (ii) the former judge no longer consents to being appointed as a prescribed authority;

   the Minister must cause the list to be amended to give effect to the request.

(5) The Minister may, on his or her own initiative, cause the name of a former judge to be removed from the list.

(7) Schedule 1, item 24, page 8 (line 6), after “who”, insert “either is a listed former judge listed as consenting to the appointment or”.

(8) Schedule 1, item 24, page 8 (line 11), after “a person”, insert “who holds an appoint-
involved in the issuing of warrants. It is reasonable to assume that former judges would not necessarily want to become involved in this process. I know the opposition has amendments in relation to this—and I think that they are best left to be addressed when those amendments arise—but there are further restrictions that others and the opposition would have in relation to these former judges which we believe restrict the number even further. In the case of Western Australia, of which I have some personal knowledge, the number of retired judges is not great and, when you look at the fact that you would have to have the consent of that person, it would be unworkable to rely on a pool that consisted only of former judges. In the interests of accommodating the concerns that were raised by the references committee, we are, by these amendments, increasing the pool to include that cohort of persons.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.20 p.m.)—I ask the Minister for Justice and Customs whether, given that the Director-General of ASIO indicated that this regime, as proposed, would be unlikely to be used on any more than two or three occasions in a calendar year, he continues to claim that there is a concern with the lack of number of retired judges—that the pool is, to use his words, ‘quite small’. Can you indicate how small the pool is, Minister? Given what seems to be a very small number of occasions on which this regime is likely to be used on any more than two or three occasions in a calendar year, he continues to claim that there is a concern with the lack of number of retired judges—that the pool is, to use his words, ‘quite small’. Can you indicate how small the pool is, Minister? Given what seems to be a very small number of occasions on which this regime is likely to be utilised, surely this does not lead to the sorts of logistical problems that you contemplate. The minister says to us that the regime that is proposed by the opposition is neither appropriate nor workable. Leaving appropriateness aside, I am trying to concentrate at the moment on its workability. Minister, are you able to provide the committee with some support for your claim in relation to a lack of workability in the areas I have raised?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.22 p.m.)—The director-general of intelligence might have said only two or three occasions. However, an occasion could involve several, if not many, warrants because you might have an operation which includes several

states. We have recently seen operations carried out by ASIO across Australia simultaneously. I suppose you could call all that one occasion. In such a situation you would need to have a number of people available across Australia, even in smaller states like Western Australia. That is the problem you face. I think it is a quite reasonable scenario. You would have to issue several warrants because you could be dealing with a group of people who are conspiring, and that group of people—obviously a terrorist group—are not acting via one person alone but through several, if not many, people across Australia. You would take out your action or you would carry out your operation simultaneously, and that would involve the issuing of many warrants, albeit on one occasion.

Law enforcement has experienced this many times. I have seen it in the Australian Federal Police where, in relation to organised criminals, warrants have been issued in different states at the same time so that the operations are carried out at precisely the same time and no-one is given advance notice or can give anyone else advance notice. That is the scenario which tests the system. The environment we have been living in since September 11 and in more recent months is a different environment to what we have experienced in the past. As to the future, who knows what we might require as to the frequency of these warrants. That is why everyone regards this bill so seriously. It is a bill that we hope will never have to be used, but we are realistic. In the environment that we are living in, we cannot rule out that these provisions will not be used in the future, and therefore they must be available. If they are to be available, the system has to be workable. We cannot afford to have a situation where there is only a limited number of former judges, where we cannot locate them in a hurry and where they are not available.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.25 p.m.)—With respect, Minister, I am not suggesting or asking that the use of these provisions be ruled out at some point in the future. I do not think any sensible person would rule that matter out. As I have indicated, we do have evidence from ASIO itself
of the number of occasions when such provisions may be used. Let us nail it down. I am happy to take at face value what you say, drawn from your own experience in the Western Australian bar, about the pool of eligible retired judges being small. But are you able to say to the committee, drawing on your experience in the Western Australian bar, how small that pool is, and what are the implications?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.26 p.m.)—I have made inquiries as to the number of former judges, and that might assist the committee at this stage. I will come to Senator Faulkner’s question in a moment. The Attorney-General’s Department does not have records of potential former judges in states and territories. From a Commonwealth point of view, the number of judges who served for the last 10 years and who are still under 72 years of age is: in the New South Wales Federal Court, five; in the ACT Federal Court, one; in the New South Wales Family Court, seven; in South Australia, one; in Victoria, four; in Tasmania, two; and in Queensland, two. So, from the Commonwealth point of view, the total number across Australia would be 22. Those judges would have to consent. My office has made inquiries and we are endeavouring to ascertain further numbers.

The question was put to me from my experience in Western Australia. Looking at judges who would be under the age of 72—because that is what the opposition is proposing—and who have 10 years experience in a superior court, the problem you would run into is that most judges retire at age 70, so you do not have too many left who are under 72. You would have a handful. The Attorney-General himself is of a view that you would have only two or three who would fit that requirement in Western Australia. That is merely anecdotal evidence, and by no means is it by way of some record—but that is the question I was asked. We are endeavouring to see if we can find further numbers. When you look at that number, from a Commonwealth point of view, it is certainly not great at all. The total number for New South Wales is 12; South Australia, one; the ACT, one; Victoria, four; Tasmania, two; and Queensland, two. And, from a Commonwealth point of view, I do not think there is one in Western Australia.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.29 p.m.)—If I hear you correctly in answer to my question, Minister, you say that the Attorney-General’s Department does not have records.

Senator Ellison—Not for state and territory judges; these numbers are for Commonwealth judges.

Senator FAULKNER—It does have records in relation to Commonwealth judges?

Senator Ellison—I have just read them out.

Senator FAULKNER—I thought you indicated that they did not have records in the broad. I appreciate that you do not have records for those from the state jurisdictions and I am sure you also appreciate that, as far as the proposal that the opposition is putting forward is concerned, we are suggesting that the judges be drawn not only from the High Court, the Federal Court and the Family Court but also from the Supreme Court and District Court, or however judges might be described in state jurisdictions, as well. You say you do not have the statistics available. The reason I press you on this is that you confidently say that the pool is small but you seem unable to quantify it.

I wonder if you have been able to give consideration to whether the use of existing judges is constitutionally sound. I ask the minister whether the Attorney-General’s Department has sought advice on that issue of constitutionality. If so, is the minister able to share with this committee what that advice might be? If the minister was so minded and was generous enough, he might even consider tabling such advice or advice in the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.32 p.m.)—I think the question of constitutionality was addressed in the inquiry by the Senate Legal and Constitutional Legislation Committee. I think that was canvassed adequately there. I am aware that there has been
some suggestion that some constitutional aspect of this bill causes concern. In particular, it has been suggested that the detention powers under the bill are inconsistent with chapter 3 of the Constitution, which establishes the separation of powers between the executive and the judiciary. It has been argued that the inconsistency arises because the power to detain a person for punitive reasons is a judicial function which cannot be conferred upon the executive. The detention provisions under this bill are not for the purpose of punishing criminal activities. There is no punitive element to detention under the bill. Our advice confirms that the bill is constitutionally valid.

As to whether we can provide a copy of that advice to the committee—we have run into the usual chestnut of providing advice—I will have to take that on notice and seek the views of the Attorney-General. But certainly we do not believe that there is any aspect of this bill which is unconstitutional. I am not sure that the first committee report by the Senate Legal and Constitutional Legislation Committee suggested that the bill was unconstitutional, but I will have to have a look at that report again. I thought that it did not.

Senator BOLKUS (South Australia) (8.34 p.m.)—That is a very disappointing response from the Minister for Justice and Customs and one that shows enormous ignorance of some fairly critical issues here. There was not just 'some suggestion'; some of the most pre-eminent lawyers in the country had some huge concerns as to the constitutionality of these provisions. I would have thought that on an issue such as this, where you deem it a serious issue, the parliament deems it a serious issue and we are making special time for it, you would have taken the time to actually brief yourself on some of those advices. People as eminent as former Australian government solicitors-general raised deep concerns about the constitutionality of this legislation. For you to dismiss them as 'some concern', in your words, I think really reflects on you enormously badly in that you obviously have not briefed yourself on these issues.

You say that you will ask the Attorney-General whether it is possible for him to make the advice available to the committee. Great good that will do! He has been on notice for quite some months now in respect of that advice and all we get are these bland assurances from his officers saying, ‘We have been assured that this is okay.’ On the one hand we have the ‘trust me’ statement from the government, whereas lawyer after lawyer, Queen’s counsel after Queen’s counsel and senior counsel after senior counsel practising at bars across the country tell us that these provisions have grave constitutional doubt.

Senator Ellison—Read your own report.

Senator BOLKUS—I have read my own report. It is about time you read it. It is really good to see that finally you have discovered it. Maybe you should have read it this afternoon.

Senator Ellison—I was right all along. Reread it.

The TEMPORARY CHAIRMAN (Senator Knowles)—Order! Senator Ellison.

Senator BOLKUS—Secondly, and Senator Faulkner was asking a few questions on this—can I ask you one question that was not addressed by either committee and could you provide an answer: is it possible for a warrant to be issued from a judge by telephone?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.36 p.m.)—As I put it correctly—and I think Senator Bolkus ought to go back and have another look at it—the Senate Legal and Constitutional Committee looked at the bill and addressed three issues. One of them was whether it is constitutionally valid for the executive to authorise the detention of a person who is not a suspect. That was looked at when the parliamentary joint committee was looking at other aspects of this bill. When I said that one of the previous committees had
looked at this question I was right. There may be all manner of witnesses who made submissions to that committee, but I do not recall that committee saying—and perhaps Senator Bolkus can point to it—that this bill was unconstitutional.

We always get submissions on legal opinion which differ. In the 10 years that I have been associated with Senate committees, that is nothing unusual. The government has its own advice that this bill is constitutionally valid. For Senator Bolkus now to exaggerate the position of the legal aspect of this bill without acknowledging that matter of history does nothing to advance the rational debate of this bill which is an important one. I think that needs to be noted for the record. On the question of warrants issued by phone, the warrant has to be signed by the issuing authority and there is no provision for a telephone warrant.

Senator BOLKUS (South Australia) (8.38 p.m.)—Minister, there are so many areas of federal jurisdiction. Issuing authorities and supervising authorities do have a capacity to entertain proceedings by telephone. I am asking you whether there is anything in this legislation that would bar that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.38 p.m.)—Perhaps Senator Bolkus is angling for a telephone warrant by the way he is talking on this amendment. Clause 34C(5) states:

The Director-General may request the warrant only by giving the material described in subsection (4) to an issuing authority who is a Judge or a member of a class specified by the regulations for the purposes of section 34AB if the person could be detained for a continuous period …

And it goes on to deal with other matters. That says that the director-general can only request the warrant by giving the material to that issuing authority, and the material very much implies that there has to be a physical transaction, that there has to be a meeting, if you like, or a situation where that material is handed over. So it is not a situation where you can do that over the telephone; it has to be done very much on a personal basis.

Senator BOLKUS (South Australia) (8.40 p.m.)—I think the Minister for Justice and Customs is trying to gloss over a particular problem that he might be confronted with here. The legislation does not say that there has to be physical presence. There has to be delivery but, as in so many areas of federal jurisdiction, that delivery can be by fax, by email—by delivery of one sort or another. I take Senator Faulkner’s first point, particularly in the context of Mr Richardson’s advice, that over the last 12 months—which you have got to say was a pretty hectic year for potential terrorist activities—these provisions would have been used only two or three times. I think that is the fundamental point. Minister, the other point is that, if you are trying to argue that there are no judges, it has never been beyond the capacity of this government or others to find retired judges to conduct work for them across the country. The clause you just read out in no way demands that there need be physical presence. Can I put it to you and to your advisers that they know it and they should be informing you to that effect.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.41 p.m.)—Senator Bolkus is talking about whether this can be done by telephone. I have indicated to him that there has to be a physical aspect to this. It is a conveyance which is personal.

Senator Bolkus—Where is that stated? That is not what you read out.

Senator ELLISON—If you have to deliver a document to someone, that is a physical aspect. If you make sure that they are standing by the fax and you send it to them and they receive it, that is a physical conveyance. It is not something that is done over a telephone whereby no signature or anything is provided. I read the proposed subsection very clearly. Senator Bolkus, by his question, is trying to imply that this bill allows a telephone warrant—it does not. The proposed subsection is there. It speaks for itself.

Senator BOLKUS (South Australia) (8.42 p.m.)—The minister thinks that we were born yesterday. I point out to the minister that, in my experience as immigration minister in this place, time and time again—
Senator Ellison—We don’t want to go there.

Senator BOLKUS—I would not mind going there. If you want to go there, I will take you there on this particular point, Minister. At least I used to come to this parliament prepared for the issues, unlike you. At least I used to come in here having read the briefs of my own. And at least I used to understand the legislation, unlike you. If you are looking at experience, time and time again federal judges would issue warrants and do all sorts of proceedings by telephone, out of their chambers or wherever. There is provision in federal laws for that. I suggest to you that on this point, as on many others, the real problem may not be the capacity to do things but more an unwillingness by the government to actually accommodate some fairly pressing issues.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.43 p.m.)—Again, Senator Bolkus is confusing his legislation. Section 3R of the Crimes Act 1914 states:

(1) A constable may make an application to an issuing officer for a warrant by telephone ...

That is how it happens—because that legislation says that you can do it by telephone. Where it does not say that you can do it by telephone, you cannot. What this bill says is that it has got to be material provided by the director-general, and that is how you get the situation under other legislation that Senator Bolkus has mentioned of its being done by telephone because it says that. Here it does not. Here it makes it very clear. There is no issue of telephone warrants.

Senator NETTLE (New South Wales) (8.44 p.m.)—I rise to assist Senator Bolkus. I agree with Senator Bolkus that the proposed section that the minister read out relating to the issuing of the warrant does not preclude the warrant having been issued by telephone. If indeed the minister believes that it does so, then perhaps I should draw Senator Bolkus’s attention to opposition amendment (15) which in fact removes that section from the bill.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that the amendments be agreed to.

Senator Faulkner—Madam Temporary Chairman, I rise on a point of order. I seek clarification. As I understand it, you are putting government amendments (2) to (8), (13) and (16) on sheet DT377.

The TEMPORARY CHAIRMAN—That is correct.

Senator GREIG (Western Australia) (8.45 p.m.)—Chair, before you put the question, can I ask the minister to clarify something. Minister, as I heard it—and please correct me if I am wrong—you ruled out the possibility of warrants under this legislation being issued by telephone but not necessarily by fax. As I heard you, a signature is required—and that could be done by fax—but the conveying, the interpersonal interaction, is done by alerting that person to being present at the receipt of the fax. Does that mean that a warrant can be issued by fax? My understanding is that a faxed signature is legally recognised for contract purposes.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.45 p.m.)—Yes, I said that warrants can be issued by signature, and that can be done by fax. These days a lot of documents that are signed are transmitted by faxes. I think that even courts accept documents lodged by fax. We think there is nothing untoward in that. That requires a document be signed. That is a totally different requirement to the provision under the Crimes Act which authorises a warrant by telephone. If something is signed—and it is stated there—you obviously assume that the person signing it reads it. That is a much more substantial requirement than simply a warrant by telephone. You cannot imply, even with the greatest stretch of the imagination, that in this subsection you can get a warrant by telephone.

Senator GREIG (Western Australia) (8.46 p.m.)—Minister, does that principle also extend to email, and does an email signature have legal weight?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.47 p.m.)—I am advised that you have to have
the consent signed by the minister and you could not convey that by email to have it signed. It is quite easily done by fax—the document is signed and it is then sent to the person at the other end, who can then sign the document. But with an email you cannot do that. Email does not provide for signatures. That is the difficulty.

Senator HARRIS (Queensland) (8.47 p.m.)—I seek clarification from the minister. We have established that we need a physical hard copy of a document signed by a person, faxed to an authorised person or an issuing authority. At what stage would a person subject to the warrant have access to the legal documents to be able to ascertain their bona fides? The minister is distracted at the moment, so I will repeat the question. Minister, at what stage would a person subject to a warrant being issued upon them be able to access the documents which establish the grounds for establishing that that warrant be issued—in other words, the actual documents that have been faxed to the former judge or the approved issuing authority?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.49 p.m.)—I understand that the warrant is provided to the person at the time it is executed. That is straightforward. If the person has a complaint in relation to the issuing of the warrant or any aspect of it then that person can complain to the inspector-general of intelligence. In the case of a warrant being executed by the police, the complaint can be made to both the inspector and the Ombudsman. The warrant is given to the person at the time of execution.

Senator HARRIS (Queensland) (8.50 p.m.)—Minister, I clearly understand that a person gets a copy of the warrant. My specific question was: at what point in time does a person who has a warrant issued against them have access to the documents under which the warrant was actually established?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.50 p.m.)—They do not have access to those documents.

Senator NETTLE (New South Wales) (8.50 p.m.)—I rise to give the Australian Greens’ position on the amendments put forward by the government. We will not be supporting these amendments. They are in conflict with the next amendments to be put forward by the opposition. We have had some discussion already about potential constitutional issues with regard to serving judges being a part of this regime. The amendments put forward by the government take up one suggestion of the committee about former judges. But rather than, as suggested by the committee, replacing the existing AAT members or magistrates with former judges, the government’s proposal is just to extend the number of people who can be issuing or prescribed authorities to also include former judges. We have had some discussion already about the constitutional issues that could arise from the government’s current model, and they are not addressed by the amendments proposed by the government.

Another issue that we have not heard talked about is AAT members being able to provide warrants under the current regime. This being the enormously controversial legislation that it is, I understand that part of the rationale for putting forward the retired judges model was to make a further separation between the government or the executive who are putting this legislation in place and the people who will actually issue the warrants. The idea is that former judges perhaps do not have as much reliance on the government and the executive for their ongoing positions, their future employment or their general relationship with the government. This government amendment does not take away those concerns that people have about government employees, through the AAT, making decisions about how this legislation should be implemented.

The responses from the Minister for Justice and Customs so far have focused on constitutional issues and the number of retired judges that would be available to serve this function. We have heard others refer to the evidence given by Dennis Richardson during the committee hearings that he believed this legislation would have been used on two to three occasions in the last 12 months. It is particularly disturbing that this
government is putting forward as one of its strongest arguments against the retired judges model that it does not believe there are enough retired judges to fulfil these responsibilities. I hope that the government’s expression of this as such a concern is not an indication that this legislation would be used more than the two to three times in the last year that we heard about from the Director-General of ASIO. It is deeply concerning to hear that being put forward by the government as a major argument for why they do not support purely retired judges being the prescribed and issuing authorities. Perhaps the minister can enlighten us as to whether he believes this legislation would be used a lot more frequently than Dennis Richardson’s evidence to the committee suggested.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.54 p.m.)—I have to correct something that Senator Nettle said. Members of the AAT are prescribed authorities, not issuing authorities. We have separated the role of the issuing authorities from the role of the prescribed authorities. Issuing authorities issue the warrant; they are not prescribed authorities who preside over questioning. That is a separate role. To have mixed those two would be an issue; that is why we have separated them. Senior legal members of the AAT are prescribed authorities, not issuing authorities. I want to correct the record for Senator Nettle, who was under the impression that the members of the AAT were to be issuing authorities.

As I understand it, Mr Richardson’s comments were in relation to the number of instances in which these provisions would have been used since September 11 and not so much how many times they would be used each year. I am glad that I have been advised of that because it brings his evidence into focus more accurately. He can look back and see two or three instances since September 11 last year where these warrants could have been used. In hindsight, he can say that with some degree of certainty.

As to the future, it is very difficult for anyone to say how many times these provisions would be used. All I can say is that we live in an environment where there is a threat to security. We have seen actions taken by ASIO in past months which in one case have resulted in charges being laid. As I said to Senator Faulkner in answer to an earlier question, it would not be beyond the realms of possibility to see these provisions being used in the future. I would hope that we had an environment where these did not have to be used, but as the government of Australia we have got to look out for the security of this country, and we have to have provisions in place in case the need arises for our agencies to use them. That is why they are there. In the current environment you could not rule out these provisions being used, and that is why they are so important.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.57 p.m.)—The only information that is available to members of the committee is the Director-General of ASIO’s public evidence in relation to this matter. I accept the minister’s presentation of that evidence to the committee in this debate. That is a fair reflection of what was said. In excess of a year after September 11, 2001 such provisions, if they were in place, would have been used on two or three occasions. I think the link being drawn here—the link between the number of occasions such provisions may be used and the number of retired judges from the High Court, Federal Court, Family Court, state supreme courts and state, district or county courts who are available to fulfil that particular function—is an appropriate one. When we have dealt with these government amendments, we will be dealing with the opposition’s amendments which propose that the prescribed authority comprise retired judges from those superior courts. We deliberately talk about retired judges.

It is very important that this committee reflect on the crucial role of the prescribed authority under this legislation—the crucial role of the prescribed authority in a questioning regime. The prescribed authority is the person before whom questioning must take place and the one who supervises the questioning. The prescribed authority is the one who can give a wide range of directions in order to manage the process. The com-
mittee should reflect on some of the evidence that was adduced before the Senate Legal and Constitutional References Committee. I remind the committee of the evidence of Mr Bret Walker SC, who appeared on behalf of the Law Council of Australia and argued that the prescribed authority ‘must not become engaged on anything which sees them lining up with the institution which is doing the questioning’. In his evidence he likened the role of the prescribed authority to that of a chaperone. He said:

... as I understand the role of a chaperone, it is not to run interference on things but, by their simple presence and by the nature of the person, to perhaps instil a sense of propriety that might not otherwise happen ... The idea is that if you have got a respectable retired judge ... then the chances of the security services misbehaving are hugely reduced, I would have thought. People do tend to behave better when they are in the presence of people whom they cannot control.

Like the Law Council, Dr Stephen Donaghue argued that a judge would be most suitable in this role. He said:

The questioning is not being conducted by the prescribed authority ... it is being supervised by them. It seems to be desirable to have someone acting in that position who would ... make sure that the process takes place appropriately. It seems to me that that is why they are there, at the end of the day—to ensure that the process is conducted appropriately. I would submit that a sitting Supreme Court judge, or a retired judge of any court, is less likely to be in a position to be pressured by the executive in the way that they exercise that function than an AAT member, who is likely to have had a less distinguished legal career and is likely to be dependent on the government for their continued appointment to the AAT. If it is a safeguard, it is a better safeguard in my view. There are certainly a great many Supreme Court judges or retired judges who would exercise that function very vigorously.

I think Dr Donaghue draws an important distinction about the seniority and status of judges and retired judges. It became clear through the recent Senate Legal and Constitutional References Committee inquiry into the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 that it is essential that the prescribed authority be truly independent if the prescribed authority is to fulfil the role and obligation of protecting the rights of people who are being questioned and detained. However highly esteemed magistrates may be, they do not have the status and seniority of judges.

We have had senior counsel making it absolutely clear that the role given to serving Federal Court judges and serving federal magistrates—who, as issuing authorities, are subject to the same chapter III limitations as Federal Court judges—makes the bill constitutionally suspect. Chapter III of the Constitution prevents the conferral of any function upon a federal judge, even acting in a personal capacity, if that function is incompatible with the exercise of the judicial function under chapter III. That concern has simply not been answered by the government.

The people putting this case are people of substance: Dr Gavan Griffith QC, Professor George Williams and Dr Stephen Donaghue. They represent some pretty heavyweight legal opinion on these sorts of issues. In stark contrast to the open, frank and thoughtful advice provided to the Senate Legal and Constitutional References Committee by these eminent people, the government refuse to table or provide a copy of its legal advice. The minister says that the legal advice exists but will not front up with it. Given what is at stake here, it is of concern that the government have never been willing to provide that advice to parliamentary committees or to either house of the Australian parliament. They say to us, ‘Everything’s okay,’ even though we have these eminent constitutional lawyers making the strong points they have made.

I am not sure it is okay. I am one of those people in the chamber who are not lawyers, but if strong, coherent and persuasive arguments are put forward by lawyers, I like to listen to them. But what the opposition has put forward, which we will deal with in the next set of amendments, is a far more workable model for the prescribed authority, and one that has also been recommended by a Senate committee. I want to hear from the government whether there are the logistical weaknesses that the minister blithely says exist. The minister claims that the pool of retired judges is not big enough. I hoped that,
by the time we were having this committee debate, the minister would be able to substantiate that claim. He cannot. He has not been able to do that today. I think that, if the minister could substantiate that claim, there would be an obligation on this committee to look carefully at any arguments like that that are presented. But all we hear is that Senator Ellison is well connected in the Western Australian bar and he does not think there are enough retired judges to go around. No-one actually has any statistics or any names to throw on the table—or, as we would say in politics, no-one has any numbers to throw on the table.

I think that on these points the government is obligated to front up to the Senate committee. The government is obligated, if it says there are not enough retired judges, to tell us how broad the pool is. I have tried to seek advice from the legal community, who have tried to satisfy me that there are enough; but I am willing to listen to sensible, well-founded arguments, if there are any. I am more than happy to be satisfied on the point of constitutionality. But what we get from the minister and from the government is some half-baked claim that the Attorney-General’s Department has had a look at it and everything is okay. Who is going to accept that throwaway line from the government on an important issue like this? The government to date has not provided any comfort on these important issues. It has provided no comfort at all on the serious constitutional issues that have been raised.

This is important, because the government—properly, in my view—argues about the national security implications of this and other counter-terrorism legislation. In my view, that is a fundamentally important imperative for this chamber and for this parliament. I hope every senator in this chamber takes account of it. If this legislation is considered as important as it is by the government, what would the government think of the blow to national security if this particular law, if it is passed in the form that the government wants, were to fall over because of constitutional problems with the warrant issuing process? That is why I think we are entitled, at this committee stage, to ask for clear and definitive answers from the government on issues of genuine and real substance.

**Senator Ellison (Western Australia—Minister for Justice and Customs) (9.12 p.m.)**—I rise to address a couple of issues. Firstly, Senator Faulkner has raised the query of using members of the Administrative Appeals Tribunal as prescribed authorities. I think the question related to whether or not they are appropriate. Recommendation 1 of the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD—of which Senator Ray is a member and was a participant in this inquiry—into the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 states:

Federal magistrates to issue all warrants; Federal Judges to issue all warrants where detention will exceed 96 hours; and members of the AAT, as set out in proposed sub-section 34B(1), to undertake all other duties of the prescribed authority excluding the power to issue warrants.

That is where you get the division between the people who issue the warrant and the people who are the prescribed authorities who oversee the questioning. That deals with any constitutional query, and it is also a recommendation of the parliamentary joint committee, which we adopted. That is why it is in the bill.

We have had the query about the constitutionality of this framework. If you are going to ask where the authority is, let us look at a Senate committee, because we rely on this as our authority. The Senate Legal and Constitutional Legislation Committee, as I previously advised the committee, looked into the constitutional aspect of this bill. Paragraph 1.21 of the committee’s report comes under the heading, “Is the issuing of questioning warrants by magistrates an exercise of executive power that is incompatible with their role as judicial officers?” This is the nub of any concern as to constitutionality and really touches on the High Court decision of Grollo v. Palmer. Paragraph 1.21 of the committee’s report states:

In summary, the Committee notes the concerns of Professor Williams and Dr Carne about some fundamental constitutional questions and the fur-
ther response of the Attorney General’s Department to those matters. The Committee considers that if the PJC’s recommendation that warrants for detention be issued only by federal magistrates and Federal Court judges is adopted by the Government, such amendments will go a considerable way towards addressing the concerns about the validity of the current Bill.

That is precisely what we did. We have taken on board recommendation 1 of the parliamentary joint committee, and we have federal magistrates, Federal Court judges and members of the AAT as prescribed authorities. So I think we have addressed those issues, and I cannot see what more the government can do. We have taken what the committee said and we have got our own advice. The matter really speaks for itself. Look at the committee report, look at both committee reports, and you will see what the PJC said in its first recommendation. We have followed that course of action.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.16 p.m.)—When someone who has been the Commonwealth Solicitor-General, such as is the case with Gavan Griffiths QC, says that the legislation in its current form is constitutionally suspect, I think it is very foolish of the government not to look carefully at these sorts of issues. Of course what the Minister for Justice and Customs does—and this has been raised after the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD—is come in here and read one recommendation from the PJC report. Half an hour ago he was rejecting another one. In other words, what the minister is doing is cherry picking these recommendations. If a recommendation or a view of a particular committee happens to suit the government, the government picks that out, regardless of the evidence that has been forthcoming on these issues—in the case of the PJC, after the advisory report had gone to the Attorney-General.

The approach that the opposition is putting forward is in fact consistent with a unanimous Senate committee recommendation—that is, that the opposition proposes that the prescribed authority be made up of experienced retired judges. I am trying to hear from the minister, but have not heard, some support for a logistical argument, which I think people would take account of if there are not enough of them. Apart from some sort of vague indication that this is the case in Western Australia, the committee is yet to be provided with any evidentiary support for that statement.

So we say, given all the concerns and given the role of the prescribed authority, that that prescribed authority be made up of experienced retired judges—individuals whose standing cannot be questioned. We have suggested a panel of retired judges who have had very significant years of service on a superior court. What is the advantage of doing that? What is the reason for doing that? It removes serious concerns over the constitutionality of using chapter 3 judges as the issuers of warrants, as the government is proposing, but also—and I think this is very important—it will have the effect of boosting community confidence in the accountability and the integrity of this regime. I think that is absolutely essential also.

The government needs to reflect on the fact that when this proposition was developed by the Senate committee—it came forward in evidence, and the committee was able to seek evidence on this matter and develop the proposal of using retired judges as members of the prescribed authority—it was very well received by agencies, by lawyers and by community groups who were appearing before the Senate inquiry. In fact, the Director-General of Security also said in evidence before the Senate inquiry that he thought using retired judges was well aligned to the current bill. But I think it is important that we heed what the director-general was saying. It is important to remember that, right through his evidence and through a range of public statements he has made, he has been supportive of ensuring that we use a model that instils the greatest level of community confidence in this regime. I think that is the other great advantage in what the opposition propose with retired judges. If there is a logistical problem with this in terms of the numbers, in terms of the pool, tell us. Do not make some vague claims. Put it on the table so that we can have a look at it.
Senator HARRIS (Queensland) (9.22 p.m.)—I wish to follow up on the minister’s response concerning the documents that are used to establish a warrant and the fact that they are not available at any time to the person who is the subject of that warrant. I wish to quote from the October 2002 issue of the Public Sector Informant. The cover story is by Veronica Burgess and the heading is, ‘Secret Business—ASIO Intelligence Game’. I think the subheading encapsulates the concerns of the Australian people. The article states:

Discretion and intrusion go hand-in-hand in an organisation which can and does poke its nose into secret corners of people’s lives.

The article goes on to say:

ASIO is allowed to and does poke its nose into secret corners of people’s lives. With the approval of the Attorney-General, it can do some pretty intrusive things, including: tracking your movements, tapping your phone or computer, sticking a microphone or a micro-camera in your bedroom wall, checking your post or taking a look around your house—but not willy-nilly. There are still strict regulations about what it is allowed to do, why, and for how long. ASIO also collects foreign intelligence within Australia at the request of the Minister for Foreign Affairs or Defence.

I come back to the original proposal—that is, the information that is used to establish the application for a warrant is in no way available to the person who is the subject of the warrant. Proposed section 34D(5)(a)(i), which deals with warrants for questioning, refers to giving information ‘that is or may be relevant to intelligence that is important in relation to a terrorist offence’. So an order for questioning can be placed on somebody for no other reason than that they ‘may’ happen to have information. It does not have to be relevant. The only requirement is that it ‘may’ be relevant. What an intrusion that is into the lives of average Australians.

Under this legislation, a person who owns a property in which a person may have resided—a person whom the government suspects has been involved in some terrorist activity—could find that he is the subject of an order and be taken in for questioning just because the information he has ‘may’ be relevant. He does not even have the right to know the basis of the claim. That is the reason why I believe we should be looking at this section of the legislation relating to the prescribed authority and the issuing authority. It is extremely important that the prescribed authority ensures that the person being questioned has certain rights maintained. Sometimes we become so engrossed in the technicalities of legislation before this chamber that we do not stop and look at the effect that it is going to have on the Australian people.

Senator NETTLE (New South Wales) (9.27 p.m.)—I rise to talk about the difference between issuing authorities and prescribed authorities. I am well aware of the distinction, although I thank the minister for pointing it out. Making the distinction does not alleviate any concerns that I, or others who expressed concerns in the committee, have about the close relationship between employees of the government—whether they be issuing authorities or prescribed authorities. They are making a decision to pursue a warrant and then to oversee questioning. That distinction in the role of the AAT certainly does not ease any concerns that I, and the people who expressed them at the committee, have about the close relationship between those authorities and the government.

I continue to express concern about the rationale in terms of the number of retired judges not being adequate. I understood the evidence given by Dennis Richardson at the time to mean that, since September 11, he believes this legislation would have been used on two or three occasions. That does not give us any idea of how many times it will be used per year but, as Senator Bolkus pointed out, the period since September 11, 2001 has been a period of intense activity on this front. One would anticipate that if this legislation, as the director-general said, were used on only two or three occasions, that would give us some idea about the likelihood of the ongoing use of this legislation.

I direct a question to Senator Faulkner. Senator Faulkner, you described evidence that had been given before the Senate committee about the distinction made in the issuing of the prescribed authority. You said that evidence had been put to the committee
that we needed to ensure that there were different people who fulfilled these roles. It could be that I have not found it. Could you explain to me where that distinction exists in the model put forward by the opposition between the role of the prescribed authority and the role of the issuing authority, which was something that was put forward in the committee as a concern by some groups.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (9.30 p.m.)—No such distinction exists. I think I can say to Senator Nettle that, if she did not find such a distinction, that is because it does not exist. The minister could well be asked why the prescribed authority cannot also be the issuing authority. In the opposition’s view there is absolutely no reason why that cannot be the case. I know of no substantive argument that can be mounted against it.

Senator Nettle (New South Wales) (9.31 p.m.)—I am happy to recognise that that may well be the position of the opposition, Senator Faulkner. I just found that you were arguing before to the government that people had come before the Senate committee and had made that distinction, so I was wondering whether that had been pursued in your amendments. I recognise that you have provided that information to the committee.

Senator Greig (Western Australia) (9.31 p.m.)—There may be no greater illustration—although that may be yet to come—of an argument in favour of the three-year sunset clause. We are effectively involving ourselves in a debate and a discussion on which is the better model in terms of issuing warrants. There are pros and cons on both sides. I have some sympathy with the minister’s argument that there are few judges. To be fair, in the statistics that he has given he has referred only to retired chapter III judges, not to state jurisdictional retired judges. There was also the argument that warrants cannot be issued by phone. However, we have heard that they can be issued by fax and that state judges are available. I could have some sympathy with the minister’s position if he could further quantify it or strengthen the argument that a lack of judges was the issue, but I am not so sure that it is.

If that is or is not the case then surely this is an illustration of where the sunset clause comes into play. In three years time we can, with the benefit of hindsight, look back on this and say, ‘That model worked,’ or, ‘That model didn’t work.’ That will be an opportunity for a new parliament in a different environment to review the legislation.

I strongly pick up a point that Senator Faulkner made—and I am paraphrasing—that this is not just an issue of practicalities or indeed technicalities but also a question of perception. There was recently an article in the Australian print media resulting from questions asked in recent Senate estimates where ASIO confirmed that it had in some cases issued its own warrants—the minister may correct me on that—on the basis that the Attorney was unavailable. I think that creates an understandable perception and concern in the community around the notion of a secret police force. It is something which we as a parliament should avoid and we should ensure that the appropriate protections are in place. The proposal by the opposition better does that on the basis that there is the stronger perception that the issuing of warrants is at arm’s length from the government or, at least, departments associated with the government when you are referring instead to the integrity and judicial experience of retired judges. On that basis I believe, and the Democrats believe, that these government amendments ought to be opposed. The alternative model, which we will get to shortly, offers a better opportunity to deal with this issue not just in terms of its perception but also in terms of its practicality, given that the three-year sunset clause is there to remedy the situation if it is proven to be fundamentally flawed. On the debate I have heard thus far, I am not convinced that that is the case.

Senator Robert Ray (Victoria) (9.34 p.m.)—I want to comment on one point raised by Senator Greig. He is right that there is a provision in the ASIO legislation—but not, I think, this one—where the director-general can issue a warrant in the absence of the Attorney-General, but it is an unusual step. It is then subject to review—and this case was subject to review by the inspector-
general; it was in his report. He looked at the circumstances and validated ASIO’s actions on this occasion. The provision is there for that reason. But it is not an unfettered right of the director-general. It is subject to review, it was reviewed and it was validated by the inspector-general.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.35 p.m.)—by leave—I move opposition amendments (3), (4), (6), (19), (20) and (24) on sheet 2764:

(3) Schedule 1, item 24, page 6 (line 25) to page 7 (line 2), omit the definitions of approved lawyer, Federal Magistrate and issuing authority.

(4) Schedule 1, item 24, page 7 (after line 7), after the definition of record, add:

superior court means the High Court, Federal Court, Family Court, the Supreme Court of a State or Territory or a District Court of a State.

(6) Schedule 1, item 24, page 8 (lines 4 to 15), omit section 34B, substitute:

34B Prescribed authorities

(1) The Minister may, by writing, appoint as a prescribed authority a person who:

(a) has served for 10 years as a judge in one or more superior courts; and

(b) no longer holds a commission as a judge of a superior court; and

(c) is under 72 years of age.

(2) The Minister must not appoint a person unless the person:

(a) has by writing consented to being appointed; and

(b) the consent is in force.

(3) A person can only be appointed as a prescribed authority for a single three-year term.

(4) The Minister must cause to be kept a list of names of former judges who have consented to being appointed as prescribed authorities.

(5) If a former judge whose name is included in the list requests the Minister to have the former judge’s name removed from the list the Minister must cause the list to be amended to give effect to the request.

(6) The Minister may, on his or her own initiative, cause the name of a former judge to be removed from the list.

(19) Schedule 1, item 24, page 12 (line 29), omit “issuing”, substitute “prescribed”.

(20) Schedule 1, item 24, page 13 (line 9), omit “issuing”, substitute “prescribed”.

(24) Schedule 1, item 24, page 14 (line 12), omit “24”, substitute “4”.

As the committee is aware, we have spent a considerable period of time debating two alternatives: the government’s proposal in relation to prescribed authority and that of the opposition. I have canvassed at some length the reasons that I believe the opposition’s proposal is a superior one. I think that we determined in the committee debate that both alternative models would effectively be on the table and canvassed. The committee has seen fit to oppose the government amendments in relation to adding former judges. We are now dealing with the substantive opposition amendment in relation to the form of the prescribed authority.

I do not want to speak at length to this, because we canvassed it at considerable length a little earlier this evening. It is important for the committee to remember that the prescribed authority plays an absolutely crucial role in the questioning regime. It is, of course, the prescribed authority which is present when questioning takes place. The prescribed authority has responsibility for supervising the questioning and for managing the whole process and has a capacity to give directions in managing the process.

We have indicated our concerns on a range of issues in relation to the alternative proposition that is contained in the bill, and not only in terms of the need for appropriate status and seniority of the prescribed authority—in other words, judges as opposed to magistrates. There is also the question of constitutionality, which is an important one. Hence the proposal that the opposition have put forward—which was developed in the Senate references committee inquiry and report—in relation to retired judges, given the concerns that have been indicated and presented to the committee about the constitutional issues surrounding serving Federal Court judges and federal magistrates.
I put to the committee in the strongest terms I can that this particular amendment has the advantage of removing those serious concerns over the constitutionality of using chapter III judges as the issuers of warrants. It also has the very considerable advantage of ensuring maximum community support for and confidence in the regime, by ensuring the accountability and integrity of the process. That is the great advantage of using retired judges as the prescribed authority. I make the point again that this is something that not only is supported by the opposition and the Senate references committee but also was received very favourably by senior members of the legal community who appeared before the Senate references committee, by agencies and also by community groups.

The amendment has a lot to commend it, and the only real argument that the government has been able to propose against it is that there may be an inadequate number of retired superior court judges to be able to adequately fulfil the functions of, or provide a panel for fulfilling the functions of, a prescribed authority. But we continue to face the problem that the government is unable to quantify that, thus reinforcing what Senator Greig was saying in his most recent contribution to the committee.

Mr Temporary Chairman, as you know, this particular matter has been canvassed at length this evening. I believe the proposal that the opposition is moving is the very best model available in relation to the composition of the prescribed authority, and I commend the amendments to the Senate.

Senator NETTLE (New South Wales) (9.42 p.m.)—I rise to give the Australian Greens position on these amendments. There are going to be many occasions throughout this debate where I will be rising to indicate that the Australian Greens will be supporting an amendment put forward by the Labor Party that we see as trying to improve a fundamentally flawed piece of legislation. There are a number of issues that the government opposes strongly in this debate. It does so firmly on the basis that this is unworkable and for the reasons I have outlined previously. I do not want to cover the same ground again, but what you are looking at is finding a judge who is under 72, who has been 10 years in superior court jurisdiction and who is willing to take on the job. I have mentioned before the problems that the government sees with this and that it is unworkable.

There are a number of issues that the government oppose strongly in this debate. We are not dividing because of the time constraints on us. I indicate to the Senate that we would have divided in other circumstances, and I say that as an indication of the strength of the government’s opposition to these amendments.

Senator NETTLE (New South Wales) (9.45 p.m.)—When the minister describes
this legislation as being unworkable, what is his premise for that view? Could he describe for the chamber whether the primary premise for his argument that this legislation is unworkable is that there will not be enough retired judges to enact that section of the legislation? It is important for the chamber to know that. It is of great concern if the minister believes this legislation will be used to such an extent that the model being put forward will be unworkable because there simply will not be enough retired judges throughout the country to deal with that level of usage.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.46 p.m.)—I have gone over this before. I have indicated that, from a federal point of view, there are only 22 judges across Australia, none of them being in Western Australia. I hasten to add that there are state and territory judges who would not be included in these figures. We do not have those figures from the states and territories but, as I have said earlier, on anecdotal evidence the Attorney-General and I do not believe that you would find more than two or three judges in Western Australia. That does make it unworkable when you consider that, if we had a September 11 in Australia and you had prior notice of such an event, you would want to execute a number of warrants—because there were some 19 operatives that we know of in that exercise. If you had some intelligence prior to that and you wanted to question all 19, you would want to have 19 warrants. I have indicated our own experience where ASIO actions in the last couple of months involved the issuing of a number of warrants on the one occasion, so you do need people around the country available in relation to this role.

Finally, we took on board recommendation 1 of the parliamentary joint committee. That spelt out how you would have federal magistrates and Federal Court judges for issuing the warrants, with members of the AAT as prescribed authorities. We took that recommendation on board. We have now taken on board further concerns by saying, ‘We’ll have that as recommended by the joint committee, but as well as that we’ll have former judges to increase the pool size.’ We really believe that we have taken this as far as we can in meeting the concerns. In relation to those other aspects of availability of former judges who meet the criteria that are required in this amendment, we have those problems. I cannot take it any further than that. I have dealt with this argument at length in the previous debate.

Senator ROBERT RAY (Victoria) (9.48 p.m.)—Minister, you have mentioned how few qualified judges in the federal system there would be in Western Australia—and it is not possible to quantify the state ones—but how many qualified AAT members of the quality that you want exist in Western Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.48 p.m.)—We will have to take that on notice. What I do know is that we are proposing that this include, in addition to the pool that we are talking about, former judges—which expands the pool. But I will take that on notice and get back to Senator Ray. I do point out, though, that the number of judges which I mentioned, a total of 22, is not in relation to WA; it is across the country.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that opposition amendments (3), (4), (6), (19), (20) and (24) on sheet 2764 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that schedule 1, item 24, sections 34AA and 34AB stand as printed.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.50 p.m.)—by leave—I move opposition amendments (7), (8), (11), (14) to (18), (21), (22), (26), (27), (32), (36) and (38) on sheet 2764.

(7) Schedule 1, item 24, page 8 (line 16), omit “, detention etc.”, substitute “warrants”.

(8) Schedule 1, item 24, page 8 (line 17), after “Requesting”, insert “questioning”.

(11) Schedule 1, item 24, page 9 (lines 13 to 29), omit paragraphs (c) and (d), substitute:

(c) if the warrant to be requested is to authorise the person to be taken into
custody immediately and brought before a prescribed authority immediately for questioning—that there are reasonable grounds for believing that, if the person is not immediately taken into custody, the person:

(i) may alert a person involved in a terrorism offence that the offence is being investigated; or
(ii) may not appear before the prescribed authority; or
(iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.

(14) Schedule 1, item 24, page 10 (lines 13 to 37), omit subsections (3B) and (3C), substitute:

(3B) In consenting to the making of a request to issue a warrant authorising the person to be taken into custody immediately and brought before a prescribed authority immediately for questioning, the Minister must ensure that the warrant to be requested is to permit the person to contact a lawyer at any time when the person is being questioned under this Division in connection with the warrant.

(15) Schedule 1, item 24, page 11 (lines 1 to 15), omit subsections (4) and (5), substitute:

(4) If the Minister has consented under subsection (3), the Director-General may request the warrant by giving a prescribed authority:

(a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
(b) a copy of the Minister’s consent.

(16) Schedule 1, item 24, page 11 (lines 17 to 30), omit subsection (1), substitute:

(1) A prescribed authority may issue a warrant under this section relating to a person, but only if:

(a) the Director-General has requested it in accordance with subsection 34C(4); and
(b) the prescribed authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

(17) Schedule 1, item 24, page 11 (line 37) to page 12 (line 10), omit paragraph (2)(b), substitute:

(b) do both of the following:

(i) authorise a specified person to be taken into custody immediately by a police officer, brought before a prescribed authority immediately for questioning under the warrant and held in custody under arrangements made by a police officer until questioning has been completed;

(ii) permit the person taken into custody to contact a lawyer (as described in section 34U) when the person is being questioned under the warrant.

(18) Schedule 1, item 24, page 12 (lines 11 to 27), omit subsections (3) and (4), substitute:

(3) For the purposes of subparagraph (2)(b)(i), the warrant may specify the end of the period for which the person is to be questioned by reference to the opinion of the prescribed authority that the Organisation does not have any further requests described in paragraph (5)(a) to make of the person.

(4) The warrant may identify other persons whom the person is permitted to contact by reference to the fact that he or she has a particular familial relationship with that person or persons. This does not limit the ways in which the warrant may identify persons whom the person is permitted to contact.

Note 1: The warrant may identify persons by reference to a class. See subsection 46(2) of the Acts Interpretation Act 1901.

Note 2: Section 34F permits the person to contact the Inspector-General of Intelligence and Security and the Ombudsman while the person is in custody, so the warrant must identify them.

(21) Schedule 1, item 24, page 13 (lines 22 to 24), omit paragraph (1)(a), substitute:

(a) the period for which the warrant authorises questioning of the person;

(22) Schedule 1, item 24, page 14 (lines 6 and 7), omit “or detention”.

(26) Schedule 1, item 24, page 17 (lines 3 and 4), omit “or a direction given under section 34F”.
(27) Schedule 1, item 24, page 17 (lines 6 to 10), omit subsection (2), substitute:

(2) Strict liability applies to the circumstance of an offence against subsection (1) that the warrant was issued under section 34D.

Note: For strict liability, see section 6.1 of the Criminal Code.

(32) Schedule 1, item 24, page 19 (lines 23 to 32), omit the note.

(36) Schedule 1, item 24, page 20 (line 22), omit “detained”, substitute “taken into custody”.

(38) Schedule 1, item 24, page 28 (lines 19 and 20), omit paragraph (c), substitute:

(c) a statement containing details of any seizure or taking into custody under this Division;

These amendments before the committee are minor in terms of the number of words, if you like, that they affect, take out or change. It is also fair to say that their significance is far from minor. Of course, substantive amendments will be moved by the opposition later in this committee stage in relation to removing 14- to 18-year-olds from the regime, setting out appropriate questioning times and ensuring access to legal advice. The amendments that are being moved here do ensure that the character of the regime is a questioning regime as opposed to a detention regime.

All in this chamber would agree that our response to the threat of terrorism has to be strong, effective and consistent with our democratic values and freedoms. As the ASIO bill stands, our view is that the government has got that balance wrong. The opposition is persuaded that the intelligence-gathering powers of ASIO should be enhanced, but we are not persuaded that that should be done through a police-like detention regime. ASIO can do its intelligence-gathering job properly, it can gather vital intelligence, without having to detain people for extended periods. I have heard the Attorney-General and others in the government stress that what is proposed in this bill is to ensure that the capacity for ASIO to gather intelligence is maximised.

I have been assured that this bill is about an intelligence-gathering regime. We are very concerned that, as it stands, this legislation may well run foul of the prohibition against arbitrary detention in the International Covenant on Civil and Political Rights. Those who have followed the hearings, the evidence and the submissions before the Senate Legal and Constitutional References Committee would be aware that a very significant number of strong submissions were made to the Senate committee on this issue.

The opposition proposes and supports a questioning regime, not a detention regime. We also insist on a questioning regime with strong protections and safeguards. We think it is appropriate that such a regime be broadly consistent with other questioning regimes employed by Commonwealth and state law enforcement agencies, such as royal commissions, the NCA and state crime commissions. You have to be able to answer the question of why ASIO should have weaker powers to interview people in relation to terrorism offences than those bodies have in relation to corruption or corporate crime. That is an absolutely crucial question that opponents of this bill need to be able to answer.

The first issue in relation to a questioning regime as opposed to a detention regime is: who should initiate the process? In this respect, the opposition believe that the current bill has got it right. We think that warrants for questioning should be initiated by the Director-General of Security, who should seek the Attorney-General’s consent to apply for a warrant. The Attorney-General must be given a draft and supporting material. Before giving consent, the Attorney-General must be satisfied that the warrant is absolutely necessary and that questioning the person would be more effective than other methods of collecting intelligence. As far as the opposition are concerned, it is fundamental that this questioning regime should not apply to anyone under the age of 18. Although that matter will be dealt with in later amendments, the opposition strongly believe that children should not be subjected to ongoing questioning by an intelligence agency. Further opposition amendments that deal with the specifics of the questioning regime will
be moved later in the committee stage of this bill.

I commend the significance and importance of these amendments to this committee. We believe it is essential that the character of this regime be a questioning regime, not a detention regime. The intent of these amendments is to give effect to that.

Senator Nettle (New South Wales) (9.59 p.m.)—The Australian Greens will be supporting these amendments because clearly a questioning regime is better than a compulsory and coercive detention regime as was proposed by the government initially in this legislation. However, I do think that the way the opposition describe these amendments is a little inaccurate, as they have asiduously gone through the bill and removed any reference to detention, taken out the word, replaced it with ‘custody’ and simply left in questioning as a regime.

The opposition are proposing up to 20 hours of detention for people not suspected of being involved in terrorist activities, and those 20 hours do not include the time in which that person being questioned may talk to their lawyer, get rest that they need, get food or medical attention, talk to an interpreter, wait whilst a lawyer arrives, wait whilst an interpreter arrives, be informed of their rights with regard to this legislation or wait for any intoxication that they are under the influence of to have subsided. All of this time beyond the 20 hours that the opposition are proposing is clearly not questioning time; it is detention time.

The opposition are proposing not merely a questioning regime such as in the models that Senator Faulkner put forward—those of the ACC or the former National Crime Commission. Under that legislation, a summons is issued for people to appear before the examiner—somebody in the ACC office—often for discrete periods of time, in which they will proceed with questioning. Then, if you fail, a warrant can be issued and outlined for those people to appear before the ACC and the examiner. That is not the same as that proposed in these opposition amendments—and later we will get onto government amendments about entry into premises and reasonable force being used in that process—which are about bringing people into a questioning regime of 20 hours with no time limit for any detention beyond and around that.

What was proposed by the government originally was indefinite. Then we heard seven days as a further suggestion. But that was a maximum time limit for which people could be held. What we are hearing from the opposition is a far reduced time period for questioning, but no time limit for those additional activities that fall outside the questioning regime. This turns the opposition proposal not into a questioning regime, as they purport, but indeed into a detention regime. Senator Faulkner talked about the strong and convincing evidence to the Senate Legal and Constitutional References Committee about the International Covenant on Civil and Political Rights, where arbitrary detention is clearly singled out as being in contravention of that international covenant. I suggest to Senator Faulkner that that same and compelling evidence applies to the questioning and detention regime that is being put forward by the opposition in this regime and this package of amendments.

Senator Ellison (Western Australia—Minister for Justice and Customs) (10.03 p.m.)—The government opposes these amendments put forward by the opposition. The government has argued that the bill should be amended so that it is a questioning regime only and does not permit the detention of persons. The government does not accept this proposal. It believes that the fundamental purpose of the bill would be thwarted by this approach. This bill deals with those circumstances where coercive questioning and detention, subject to strict controls, are necessary in the interests of public safety. For example, it may be necessary to detain a person to allow urgent intelligence investigations to continue unimpeded and to prevent them from informing others about ASIO’s investigation. In some situations, the capacity to detain will be critical.

What we are dealing with here is not a normal situation, as you have with a criminal investigation. This aspect goes to national security where people are suspected of actively planning to bring about harm to the
community at large or, indeed, something much greater than that. Detention is not just about questioning. It is also about prevention—it is about acting to prevent terrorist attacks. It would be absurd not to have a power to detain a person for a limited period in a situation where there is evidence that they will tip off their terrorist associates. We need sufficient powers to prevent persons from alerting the terrorists that we are on to them. The only way to protect against this is to hold a person incommunicado, subject to strict safeguards, while questioning for the purposes of intelligence gathering.

Those at the front line of meeting the terrorist threat tell us that, in order to protect the community, they need the power to hold a person incommunicado, subject to strict safeguards, whilst questioning them to gather intelligence. This is a need that we have to address in this bill. The opposition amendments do not do that. Warrants under the bill will only ever be used as a last resort. It is important that, when no other measures are available, our intelligence agencies have this essential tool to prevent terrorist attacks. The detention of persons is a significant power, but one that is necessary in the new environment of threat that we experience.

The government have taken active steps to ensure that the safeguards included in this bill remain consistent with our fundamental democratic values and freedoms. In the opposition’s proposals we see nothing that advances what this bill needs us to do and what our security agencies need. We believe that we have to make tough decisions in the interests of safety of all Australians. A bill such as this is the sort of decision that I mention.

Senator GREIG (Western Australia) (10.07 p.m.)—The first group of amendments moved by the opposition would remove reference to detention. If the committee are to support that, then we should acknowledge that the removal of references to detention may influence the interpretation of the act by a judge, should it be challenged—that is, individual sections should be interpreted consistently with the spirit of the act as a whole. Opposition amendment (14) would remove the provision which enables a person to be deprived of the right to legal advice during the first 48 hours. It is very important to emphasise here that access to legal advice and, indeed, access to legal aid where warranted in those circumstances is critical. We need to emphasise that, particularly in the situation where a person would have—as is proposed—no right to silence.

Senator BROWN (Tasmania) (10.08 p.m.)—The Minister for Justice and Customs said that this ASIO legislation is designed to ensure our fundamental democratic values and freedoms. I wonder if the minister could tell the committee whether this legislation is fully consistent with the International Covenant on Civil and Political Rights and, indeed, the United Nations Convention on the Rights of the Child and other international covenants to which Australia is a signatory. Could the minister say whether advice has been sought on that matter and, if so, what that advice to the government is and from whom it came?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.09 p.m.)—In resolution 1373, the United Nations Security Council recognised that acts of terrorism constitute a threat to international peace and security. The Security Council also called on states to prevent and suppress terrorist acts. This bill will help ensure that Australia meets its obligations arising from resolution 1373. The government takes Australia’s human rights obligations seriously and makes conscientious efforts to ensure that they are complied with. The bill recognises the need to ensure both the security and safety of the community and respect for individual rights. Ultimately, any person claiming that his or her international human rights under the International Covenant on Civil and Political Rights have been violated has a right to lodge a communication with the United Nations Human Rights Committee. We believe it would be impossible for any country to say categorically that no breaches of its international human rights obligations will ever occur, because these obligations relate to the treatment of indi-
individuals and compliance will depend on the circumstances of each individual case. But one has to remember that stemming from that resolution by the United Nations Security Council is a duty on member states to prevent and suppress terrorist acts. This is what the bill is primarily aimed at. As for the safeguards in this bill, if Senator Brown will not rely on what the government says, he merely has to look at the Senate Legal and Constitutional References Committee report at page X to see the safeguards built into this bill outlined at length.

Senator BROWN (Tasmania) (10.11 p.m.)—Chair, you may have heard the minister avoid the question, but I will put it to him again in case he did not understand it. His submission then was just read from a piece of paper—obviously prepared for the eventuality of the question which I put. But I will explore the matter a little further. Does this legislation infringe on any of our international signed obligations such as the international covenants to which we have both referred? Has the government had advice on that and, if so, what is that advice? I will now add to that: does the government read the motion of the Security Council, to which the minister has just referred, as allowing abrogation of member states from their international obligations to covenants on such things as civil and political rights?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.12 p.m.)—I think that we can look at the practice of other member states. The fact is that there are international precedents for this sort of legislation. Relevant legislation from the United Kingdom, Canada and the United States was considered when drafting this bill. All those states are answering their obligations under resolution 1373 of the United Nations Security Council. The similarities are there between this bill and the legislation that has been mentioned from those overseas jurisdictions. I mentioned the resolution from the United Nations Security Council. We believe that we do have the checks and balances there to ensure that human rights and civil and political rights are observed.

Senator BROWN (Tasmania) (10.13 p.m.)—I will try again. I did not ask the minister about whether he thought human rights were being observed, protected or otherwise. I asked him about the covenants to which Australia is a signatory and about Australia’s obligation to those covenants and whether or not this legislation was consistent with those obligations. That is the question. I also clearly asked the minister whether the government had advice and, if so, what that advice was. It would make the process a lot faster if the minister would answer those questions.

Senator Ellison—I have got nothing to add.

Senator BROWN—Indicted by his own refusal, this minister is in effect admitting that the government does know that this legislation breaches, and breaches serially, international covenants to which Australia is a signatory. The legislation effectively is attempting domestic law which breaches international law. Moreover, I take it from the minister’s failure to defend the position with any information at all that he has advice which says just that. We are being asked to sign on to a piece of legislation that breaks the law—very important law at that; international law on human rights, political rights, the rights of children. The minister sits mute—

Senator Ellison—I’ve answered the question.

Senator BROWN—He says that he has answered the question. Any reasonable person looking at the Hansard will see that he ducked the question. I will ask the minister a very simple component of that question, for the third time, to see whether we can get a yes or no answer: has the government had advice on whether this legislation is or may be in breach of any international covenant?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.15 p.m.)—I cannot take this any further. I have answered the question. The government is of the view that it has not breached any international obligation—in fact, it is fulfilling international obligation by this bill, and I have mentioned why.

Senator BROWN (Tasmania) (10.16 p.m.)—Finally! I will not expand on this,
because the government is indicted by its own words. We are seeing a deliberated, premeditated breach of international covenants which are fundamental to the democratic values and freedoms which this government says the legislation is to uphold. There may be a conflict here between legislation that the government says is necessary to defend us from terrorism and Australia’s obligation to international law. If that is the case the minister should say so.

We are into a process here whereby the government knows that this bill breaches serially international covenants on fundamental democratic, civil and political rights but it does not have the honesty to say so. It knows that that is the case. The minister has indicated that that is the case but this government, headed by the Hon. John Howard, Prime Minister, is not honest about this legislation. If it were we could have a much more reasonable debate here. We could say, ‘This is a difficult situation.’ Of course, we have to attack terrorism. We have to defend ourselves against terrorism, because terrorism itself is an attack on democracy, freedom and liberty. But we are not into an open and honest debate on this matter and on how we deal with the dilemma. We are into a debate in which the government says it is defending those values but knows that, through this piece of legislation, it is in breach of international laws upholding those values but will not say so.

I think honesty is a basic component of a healthy debate in a free parliament like this. Sometimes we do get terrible contradictory problems and this is one of them. But this debate is not helped by the government failing to admit the problem it faces. Once the government says—and this is the problem—‘We can do what we like in internal legislation; we can cut down civil and political rights to sections of the community,’ but will not admit that, then the process has no end. We have seen it with the detained asylum seekers. We are seeing it here in this legislation. We have to ask: where does it end? The problem is that it will go a lot further if we allow the government to get away with saying that it is not breaching anything here. That is a lie. Any minister or member oppo-

site who gets up and says that would be confronted with the compelling evidence that that is a lie.

This legislation does breach international covenants. It needs tackling from that basis. But here it is being put forward by a government which has at best its head in the sand and at worst, and more likely, is being deliberately deceptive because it will not put to this committee its own advice on the matter, let alone a mature assessment of just how far this legislation does go in breaching those covenants.

I will try with Senator Faulkner—I might get a better go here. I want to follow up on Senator Nettle’s line of questioning, which was about taking the word ‘detention’ out and putting in the word ‘custody’. The Macquarie Dictionary says that detention means keeping in custody. What does the opposition aim to achieve by exchanging these words? What does it fear in the word ‘detention’ but feel comfortable with in the word ‘custody’?

Senator HARRIS (Queensland) (10.21 p.m.)—I rise to put a question to the minister. The minister has claimed that the bill will not affect the civil rights of Australians. I believe that that is incorrect. In their submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD, the Law Council of Australia make the comment: The Law Council objects to the capacity proposed to be conferred by s.34F(4) to detain incommunicado persons not themselves suspected of any criminal offence for a period of 48 hours, and strongly opposes any capacity to seek an extension of the 48 hour period pursuant to s.34F(7). The Law Council rejects as unacceptable the test of whether or not the prescribed authority is satisfied that there are “reasonable grounds” for believing that if the person is not detained, the person “may” alert a person involved in a terrorism offence that the offence is being investigated, may not continue to appear or appear again, or may destroy, damage or alter a record or thing.

The Law Council of Australia are clearly saying that a person who is not suspected of any criminal offence can be taken into custody for 48 hours. If we look at the powers of the bill, we find some rather frightening things. A person may be detained for questioning without being suspected of having committed or having been involved in plan-
ning an offence. They do not even have to be suspected of being involved in the planning of it, yet they can be held incommunicado. That person may be held for 48 hours. The period of detention may be extended if certain grounds are satisfied, with no maximum period of detention specified.

There is no right to silence. Well, excuse me: if the right to remain silent is not one of the fundamental civil rights that we have in Australian society, what is? The privilege of refusing to answer on the grounds of self-incrimination does not apply. How can the minister sustain the argument that it is not a gross deterioration of the civil rights of an Australian person if they can no longer claim the right not to answer, based on the fact that it may incriminate them?

It goes further. There is no right to legal representation. You lose your right to remain silent. You lose your right not to answer because you may incriminate yourself. Then you have no right to have a legal representative there to advise you. Minister, are you still maintaining that this bill does not remove or detract from the civil rights of Australians? That is absolutely preposterous, and for this reason One Nation believes this legislation should not be amended but be defeated.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.26 p.m.)—In the few short minutes I have got, I will try to respond to Senator Brown’s reasonable question to the opposition. Both in the original bill and in the bill as grudgingly amended in the House, the government has very stubbornly stuck to the basic model that it proposed on day one. That model contemplates allowing children to be detained for an extended period and to be questioned by ASIO. It contemplates allowing someone not suspected of any offence to be detained for seven days, including for 48 hours without a lawyer. Even after questioning has finished, a person not suspected of any offence can be detained for seven days.

The radical model proposed by the government is still at the core of the amended bill. I say it is still a detention regime. The government says it is for gathering intelligence. If that is so, then people should be released once questioning finishes. But of course, that is not the case. The government originally wanted to detain them for an unlimited period. Now they have grudgingly wound that back to seven days. Detaining people is a police function, and that is not what this bill should be about. The opposition amendments ensure the bill is about intelligence gathering and questioning, not about detention.

The government uses the words ‘detention’ and ‘detain’ in many contexts, but it uses them primarily to justify detaining people after questioning has finished—that is, they are detained for some other purpose. We have chosen the word ‘custody’ and used it sparingly to indicate the nature of the situation that a person is in when they are being questioned over a period of time. The only purpose of custody under the opposition’s model—under these proposed opposition amendments—is for questioning. That is the crucial difference. The critical difference here is the purpose of the custody. The purpose is questioning, not detention. It is intelligence gathering, not detention.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Order! It being 10.30 p.m., I propose the question:

That the Senate do now adjourn.

Crane, Former Senator Arthur Winston

Senator REID (Australian Capital Territory) (10.30 p.m.)—I speak briefly tonight to incorporate a press statement of the Minister for Justice and Customs, Senator the Hon. Christopher Ellison, relating to the finalisation of a matter that had been taken against former senator Winston Crane and has now been concluded in accordance with the statement of Senator Ellison dated 13 November 2002. The matter had been going on for approximately four years. The Senate became involved with it particularly in relation to a judgment handed down by His Honour Mr Justice French in Crane v. Gething on 18 February 2000, as a result of which many documents were delivered to the Clerk of the Senate in paper and electronic
form on 29 September 2000. The Senate, by resolution on 5 December 2000, appointed Mr Stephen Skehill SC to examine and report to the President as to which documents were classified as privileged and which were not. The order was varied by the Senate on 8 August 2001, and the report was made to the President and tabled on 27 August 2001 with Mr Skehill’s conclusions.

I do not wish to discuss the background of the case in detail, other than to comment on the fact that it took a very long time to resolve. There was some difference of opinion between Mr Crane and the commissioner of police as to why that was so. Mr Crane expressed the view that an administrative audit of his claims should have been held much earlier. The Commissioner of the Australian Federal Police, Mr Keelty, was quoted in an article by Mr Mark Mallabone in the West Australian of 15 November 2002 as saying that it was claiming privilege which caused the matter to take longer than it might otherwise have done. The unfortunate thing about that article is the heading ‘Crane to blame’ for long travel rort probe.

As the matter has been before the Senate by resolution and has been raised in estimates committees on several occasions, I thought it appropriate for the record to conclude with the statement of the Minister for Justice and Customs dated 13 November 2002, which ends, ‘Former Senator Crane has been cleared of any wrongdoing in this matter and it is now concluded,’ Senator Ellison said.

Taxation: Clubs

Senator MURRAY (Western Australia) (10.33 p.m.)—As the finance and taxation spokesperson for the Australian Democrats, I am constantly faced with the cry for more money. This government, like all of its predecessors, has no option but to keep raising revenue for legitimate Australian needs—for more to be spent on upgrading national security, creating jobs, improving health and education services and investing in the environment for a sustainable future. Revenue prospects are affected by growth prospects. The federal government faces some difficult budgetary challenges in the near future. The precise economic effects of the drought remain unknown but are likely to be substantial; the global economic climate is uncertain; and, if the Iraq crisis blows up, oil prices will go through the roof.

It is important to secure additional revenue sources to cover a very problematic future, and the fairest way to do that is by reducing unfair tax concessions, eliminating tax rorts and cutting wasteful tax expenditure. In this climate, the government needs to examine its revenue base to determine whether there are any sources from which additional revenue could reasonably be derived. For five years now I have been urging the government to address the unfair and costly tax loss that results from a number of super-club businesses abusing the mutuality principle. The mutuality principle was designed as a tax concession to help community services, not to give big businesses a tax lurking. Conservative estimates suggest that closing this loophole could generate at least $200 million in revenue annually.

I fully endorse the principle of mutuality when it is properly applied. The mutuality principle provides that, where a number of persons contribute to a common fund that is created and managed as a common interest, any excess earnings that are generated from the use of the fund are not to be considered income for the purposes of taxation. This affords the private licensed registered club
industry in Australia tax-free status on income derived from members. This system offers significant benefits to the Australian community. It allows many community organisations, such as small sporting clubs, to consolidate their financial position. These community based clubs often have very limited resources. This concessional tax treatment enhances their ability to continue to contribute to the community for the common good.

This is an excellent system but it is only excellent where it is not abused—and it is abused, to the benefit of big businesses. Large, big business clubs throughout Australia have diversified into a broad range of commercial activities that are way outside the intention of their original community based charter. Apart from the exceptionally large salaries that seem to float around in these big businesses, the big business club sector is involved in operating accommodation properties, ski lodges, cinemas, IMAX theatres, gymnasia, travel agencies, bus services, hairdressing businesses, bakeries and butcher shops—all with huge taxpayer subsidies. In the process, such big businesses are not only not paying their fair share of tax but also hurting small and local taxpaying businesses unable to compete with their larger, tax-free competitors.

I start from the premise that, where possible, tax laws should look to the substance rather than the form of commercial arrangements. The fact is that some clubs are major multimillion dollar commercial enterprises. They are clubs in form but commercial enterprises in substance. They should be taxed accordingly as businesses. I will use one example for this speech: a club that has been in the news for other reasons recently. There are many other examples, some of which I have used in the past. The Bulldogs Rugby League Club’s audited annual financial reports for the year ended 31 October 2001 show that the tax payable for that year was a net $1,181,494 on a profit before tax that was declared of $5,585,154. In theory, this would represent a 21.1 per cent tax rate. But this profit does not include grants paid by the club totalling $6,745,000 for the year. There is no further notation in the accounts as to how or where these grants were paid. It is unclear from the financial reports whether the grants should have been fully tax deductible. If we look at total profits before allocating any grants, the profit would then be $12,330,154 and the tax rate 9.6 per cent.

While the precise detail of the club’s taxation situation is not clear from the financial reports—and that in itself is an issue—it can be estimated that the tax rate was somewhere between 10 and 20 per cent. This is a very low to low tax rate and a good example of the revenue shortfall that government could instead be gaining and devoting to health, education or other areas of community need. This is not the local tennis club that is being concessionally taxed. It is a big business—a major commercial enterprise that is given a special unfair advantage over its competitors.

Let us examine another tax lurk they enjoy. Consider the difference between the gaming machine taxes paid by hoteliers to that of their club counterparts under the New South Wales Gaming Machine Tax Act. On the first $1 million of gaming machine profits, a hotelier is liable for $216,600 while a registered club will pay $87,280. On $2 million profit, a hotelier will pay $525,700 while a registered club will pay only $156,600. The fact that large clubs pay less tax on their gaming operations means that other operations of these big business clubs can be subsidised, including food and beverages, entertainment and accommodation, along with undertaking further activities and capital expenditure. The benefits for an elite group of members and guests in accessing cheap big business club operations subsidised by the rest of us, including dining and bar facilities, gym and entertainment, are to the detriment of both much needed revenue for other purposes and fair competition.

Concern has also been expressed at the fact that the level of community contributions from clubs is not accurately measured. The role of clubs should be to support community projects in sport or welfare. Many do, and the Democrats and I strongly support the continuation of that community service; but there are many cases in which it can be shown that big business clubs are paying
nothing or a very small percentage of their profit back to the community. This is an unacceptable distortion and manipulation of the tax system. The commercial activities of private licensed registered clubs operating as businesses should be subject to company tax, as with any other business enterprise. Clubs should also be obliged to pay a mandatory sum to community organisations as part of their charter. Apparent constraints on the Taxation Office and the courts to effectively interpret the current taxation exemption in respect of clubs should be removed by both legislative change and a more vigorous enforcement and evaluation procedure.

One proposal I am aware of is that section 50-45 of the Income Tax Assessment Act should give effect to a test that a club show that the principal activity of that club is in accordance with the original objectives of the club. The effect of this change would be that, where clubs have a principal activity relating to social activity as distinct from sporting or community activities, there would be definitive guidelines whereby the tax office would be in a position to review those clubs in order to reassess their taxation exemptions. I support the notion of community based organisations and clubs and view smaller, tax-exempt club enterprises as legitimate and desirable community subsidised organisations. The large superclub big businesses, however, are clearly major multimillion dollar commercial enterprises that should be taxed appropriately.

The current situation has a severe effect on the hotel and other associated hospitality and service industries. If left unchecked, it will undoubtedly result in reduced investment in those industries, many of which are small businesses. This will be to the detriment of Australia as a whole. I have previously moved amendments in the Senate to try to remove the loopholes that have created this problem. There are of course many views about how best to reform the mutuality principle, and I am not committed to any particular model. I ask again that the government review this situation as a matter of urgency, and I say again that there is about $200 million out there that they could get. It is necessary to assist small business competitors that are being unfairly disadvantaged and to provide revenue to assist in meeting the substantial budgetary needs not just of this government but of future governments.

**Taxation: Tobacco**

Senator BARNETT (Tasmania) (10.43 p.m.)—In 1997 tobacco wholesalers gained a windfall of up to $250 million following a High Court ruling on tobacco franchise fees. The ruling meant that the tobacco wholesalers did not have to pay excise collected during the period 1 July 1997 and 5 August 1997 to the states or to the Australian government. Wholesalers retained up to $250 million in excise collections and, while the Australian government acted to prevent greater windfalls to wholesalers for all amounts prior to 1 July 1997, the government has cited subsequent High Court judgments to argue that its legal options are constrained. Retrospective legislation is a dangerous precedent at any time. This money does not belong to either the tobacco retailers or the tobacco wholesalers. Neither does it belong to any government—state or federal. It belongs to those smokers who purchased their tobacco products during the same period in 1997. If no action is taken, there is every possibility that some of the funds will remain with the tobacco wholesalers, and in my view this would be a tragedy.

I acknowledge that there is currently litigation between the tobacco retailers and the tobacco wholesalers and that the tobacco retailers are likely to be successful in retrieving some of the funds from the tobacco wholesalers. But I say again that it is, in my view, not their money nor the tobacco wholesalers’ money. The $250 million windfall gained by the tobacco wholesalers in 1997 should be used for antismoking campaigns and tobacco related health care. In my view, the tobacco wholesalers and retailers are morally bound to return the money and use it, preferably by way of hypothecated funding, for smoking related health care.

I have been advised by the Cancer Council in my home state of Tasmania that the $250 million would assist with much-needed antismoking campaigns—indeed, I agree. I hope that this money will help save some of the nearly 20,000 Australian lives lost to to-
to our local producers and those on the land. It will certainly allow them to continue to fight the terrible affliction that is drought.

All too often we forget to think about the people affected by the drought. We contemplate the images of barren paddocks littered with carcasses and concede that it must be tough living through these times, but rarely do we go beyond this vague sympathy to actively assist drought affected residents get through these hard times. All too often the National Party preach to us how tough and resilient people from the bush are. This is very true. However, all too often this compliment is given by the National Party in lieu of government assistance and in lieu of the fact that they got rolled in caucus by their citycentric Liberal mates—or perhaps they have given up entirely on the charade of bush representation.

But there are organisations like Lifeline who have not given up on rural and regional people. Last week, Lifeline’s Tool kit for getting through the drought was released. It is a simple four-page document which provides advice on ways to combat stress and mental anguish occurring in traumatic times such as drought. It also provides useful contact details for further information or assistance. The tool kit provides advice and activities that can help with stress relief. It encourages people to ‘get their heads around’ the changing circumstances in their lives as a result of drought.

Senator Tierney—With funding from the federal government.

Senator STEPHENS—I acknowledge the fact that it has been funded by the federal government. The tool kit is full of sensible and timely advice. For example, under the ‘Looking after yourself’ section are these simple but very helpful tips:
- Become aware of your stress levels
- Regularly take time out for relaxation and fun
- Maintain links with family, friends and community
- Make sure you eat and sleep well
- Keep involved with sport, hobbies, and other recreational activities
- Vigorously exercise 30 minutes a day to relieve tension.
This might be stating the obvious for some, but for those caught up in the tragedy and distress of drought, it is in fact very easy to forget the obvious. Personal needs are low priorities when stock has to be destroyed and the unpaid bills mount up. Combined with the contact details of rural counselling services and Lifeline’s telephone counselling services, the drought tool kit is an innovative and helpful initiative for struggling, drought affected communities. I commend it to everyone here who is dealing with those communities.

Speaking of innovation, I again make reference to the response of the New South Wales Labor government. Unlike this government, dragged to the table kicking and screaming yesterday with this drought package—

Senator Ian Macdonald—How much have you put into it?
Senator STEPHENS—the Carr Labor government has been helping farmers and drought affected communities for almost six months now.
Senator Tierney—Get the facts.
Senator STEPHENS—Last week the New South Wales Energy Minister, Mr Kim Yeadon, announced a new initiative for struggling families in drought ravaged New South Wales, who will be given 12 months or more to pay their energy bills.
Senator Tierney—How much?
The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order! I think Senator Stephens ought to be heard in silence.
Senator STEPHENS—Thank you, Mr Acting Deputy President. The country support package is available for all Country Energy’s 700,000 household and rural residential customers throughout the state if they are experiencing hardship, including the effects of drought. Announcing this relief, Mr Yeadon said:

The last thing people need in times of hardship is to be worrying about essential services like electricity and gas being cut off.

This is a policy aimed at helping people. It is a sensible and compassionate way to remove a few extra complications for drought affected residents of New South Wales. It is a good policy and it has not been created for media success; it has been created to tangibly improve the lot of drought victims. This is what the New South Wales Labor Government and Country Energy are about and I appreciate now that this government is showing signs that it will follow Premier Carr’s lead.

Another interesting and useful innovation, recently released by Australian Wool Innovation Ltd, is a paper for wool growers called ‘Decision making during drought’. This is the first of four information papers developed by AWI, with contributions from the New South Wales and Western Australian departments of agriculture, the Queensland and South Australian departments of primary industry, the Victorian department of natural resources, and Woolmark. ‘Decision making during drought’ provides information to wool producers, including a high-level assessment of the current drought and the impact that it may have on the wool industry, current information and services available from a range of sources to assist producers through these difficult times, identification of current AWI investments that will deliver innovation and new technology for drought management in the future, identification of activities that AWI is considering to help producers now, and future strategic research and development opportunities for AWI investment. This is the first paper in the ‘Wool sheep as good business’ drought management strategy being implemented by AWI.

Stage 2 will be delivered in February 2003, covering ‘Drought recovery decisions’. It will provide additional information and resources to help wool producers develop business plans to hasten their recovery from the drought. Stage 3, ‘Managing in prolonged drought’, will also be delivered in February 2003 and will assist wool producers with the personal and financial issues that will arise in the event of prolonged drought. Stage 4, entitled ‘Animals and land—planning for extreme dry’, will report on AWI’s portfolio of investments, which will deliver new tools and skills to wool producers to improve drought preparation strategies and
Labor has a six-point plan, released by Simon Crean and the shadow minister for primary industries and resources, Senator Kerry O’Brien, on 19 November. Labor provided the community with a blueprint of what we think should be done to help drought affected communities. It is a blueprint of what Labor will do in government.

We will cut through the red tape by setting a seven-day turnaround for prima facie assessment of EC applications to allow emergency funding to flow to farm families in need. Further to this, we will set a 28-day turnaround for full EC assessment. Labor will improve the Farm Management Deposit Scheme by providing flexibility in accessing farm management deposits, to allow farmers in EC declared areas to withdraw deposits within 12 months without penalty. We will introduce 100 per cent interest rate subsidies for loans used to preserve core breeding stock. We will order an immediate national grain audit to assist current and future national grain supplies to allow intensive industries to plan for potential feed shortages in 2003. We will coordinate existing rural programs to better assist rural and regional communities manage the drought. We will work with the states to streamline exceptional circumstances application processes, by adding drought to the agenda for the next COAG meeting. When drought strikes, Labor is there. Our state Labor governments have been responding for many months, and we have created this six-point plan.

I move now to the announcements made yesterday by the Prime Minister. On behalf of the 60,000-plus farmers and the many country communities affected, I congratulate him and John Anderson on reforming the farm management deposits to allow farmers to withdraw their deposits within 12 months without penalty. This is, in fact, point 2 of Labor’s six-point plan. There are some admirable features in yesterday’s announcement. I will certainly be watching the Drought Force program with interest, although my office has already been contacted by some people from northern country New South Wales who have tried to find out about this program from Centrelink, and who have been referred to the AFFA web site, only to be directed from there to a link connecting them to Minister Truss’s announcement. I would hate to think that this was going to be another bungle between departments, such as that which characterised the exceptional circumstances announcements of August this year.

There are some questions about how the Work for the Dole program can be voluntary while others are being forced into Work for the Dole programs as part of the government’s reciprocal obligations regime. I will grant the government the benefit of the doubt, because at last the Prime Minister and his government are doing something about the desperate drought conditions being experienced across Australia.

The Prime Minister’s announcement has had a mixed reception. With a drought of this magnitude, however, there has to be a compassionate approach, although I recognise the concerns of some rural commentators about extending income support measures but at the same time not supporting efforts by farmers to develop risk management strategies. This government must implement a seven-day turnaround for the prima facie assessment of EC applications and set a 28-day turnaround for full EC assessments. Only through such reform will our farmers receive the funding they desperately need. (Time expired)

Hunter Region: Newcastle Structural Adjustment Fund

Senator TIERNEY (New South Wales) (10.58 p.m.)—I rise tonight to speak on a very successful regional employment program in the Hunter Valley, called the Newcastle structural adjustment fund. This fund was established in the wake of the shutdown of steel smelting in Newcastle in 1997. This was a traumatic event not only for the Hunter but for the whole of Australia. At that time the feeling was that, if Newcastle could no longer smelt steel, what were the chances for steel making in the rest of the country and, therefore, what were the chances for secondary industry? It was a very traumatic event. At the time, the Prime Minister, to his great credit, came up to Newcastle, spent two days in the city and had widespread consultation
with the unions, the leaders of the community, welfare groups and other community members. This consultation led to the creation of the Newcastle structural adjustment fund.

As it turned out, the shutdown of steel smelting in Newcastle with the loss of 2,000 jobs was followed the next year by the creation of 40,000 jobs in the region. What had occurred was a major boom in the Hunter, following the successful policies of the Howard government since 1996 in generating higher levels of employment in this country. Indeed, today we see that unemployment has dropped to six per cent. The Hunter, which under the last Labor government was running at 15 per cent unemployment and moved down to under 10 per cent under our government—in the Olympic period it touched seven per cent—at that time had moved back but is now down around seven per cent. This really disturbs the Labor Party in the Newcastle area. They had a job summit on this week. They were going to talk about the job crisis, but unfortunately for them the Bureau of Statistics showed that unemployment had plummeted to seven per cent. They said, ‘This can’t possibly be right; the statistics are wrong.’ A lot of this has been generated by policies from this government that has got the budget in order, got the deficit down, got interest rates down and got the economy really moving. This has now flowed through to regions like the Hunter Valley.

But in 1997 the outlook was pretty grim. Hence, the state government and the federal government brought in two structural adjustment packages for assistance post BHP. As you look down on the city of Newcastle, you see it dominated by these industries and you think that that is basically the industry of Newcastle. But the reality in the Hunter Valley was that when BHP shut down its steel-smelting facilities it was actually only shutting down one per cent of employment in the Hunter Valley. There were 2,000 people employed at the steel works at that time. But it was a major shock at the time and therefore it needed a response. Both the state government and the federal government came in with that response in the form of the Hunter structural adjustment packages.

It was therefore somewhat disturbing to find that the Newcastle Herald editorial two days ago published a comparison of the two projects. The unfortunate thing about their comparison was that they took the very honest figures provided by the federal government in terms of money spent, projects funded and job outcomes achieved and compared them with the rather dodgy figures of the Carr Labor government. Evidence to support those figures has not yet been provided. They claim these figures are commercial-in-confidence, so instead of giving the outcomes for jobs project by project they have just given the grand total, claiming that $10 million has generated $200 million worth of investment and 2,700 jobs. Given that they funded a series of small projects that were basically private businesses, these sorts of outcomes would be absolutely astounding. Talk about rubbery figures! But that is what we have come to expect from the Carr government.

By comparison, our federal government went through a very detailed assessment process and made sure that, with each project, there were going to be direct job outcomes, indirect job outcomes, short-term outcomes and long-term outcomes, and this had to be proved before the minister of the day, Senator Ian Macdonald, would sign off on those projects. I have had a lot of discussions with him. I would like to pay special tribute not only to the projects he signed off but to the visionary direction taken in the case of the federal Newcastle structural adjustment program. Unlike the state government, which funded a whole series of small businesses, what we did was fund a series of infrastructure projects, off the back of which there could be a whole lot of extra private jobs generated. That was the approach in 1997, and five years later the proof is in the pudding—this is actually coming to fruition.

I will go through some of the federal government’s projects, because they are radically transforming Newcastle. One project that is a real highlight, which was perhaps one of the ones we had the most difficulty getting through initially, is the creation of a
marina in Newcastle. We are very much in a yachting area. There is a terrific yachting facility in Port Stephens to the north and a terrific yachting facility in Lake Macquarie to the south, but in Newcastle harbour itself if you had a yacht and called in you could not even get any fuel—there was no place to do that. That is now being replaced with a 220-yacht facility. This will transform Newcastle harbour. As a matter of fact, more than half of the facility is built. There have been a few trial runs which I have been involved with where they have brought yachts in from the other nearby yachting areas and tried out the facilities. Over the years we had ships bringing in iron ore. That is now being replaced by 220 yachts, if you can imagine Newcastle harbour and the way that is going to transform it in the next year. But it is not only a visual thing. There is a whole range of businesses that are now developing around the facility. So what we have created with this marina is a little microeconomy which will generate many more jobs than were originally projected, and that is just one project.

Another excellent piece of infrastructure was the pipeline into the Hunter Valley vineyards. We all know that the Lower Hunter has some of the best wines in the world, but the amazing thing is that no-one managed to provide a pipeline over the last 150 years until we came up with the seed funding, off the back of which more funding was generated. Every vineyard is now linked up to the Hunter River. Can you imagine, in the drought that we are currently in, what a difference that will make to the yields and the vintages? This also generates a little micro-economy in the region, because if you have secure water supplies you get greater yields, people are confident and open more vineyards, you have more wineries opening and more restaurants and golf courses, and the whole economy builds on the back of that. That is a sign of the success of this approach.

Newcastle Airport is another success. We actually funded an extension of the apron areas and the facilities for handling and, despite the fact that there has been a downturn in aviation, there is greater diversity not just within the airport but also surrounding the airport. I was delighted to see, when I went in on Monday morning, a new sign up—‘Brindabella Airlines’. There will be direct flights developing between Canberra and Newcastle. This is a terrific development at a time when aviation has turned down. This is possible because we have provided the proper infrastructure for such businesses to develop.

So it is a great pity that the editorial of the Newcastle Herald gave such a misleading picture. The reality is that the federally funded Newcastle structural adjustment program has delivered real growth and jobs, and I compliment Senator Ian Macdonald for his work as the minister in delivering that program.

Adjournment Speech

Senator MACKAY (Tasmania) (11.08 p.m.)—In the short time available to me—

Senator Ian Macdonald—Mr Acting Deputy President, can I raise a point of order. The speakers list seems to finish at Senator Tierney and I jumped up more quickly than Senator Mackay. It is very important that I speak because I have to correct the information of Senator Stephens, who erroneously—

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Do you want to speak on the point of order, Senator Mackay?

Senator MACKAY—I do. I do think the Minister for Fisheries, Forestry and Conservation is in fact straying from the point of order. He seems to be entering into a debate. I point out that the speaking order is—

The ACTING DEPUTY PRESIDENT—Senator Mackay, I think I can anticipate by saying that there is no point of order.

Senator MACKAY—Thank you, Mr Acting Deputy President. In the extremely short time remaining to me I wish to talk for the next 10—

Senator Ian Macdonald—Mr Acting Deputy President, can I just raise a further point of order.

The ACTING DEPUTY PRESIDENT—No, Senator Macdonald, you cannot, because it now being 11.10 p.m. the
Senate stands adjourned until 9.30 a.m. tomorrow morning.

**Senate adjourned at 11.10 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- Audio-Visual Copyright Society Ltd (Screenrights)—Report for 2001-02.
- Australian Broadcasting Corporation—Equity and diversity—Report for 1 September 2001 to 31 August 2002.
- Human Rights and Equal Opportunity Commission—Reports—
  - No. 22—Inquiry into a complaint by Mr XY concerning his continuing detention despite having completed his criminal sentence.
  - No. 23—Inquiry into a complaint by Mr Hassan Ghomwari concerning his immigration detention and the adequacy of the medical treatment he received while detained.
  - No. 24—Inquiry into complaints by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre.
  - No. 25—Inquiry into a complaint by Mr Mohammed Badraie on behalf of his son Shayan regarding acts or practices of the Commonwealth of Australia (the Department of Immigration and Multicultural and Indigenous Affairs).
- Productivity Commission—
  - Report—No. 22—Radiocommunications, 1 July 2002.

**Tabling**

The following documents were tabled by the Clerk:

- Class Ruling—
- Commonwealth Authorities and Companies Act—Notice under paragraphs 45(1)(b) and (f)—Disposal of shares and cessation of membership in National Rail Corporation Limited.
- Fuel Grant and Rebate Ruling FGRR 2002/1.
- Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].
- Telecommunications Act—Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 4 of 2002).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Superannuation: Australian Independent Superannuation Fund
(Question No. 560)

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 20 August 2002:

(1) When was the application for assistance under Part 229 of the Superannuation Industry (Supervisi-
on) Act 1993 lodged with the Assistant Treasurer or her predecessor, the Minister for Financial Services and Regulation.

(2) When did the theft, as outlined in the Assistant Treasurer’s media release, occur.

(3) For the purpose of granting financial assistance under section 231 of the Act, what did the Assis-
tant Treasurer determine the total eligible loss suffered by the AISF to be.

(4) (a) What was the name of the trustee director imprisoned for theft; and (b) when did this convic-
tion occur.

(5) Was the AISF a public offer superannuation fund as defined by section 18 of the Act.

(6) Did Broadway Fiduciary receive any payment as trustee of the AISF.

(7) Was Broadway Fiduciary an approved trustee under Part 2 of the Act; if so, did Broadway Fiduci-
ary meet the capital requirement under section 26 of the Act; if Broadway Fiduciary did not meet
this requirement, when did the Australian Prudential Regulation Authority (APRA) become aware
that this was the case.

(8) Did Broadway Fiduciary meet the equal representation requirements under Part 9 of the Act; if
not, when did APRA first become aware of this.

(9) (a) Under what circumstances did the 160 members of the AISF who suffered losses as a result of
theft become members of the fund; (b) did members chose to make rollovers or personal contribu-
tions to the AISF; (c) did members chose the AISF as the destination for employer contributions
or did their employers make contributions to the AISF under an award, industrial agreement or
contract; and (d) who, if anyone, were the employer sponsors of AISF.

(10) When did APRA first become aware that the AISF had suffered a loss as a result of theft.

(11) (a) Did APRA remove Broadway Fiduciary as trustee of the AISF under section 133 of the Act;
and (b) did APRA appoint Denara as acting trustee under section 134 of the Act; if so: (i) what
process did APRA use to select the replacement trustee, and (ii) what conditions, if any, did APRA
impose on the acting trustee under section 135 of the Act; if not, under what circumstances was
Broadway Fiduciary replaced as trustee.

(12) Is Denara receiving any payment as acting trustee of the AISF; if so, was any of this payment in-
cluded in the eligible loss for the purpose of financial assistance under Part 23 of the Act.

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

(1) The application was initially received from Broadway Fiduciary on 8 August 2000. Denara Nom-
inees Pty Ltd on 27 October 2000 requested that the application be deferred. On 15 August 2001
Denara submitted a new application. In January 2002, Denara withdrew that application stating
that they would be preparing a revised assessment of the loss suffered. A revised application was
received on 28 February 2002.

(2) Between June 1996 and June 2000.

(3) $902,244.44

(4) (a) Mr Lindsay Dods. (b) 24 November 2000.

(5) No.

(6) Yes.

(7) No.

(8) Yes.

(9) (a) Arrangement between their standard employer-sponsor and the fund trustee. (b) Yes. (c) See
answer to (a).
(d)—
Wiseshare Holdings Pty Ltd
Failsafe Holdings P/L
Australian Turf Industries
AISF
Liberation Holdings Pty Ltd
Joanne Matich & Associates
Aladdin Holdings Pty Ltd ATF The Settlers Green Trust and ATF The Preuss Group Development Trust
Hathermoor P/L T/As Murdoch Jones Realty
Magentatown Pty Ltd
Vaston Pty Ltd
Ashburton Enterprises Pty Ltd
Project Planning & Management (WA) Pty Ltd
Kramer & Kramer Real Estate
Harry Newell Estate Agency
Jergen Werner Preuss ATF The Preuss Group Retail Trust
Kells Secretarial Service (Also McLeod & Co)
Skyoak P/L T/As Ray White Kelmscott
Etsaw Holdings T/A Kemo’s Plumbing Northwest
JMI Pty Ltd
Network Reality Pty Ltd
Kelly Reality Pty Ltd
G.R.Q. Pty Ltd T/A Roy Western Carousel
Iannes Commercial Cleaning Pty Ltd
Outline Research Services
Clairs Keeley
Koomella Heights Pty Ltd T/A Daly Drilling Company
B&M Nominees Pty Ltd T/A Carine Glades News
Angel Bay Pty Ltd T/A Regal Settlements
Selby Enterprises ATF Five Seas Trust T/A Pilbara Food Services
Technical Resources Pty Ltd
Nicholson Clement
Mango Hill Pty Ltd T/A Arrix Services
Western Fabrication
BM & SF Cooper
Motor Industry Training Association
Summerstrand Holdings Pty Ltd ACN 050 601 093 ATF Janet Smith Family Trust T/A Specialist Mortgage
Kaye Wills
Luxton Harvey Real Estate
IINet Limited
D.T. Peacock Pty Ltd

(10) 27 June 2000.

(11) (a) Yes. (b) Yes. (i) APRA invited expressions of interest from five accountancy firms. Those firms expressing interest were asked to specify particular expertise in superannuation industry practice
and law, forensic accounting and business reconstruction/recovery. (ii) The Conditions are as follows:

**SCHEDULE**

**TERMS AND CONDITIONS OF APPOINTMENT**

1. The Acting Trustee must not use or disclose any information relating to the affairs of the Fund except for the purpose of performing its functions as Acting Trustee.

2. Despite anything contained in the governing rules of the Fund, the Acting Trustee’s fees are to be paid out of the Fund. The fees of the Acting Trustee are to be fully disclosed to members on request and also at the same time as the periodic disclosure made in accordance with Part 2 of the Superannuation Industry Supervision Regulations 1994.

3. If the Acting Trustee believes that any action is necessary that would breach, or exceed its authority under, the governing rules of the Fund, the Acting Trustee must:
   (a) inform the Australian Prudential Regulation Authority in writing immediately; and
   (b) must not take the action without the Australian Prudential Regulation Authority’s written approval.

4. The Acting Trustee must, within 21 days after the date of this instrument, prepare, and give to the Australian Prudential Regulation Authority, a plan setting out the course of action in respect of the management of the Fund that the Acting Trustee considers would be in the best interests of its members.

5. The Acting Trustee is to be indemnified out of the Fund in relation to any expenses properly incurred by it in the course of the performance of its functions as Acting Trustee of the Fund.

6. The Acting Trustee may pay out of the Fund any debt incurred by the former trustee in relation to the Fund, provided that the Acting Trustee is satisfied that:
   (a) the debt was properly incurred;
   (b) the creditor to whom the debt is owed would be entitled, under the general law, to be indemnified out of the Fund; and
   (c) it is in the best interests of the members of the Fund to pay the debts.

(12) Yes; Yes.

**Superannuation: Funds**

**(Question No. 561)**

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 20 August 2002:

(1) What are the current assets of the following superannuation funds: (a) the Australian Workforce Eligible Rollover Fund (AWERF); (b) the Network Superannuation Fund; and (c) the Midas Super Fund.

(2) What are the losses estimated to have occurred in these funds prior to the replacement of CNAL as trustee in December 2000: (a) as a result of exposure to the Enhanced Cash Management Trust (ECMT); and (b) as a result of exposure to the Enhanced Equity Fund (EEF).

(3) (a) How many members did each of these funds have; and (b) how many members of these funds are estimated to have been affected by these losses.

(4) What was the: (a) minimum; (b) maximum; and (c) average, loss incurred by these members.

(5) With reference to the Australian Prudential Regulation Authority’s (APRA) submission 225 to the then Senate Select Committee on Superannuation and Financial Services dated 13 July 2001, which indicates that losses incurred through the ECMT and EEF affected many but not all of the members of the AWERF: Why was this the case.

(6) (a) What losses have occurred in each of the three funds since the replacement of CNAL as trustee; (b) how many members of these funds are estimated to have been affected by these losses; and (c) what is the: (i) minimum, (ii) maximum, and (iii) average, loss incurred by these members.

(7) (a) On what basis have Oak Breeze, as replacement trustee of the AWERF, and ACT Super Management, as replacement trustee of the Network Superannuation Fund and the Midas Super Fund, debited fees against member accounts; (b) what is the total value of the fees charged by the trus-
tees of each fund; and (c) what is the: (i) minimum, (ii) maximum, and (iii) average, fee incurred by members of these funds thus far.

(8) Have Oak Breeze and ACT Super Management fulfilled their reporting obligations, under the Superannuation Industry (Supervision) Act 1993 and Regulations, to members of the respective funds; if not, has any action been taken to ensure they comply with these requirements.

(9) Have APRA, Oak Breeze, ACT Super Management or any other parties undertaken an investigation of whether fraudulent conduct or theft, within the meaning of Part 23 of the Act, has occurred in relation to any of these funds and their investments in the EEF and the ECMT.

(10) Have Oak Breeze or ACT Super Management made, or indicated that they intend to make, an application for financial assistance under section 229 of the Act in relation to any of these three superannuation funds; if not, why not.

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

It should be noted that the relevant acting trustee for the relevant superannuation funds has supplied figures quoted in these answers to the Australian Prudential Regulation Authority. They are current as at May 2002 for AWERF, and June 2002 for Midas and Network.

(1), (2) and (3)

<table>
<thead>
<tr>
<th></th>
<th>1(a) (Assets)</th>
<th>2(a) (ECMT)</th>
<th>2(b) (EEF)</th>
<th>3(a) (Members)</th>
<th>3(b) (Members)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWERF</td>
<td>$24.2 million</td>
<td>$0.87 million</td>
<td>$8.67 million</td>
<td>44,434</td>
<td>21,152</td>
</tr>
<tr>
<td>Network</td>
<td>$5.3 million</td>
<td>$52,435</td>
<td>$2 million</td>
<td>1,278</td>
<td>1,278</td>
</tr>
<tr>
<td>Midas</td>
<td>0.73 million</td>
<td>$0</td>
<td>$1.69 million</td>
<td>288</td>
<td>288</td>
</tr>
</tbody>
</table>

Question 4

<table>
<thead>
<tr>
<th></th>
<th>4(a) Minimum</th>
<th>4(b) Maximum</th>
<th>4(c) Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWERF</td>
<td>$40</td>
<td>$451</td>
<td>$235</td>
</tr>
<tr>
<td>Network</td>
<td>$0.01</td>
<td>$77,880</td>
<td>$1,609</td>
</tr>
<tr>
<td>Midas</td>
<td>$0.09</td>
<td>$102,048</td>
<td>$5,869</td>
</tr>
</tbody>
</table>

The Australian Workforce eligible Rollover Fund was divided into a number of investment option pools. Only one pool (Pooled Division 1) had an exposure to impaired assets.

Question 6

<table>
<thead>
<tr>
<th></th>
<th>6(a) Losses</th>
<th>6(b) Members</th>
<th>6(c)(i) Minimum</th>
<th>6(c)(ii) Maximum</th>
<th>6(c)(iii) Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWERF</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Network</td>
<td>$111,014* investment loss</td>
<td>1,278</td>
<td>$0.01</td>
<td>$8,715</td>
<td>$60.07</td>
</tr>
<tr>
<td>Midas</td>
<td>$15,827** investment loss</td>
<td>288</td>
<td>$54.95</td>
<td>$54.95</td>
<td>$54.95</td>
</tr>
</tbody>
</table>

* Represents reimbursements payable by CNAL. The acting trustee determined that this amount was irrecoverable and has written it off.

** Represents an amount written off as irrecoverable in respect of the CNAL Imprest account.

(a) Fees for both acting trustees are on a fee for service basis.

<table>
<thead>
<tr>
<th></th>
<th>7(b) Fees</th>
<th>7(c)(i) Minimum</th>
<th>7(c)(ii) Maximum</th>
<th>7(c)(iii) Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWERF</td>
<td>$3,089 million</td>
<td>$69.54 average for each member</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Network</td>
<td>$635,000</td>
<td>$0.01</td>
<td>$49,851</td>
<td>$343.80</td>
</tr>
<tr>
<td>Midas</td>
<td>$250,595</td>
<td>$0.31</td>
<td>$6,644.44</td>
<td>$415.61</td>
</tr>
</tbody>
</table>

Reporting obligations in respect of AWERF, Network and Midas have been fulfilled.

The acting trustees of all funds have indicated to APRA that the losses suffered by the members were, in their opinion due to fraudulent conduct. APRA has appointed Gadens-Lawyers to undertake an independent review of these applications.
Oak Breeze has lodged an application for financial assistance under s229 on behalf of those affected members of AWERF. ACT Super Management has indicated it intends lodging an application for financial assistance under s229 on behalf of Network and Midas Superannuation Funds.

Superannuation: Commercial Nominees of Australia Ltd
(Question No. 562)

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 20 August 2002:

(1) With reference to correspondence to Senator Sherry, dated 9 August 2002, in which the Australian Prudential Regulation Authority (APRA) stated that MIP funds were not invested in the Commercial Nominees of Australia Pty Limited (CNAL) Enhanced Cash Management Trust but in the Enhanced Income Trust (EIT): (a) was CNAL at any stage the trustee of the EIT; if so, when did CNAL cease to be the trustee of the EIT; (b) was this a result of being replaced as trustee by APRA or the Australian Securities and Investments Commission; and (c) who is the replacement trustee of the EIT.

(2) (a) What steps have APRA, Perpetual or Australian Unity Funds Management taken to ascertain whether fraudulent conduct or theft, within the meaning of Part 23 of the Superannuation Industry (Supervision) Act 1993, occurred in relation to investments by the MIP in the EIT; and (b) have APRA, for example, appointed an inspector to the MIP and/or the EIT.

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

(1) (a) No. (b) Not applicable. (c) EIT is an unlisted trust, regulated by ASIC.

(2) (a) APRA has appointed an independent law firm to review the evidence provided by Oak Breeze that losses in the EIT were as a result of fraudulent conduct of theft. AUFML as approved trustee for Freedom of Choice Masterfund (FOC) has not yet submitted an application for financial assistance under section 229. (b) APRA cannot appoint an inspector to the MIP and/or EIT, as they are unlisted trusts and are not regulated by APRA.

Trade: Mining, Minerals and Energy Projects
(Question No. 639)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

(1) With reference to projects in the mining, minerals and energy sectors (including those projects defined as multisector or crosscutting) funded by AusAID during the calendar years 1998 to 2002, and relating to countries and/or projects in the Asia-Pacific region:

(a) Can the following details be provided for each project: (i) the project name, (ii) the country, (iii) the date, (iv) the partner/beneficiary, (v) the project implementing agency, (vi) the funds allocated (in Australian Dollars), and (vii) the current status; and

(b) can the following details be provided for the aggregate of all projects (in Australian Dollars): (i) total expenditure from all sources, (ii) total funding contributed by AusAID, and (iii) the percentage this funding represents of the total Australian aid budget expenditure for the period.

(Can these details be provided in Excel format, corresponding to data that was formerly published in the Blue Book, which contained project title, brief project description, region, country, DAC sub-sector code and amount spent).

(2) What was the total Australian aid and aid-related expenditure relating to countries and/or projects in the Asia-Pacific region during the calendar years 1998 to 2002.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.
Trade: Fossil Fuels and Renewable Energy Sector Project Funding
(Question No. 640)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to AusAID proportional funding for fossil fuels and renewable energy sector projects in countries in the Asia-Pacific region:

(1) What was the expenditure, in Australian dollars, provided by AusAID during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting, expressed as a percentage of the total Australian aid budget expenditure.

(2) What was the expenditure, in Australian dollars, provided by AusAID during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting, expressed as a percentage of the total Australian aid budget expenditure.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:
The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Fossil Fuel Sector Project Funding
(Question No. 641)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to non-government funded fossil fuel sector projects in countries in the Asia-Pacific region:

(1) What was the total expenditure in Australian dollars provided by the Asia Pacific Economic Cooperation during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure, in Australian dollars, provided by the Asian Development Bank during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure, in Australian dollars, provided by Australian businesses and industry during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:
The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Fossil Fuel Sector Project Funding
(Question No. 642)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:
With reference to Australian Government funding for fossil fuel sector projects in countries in the Asia-Pacific region:

(1) What was the total expenditure, in Australian dollars, provided by AusAID during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure, in Australian dollars, provided by the Department of Foreign Affairs and Trade during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure, in Australian dollars, provided by the Department of Industry, Tourism and Resources during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(4) What was the total expenditure, in Australian dollars, provided by Austrade during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(5) What was the total expenditure, in Australian dollars, provided by any Australian Government agency other than AusAID, the Department of Foreign Affairs and Trade, the Department of Industry, Tourism and Resources and Austrade, during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(6) What was the total expenditure, in Australian dollars, provided by the Export Finance and Insurance Corporation during the calendar years 1998 to 2002, in relation to projects in the fossil fuels sector (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Renewable Energy Sector Project Funding

(Question No. 643)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to Australian Government funding for renewable energy sector projects, can the following information be provided in relation to countries or projects in the Asia-Pacific region?

(1) What was the total expenditure, in Australian dollars, provided by AusAID during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure, in Australian dollars, provided by the Department of Foreign Affairs and Trade during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy; and biomass energy), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure, in Australian dollars, provided by the Department of Industry, Tourism and Resources during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (ie. projects relating to solar energy, wind energy, micro-hydroelectric en-
nergy schemes, geothermal energy, tidal or wave energy, and biomass energy), including those projects defined as multisector or crosscutting.

(4) What was the total expenditure, in Australian dollars, provided by Austrade during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(5) What was the total expenditure, in Australian dollars, provided by any Australian Government agency other than AusAID, the Department of Foreign Affairs and Trade, the Department of Industry, Tourism and Resources, or Austrade during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(6) What was the total expenditure, in Australian dollars, provided by the Export Finance and Insurance Corporation during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:
The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Renewable Energy Sector Project Funding
(Question No. 644)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to non-government funding for renewable energy sector projects, can the following information be provided in relation to countries or projects in the Asia-Pacific region:

(1) What was the total expenditure, in Australian dollars, provided by the Asia Pacific Economic Cooperation during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure, in Australian dollars, provided by the Asian Development Bank during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure, in Australian dollars, provided by Australian businesses and industry during the calendar years 1998 to 2002, in relation to projects in the renewable energy sector (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:
The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.
Trade: Fossil Fuel Sector Exports
(Question No. 645)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to Australian fossil fuels sector exports, can the following information be provided in relation to exports to countries in the Asia-Pacific region:

1. What percentage of Australian total exports during the calendar years 1998 to 2002, related to the fossil fuels sector (i.e. exports relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

2. What percentage of Australian energy exports during the calendar years 1998 to 2002, related to the fossil fuels sector (i.e. exports relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Renewable Energy Sector Exports
(Question No. 646)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to Australian renewable energy sector exports, can the following information be provided in relation to exports to countries in the Asia-Pacific region:

1. What percentage of Australian total exports during the calendar years 1998 to 2002, related to the renewable energy sector (i.e. exports relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

2. What percentage of Australian energy exports during the calendar years 1998 to 2002, related to the renewable energy sector (i.e. exports relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Fossil Fuel Research and Development Funding
(Question No. 647)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to Australian Government fossil fuel research and development funding, can the following information be provided in relation to exports to countries in the Asia-Pacific region:

1. What was the total expenditure in Australian dollars provided by the Department of Foreign Affairs and Trade during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (i.e. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.
(2) What was the total expenditure in Australian dollars provided by the Department of Industry, Tourism and Resources during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure in Australian dollars provided by Austrade during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(4) What was the total expenditure in Australian dollars provided by any Australian government agency other than the Department of Foreign Affairs and Trade, the Department of Industry, Tourism and Resources or Austrade during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(5) What was the total expenditure in Australian dollars provided by the Export Finance and Insurance Corporation, during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Fossil Fuel Research and Development Funding
(Question No. 648)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to non-government funding for fossil fuel research and development funding, can the following information be provided in relation to countries or projects in the Asia-Pacific region:

(1) What was the total expenditure in Australian dollars provided by the Asia Pacific Economic Co-operation during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure in Australian dollars provided by the Asian Development Bank during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure in Australian dollars provided by Australian businesses and industry during the calendar years 1998 to 2002, in relation to the research and development of fossil fuel energy sources (ie. projects relating to coal, including clean coal, and co-generation and emission reduction projects, gas and oil), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.
Trade: Renewable Energy Research Development Funding
(Question No. 649)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to the Australian Government renewable energy research and development fund, can the following information be provided in relation to exports to countries in the Asia-Pacific region:

1. What was the total expenditure in Australian dollars provided by the Department of Foreign Affairs and Trade during the calendar years 1998 to 2002, in relation to the research and development of renewable energy sources (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

2. What was the total expenditure in Australian dollars provided by the Department of Industry, Tourism and Resources, during the calendar years 1998 to 2002, in relation to the research and development of renewable energy sources (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

3. What was the total expenditure in Australian dollars provided by Austrade during the calendar years 1998 to 2002, in relation to the research and development of renewable energy sources (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

4. What was the total expenditure in Australian dollars provided by any government agency other than the Department of Foreign Affairs and Trade, the Department of Industry, Tourism and Resources or Austrade during the calendar years 1998 to 2002, in relation to the research and development of renewable energy sources (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

5. What was the total expenditure in Australian dollars provided by the Export Finance and Insurance Corporation during the calendar years 1998 to 2002, in relation to the research and development of renewable energy sources (ie. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

Senator Nettle—The Minister for Trade has provided the following answer to the honourable senator’s question:

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Coal and Renewable Energy Industries
(Question No. 650)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

1. In relation to the 14 middle managers from Thai Government departments brought to Australia in June 2000 under a joint AusAID-Thai Government tour of coal-fired power stations in the Hunter Valley: Does the Government: (a) deny the purpose of this trip was to promote Australian coal and coal technology development, in particular Australian clean coal; and (b) have any plans for similar promotional activities for the renewable energy industry.

2. What promotional activities does the Government have for renewable energy trade promotion in Asia in the 2002-03 financial year.

3. Given that the Renewable Energy Action Agenda produced by the Department of Industry, Science and Resources states that, there is a wide range of Commonwealth Government Programs that jointly will provide around $387 million in funding to the [renewables] industry: How much
funding, in Australian dollars: (a) does the Commonwealth provide the coal industry annually; and
(b) has the Government provided the coal industry with in total over the past 5 years (for the period 1998 to 2002).

(4) Given that the agenda further states, the industry’s most significant impediments are the relatively high cost of renewable energy products and energy market access barriers: How does the Government plan to combat these impediments.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Renewable Research and Development Funding
(Question No. 651)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to non-government research and development funding of renewables, can the following information be provided in relation to exports to countries in the Asia-Pacific region:

(1) What was the total expenditure in Australian dollars provided by the Asia Pacific Economic Cooperation during the calendar years 1998 to 2002, in relation to research and development of renewable energy sources (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(2) What was the total expenditure in Australian dollars provided by the Asian Development Bank during the calendar years 1998 to 2002, in relation to research and development of renewable energy sources (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

(3) What was the total expenditure in Australian dollars provided by Australian businesses and industry during the calendar years 1998 to 2002, in relation to research and development of renewable energy sources (i.e. projects relating to solar energy, wind energy, micro-hydroelectric energy schemes, geothermal energy, tidal/wave energy and biomass energy), including those projects defined as multisector or crosscutting.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Trade: Fossil Fuel and Renewable Energy Policy
(Question No. 652)

Senator Nettle asked the Minister representing the Minister for Trade, upon notice, on 17 September 2002:

With reference to the Australian Government policy on fossil fuels and renewable energy:

(1) On what timeframe, in years, are the Government’s energy policies based.

(2) In order for Australia’s renewable energy sector to capture a larger share of the international energy market, does the Government acknowledge that a more active approach needs to be taken in the phasing-out of fossil fuels.

(3) What is the Government’s position on the use of gas as a transition fuel from fossil fuel energy production to a renewable energy alternative.
(4) In the light of the need for transition to renewable energy, what is the Government doing to actively assist countries in the Asia-Pacific region to phase out the use of fossil fuels in energy production.

(5) With reference to the answer to question on notice no. 186 (Senate Hansard, 14 May 2002, p. 1495) in which the Minister for Industry, Tourism and Resources stated that, Malaysia, Thailand and the Philippines are considered to be important emerging markets for coal. The governments strategy is to support improvements in the Australian industry’s international competitiveness through economic and industry reforms in Australia, to address trade and other barriers that may restrict access to these markets, provide factual material, and to address technical and environmental issues by facilitating bilateral and other exchanges with these countries: (a) where does the Government see the largest potential export market for Australian renewable energy emerging; and (b) what strategies are being adopted by the Australian Government to ensure the Australian renewable energy industry is able to capitalise on this emerging market.

(6) Given that in the answer to question on notice no. 186 the Minister also stated, the department does not provide specific funding for coal trade promotion activities: in what way are documents such as the sixth edition of Australia’s Export Coal Industry, produced by the Department of Industry, Science and Resources, not a promotional activity.

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

The details requested in the honourable senator’s question are not readily available from a single source. To collect and assemble such information solely for the purpose of answering the honourable senator’s question would be a major task and I am not prepared to authorise the expenditure of resources and effort that would be involved.

Military Detention: Australian Citizens
(Question No. 654)

Senator Marshall asked the Minister representing the Minister for Foreign Affairs, upon notice, on 18 September 2002:

With reference to the two Australian citizens, Mr David Hicks and Mr Mamdouh Habib, who are currently detained and imprisoned by the United States of America in Camp Delta in Cuba:

(1) What is the current legal status of Mr Hicks and Mr Habib.
(2) What access do Mr Hicks and Mr Habib have to legal counsel of their choice.
(3) What access to and communication with their family members have Mr Hicks and Mr Habib had.
(4) Is there any indication that Mr Hicks and/or Mr Habib will be charged with any offence in any jurisdiction; if so, what are those charges.
(5) (a) What access do Mr Hicks and Mr Habib have to Australian consular staff; and (b) can the details of that access be provided.
(6) Is the Australian Government making any representations on behalf of Mr Hicks and/or Mr Habib to secure their release from custody.
(7) What is the current health situation of Mr Hicks and Mr Habib.
(8) Under what conditions are Mr Hicks and Mr Habib being imprisoned.
(9) Does the Government believe that Mr Hicks and Mr Habibs imprisonment is legal and that Australia has met its legal responsibilities and complied with all international conventions, treaties and agreements.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Responsibility lies with the United States, as the detaining power, to determine the legal status of the detainees. While the United States has determined that the detainees are not prisoners of war, United States authorities have stated that the men are being detained as enemy combatants in accordance with the laws of war.
(2) To date the United States has declined to grant the detainees access to legal representation.
(3) The detainees are able to send and receive mail through the International Committee of the Red Cross (ICRC). The Government understands that both Australian detainees have used this service to communicate with family members in Australia.

(4) Investigations into the activities of both men are currently being undertaken by both Australian and US authorities, to determine whether any crimes have been committed by either man. Those investigations are complicated by the unique nature of the circumstances surrounding the detainees and their activities abroad. The Australian Government is in regular contact with the United States and both countries are cooperating to ensure the investigations and any possible prosecutions are conducted effectively. I am unable to comment further on the details of these investigations, for legal and privacy reasons.

(5) Consular access to the detainees in Guantanamo Bay has been declined by United States authorities.

(6) No.

(7) Australian officials who visited Guantanamo Bay in May 2002 noted that both detainees appeared in good health. All detainees have access to medical examinations and treatment.

(8) The Government is satisfied that both Mr Hicks and Mr Habib are being held in safe and humane conditions, and are being treated appropriately by US authorities. They are detained in an individual, air-conditioned cell with clean and appropriate bedding and washing facilities. They have access to medical examinations and treatment, culturally appropriate meals, and are permitted to observe religious practices. They are given fresh towels and uniforms on request and permitted exercise and reading material. They are able to send and receive mail through the International Committee of the Red Cross (ICRC). There is an ICRC representative at the military base who has access to the facility and the detainees, to independently assess their condition.

(9) Yes.

Suerannuation Complaints Tribunal

(Question No. 704)

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 27 September 2002:

(1) Since his appointment on 3 October 2001 to the Superannuation Complaints Tribunal, in how many review hearings has Mr Michael Baume participated.

(2) Since 3 October 2001, in how many review hearings have each of the other members of the SCT participated.

(3) Of the review hearings in which Mr Baume participated: (a) how many determinations were in favour of complainants; and (b) how many determinations upheld the trustees’ decisions.

(4) (a) What is the average proportion of review determinations in favour of complainants; and (b) what is the average proportion of determinations that uphold the trustees’ decisions.

(5) On what basis is the remuneration of members of the tribunal determined.

(6) What is the total remuneration Mr Baume has received since his appointment to the tribunal.

(7) What is the total remuneration received by other members of the tribunal in the same period.

(8) What is the term of Mr Baume’s appointment.

(9) Is Mr Baume listed as a tribunal member on its website; if not, why not.

(10) With reference to Mr Baume’s qualifications for the tribunal, as outlined in part (9) of the answer to question on notice no.1 (Senate Hansard, 17 June 2002, p.1869): (a) how do these qualifications differ from those of other members of the tribunal; and (b) based on the review hearings in which Mr Baume has participated so far, what have his qualifications added to the tribunal.

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

(1) 39.

(2) Number of hearings Tribunal members participated in:
   a. Graham McDonald, Chairperson, 79
   b. Nicole Cullen, Deputy Chairperson, 70
(3) Of the 39 hearings Mr Baume participated in, 19 have had Determinations issued. The results are as follows:

- Trustee decision affirmed, 10
- Trustee decision set aside, 7
- Remitted to Trustee for re-consideration, 2

(4) (a) In the 2001–02 year in 41% of cases the Determinations were
   (i) to set aside the decision of the Trustee and substitute the decision of the Tribunal;
   (ii) to vary the decision of the Trustee; or
   (iii) remit the case to the Trustee with directions for further consideration.

(b) 59%.

(5) The Remuneration Tribunal.

(6) This information is not publicly available.

(7) This information is not publicly available.

(8) 3 October 2001 to 3 April 2003.

(9) The Website now displays Mr Baume as a member.

(a) The members bring to the Tribunal a variety of skills and qualifications that assist the Tribunal to carry out its functions.

(b) The Tribunal hearings in which Mr Baume has participated are constituted by 3 members. All participating members contribute to the decision and reasons. It is not possible to identify the contributions made to the decision-making process by any one member of a multi-member Tribunal.

Superannuation Committee: Government Responses to Reports
(Question No. 705)

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 30 September 2002:

With reference to the resolution of the Senate relating to government responses to committee reports (Standing Orders, February 2002, p. 129) and undertakings by successive governments to present a response to committee reports within 3 months of tabling: When will the Government respond to each of the following reports tabled in the 39th Parliament, on the dates indicated, by the Senate Select Committee on Superannuation and Financial Services:
The opportunities and constraints for Australia to become a centre for the provision of Global Financial Services (22 March 2001).

A ‘reasonable and secure’ retirement? The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes (5 April 2001).

Prudential supervision and consumer protection for superannuation, banking and financial services—First report (20 August 2001).

Prudential supervision and consumer protection for superannuation, banking and financial services—Second report—Some case studies (30 August 2001).


Early access to superannuation benefits (31 January 2002).

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

(1) The Government is considering the Report’s recommendations and will respond to them shortly.

(2) The Minister for Finance and Administration, Senator the Hon. Nick Minchin is the Minister responsible for the superannuation arrangements of the Commonwealth’s civilian employees, and, as such, will be responding to the Committee’s recommendations made in the report.

(3) The Government’s response to the Report’s recommendations was tabled on 24 October.

(4) The Government’s response to the Report’s recommendations was tabled on 24 October.

(5) The Government is considering the Report’s recommendations and will respond to them shortly.

(6) The Government is considering the Report’s recommendations and will respond to them shortly.

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Fisheries, Forestry and Conservation: Illegal Fishing

(Question No. 730)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 4 October 2002:

With reference to the Minister’s answer to question on notice no. 489, and specifically parts (1) and (2):

(1) What was the cost to the Australian government of the 2001 operation to apprehend the South Tomi using South African navy vessels.

(2) (a) What assistance has South Africa provided in approaching other countries to address specific incidents of illegal fishing; and (b) can details be provided of these incidents and of the assistance provided by the South African government in each case.

(3) (a) When have formal negotiations with South Africa occurred with respect to concluding a formal agreement on cooperation to combat illegal fishing; and (b) who is leading these negotiations on behalf of the Australian government.

(4) (a) When have formal negotiations with France occurred with respect to concluding a formal agreement on cooperation to combat illegal fishing; (b) who is leading these negotiations on behalf of the Australian government; and (c) when is it expected that these negotiations will conclude.

(5) Since 1996, has any direct minister-to-minister contact occurred with respect to cooperation with other countries on combating illegal fishing; if so, can details of these occasions be provided, including the countries concerned and the ministers engaged in this contact.

Senator Ian Macdonald—the answer to the honourable senator’s question is as follows:

(1) The total additional cost incurred (above normal patrol costs) by the Australian Government in apprehending the South Tomi and escorting it to Fremantle was approximately $1.232 million. This includes the cost of additional sea days (above normal patrol duration) spent by the Australian Fisheries Management Authority’s (AFMA’s) civil charter vessel Southern Supporter in hot pursuit and post apprehension escort of the South Tomi, additional fuel, and reimbursement of fuel costs to the Government of South Africa for their patrol vessels used in the apprehension.

(2) (a) Earlier in 2002, Australia sought the assistance of South Africa in making representations to Mozambique authorities to prevent the unloading of toothfish at the port of Maputo in Mozambique by two Uruguayan-flagged vessels that had been engaged in illegal fishing in waters falling
under the management regime of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Australia approached fisheries authorities in Mozambique directly urging them not to allow these vessels to unload their catch. South Africa undertook similar approaches to Mozambique authorities. (b) See 2(a) above.

(3) (a) I wrote to my South African Ministerial counterpart in September 2002 to initiate discussions on the text of an agreement with South Africa to provide for cooperate action against illegal fishing. Informal discussions also took place at officials’ level in late October 2002. (b) The Commonwealth Department of Agriculture, Fisheries and Forestry (AFFA) and the Commonwealth Department of Foreign Affairs and Trade (DFAT) portfolios will jointly lead negotiations assisted primarily by the portfolios of the Attorney General’s Department (AGs) and Defence with involvement from other portfolios on an as needed basis.

(4) (a) Negotiations have occurred intermittently at both the Ministerial level and officials level for more than three years. (b) As is the case with negotiations with South Africa, AFFA and DFAT have usually jointly led negotiations assisted by AGs and Defence with involvement from other portfolios as needed. (c) Negotiations have concluded on a proposed draft text at the officials level subject to whole-of-government clearance by each country.

(5) Since 1996 there has been frequent Minister-to-Minister contact regarding cooperation on the issue of IUU fishing. It is not feasible to provide a full list; opportunities have been taken during bilateral visits, at international meetings and through correspondence and other available avenues. For example, in recent months, in the lead up to the CCAMLR meeting in Hobart in late October, I wrote to my Ministerial counterparts with responsibility for fisheries issues in those States which are also signatories to the CCAMLR Convention urging them to support efforts by Australia and other States to combat IUU fishing.

Similarly, my colleague, the Parliamentary Secretary to the Minister for the Environment and Heritage, Senator the Hon Sharman Stone, wrote to Ministers with responsibility for CCAMLR matters in countries that are also signatories to the CCAMLR Convention urging them to support Australia’s efforts to combat the IUU fishing in the Southern Ocean. Australian officials also made numerous representations to officials in other CCAMLR countries seeking their support for the suite of measures Australia was proposing at CCAMLR XXI to combat IUU fishing. Australian officials also made representations to CITES Parties in the lead up to the Conference of Parties this month to seek support for Australia’s proposal to list Patagonian toothfish on Appendix II of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Medicare: Bulk-Billing
(Question No. 770)

Senator Chris Evans asked the Minister for Health and Ageing, upon notice, on 10 October 2002:

In each federal electoral division, for each of the following financial years: (a) 1996-97; and (b) 2001-02:

(1) How many general practitioners provided a bulk billing service.

(2) How many general practitioners bulk billed less than 5 per cent of medical services.

(3) How many general practitioners bulk billed more than 5 per cent but less than 25 per cent of medical services.

(4) How many general practitioners bulk billed more than 25 per cent but less than 50 per cent of medical services.

(5) How many general practitioners bulk billed more than 50 per cent but less than 75 per cent of medical services.

(6) How many general practitioners bulk billed more than 75 per cent but less than 95 per cent of medical services.

(7) How many general practitioners bulk billed more than 95 per cent of medical services.

(8) Assigning each general practitioner to his or her principal practice postcode in the last quarter of the financial year having regard to service volumes, how many general practitioners practised.

Senator Patterson—The answer to the honourable senator’s question is as follows:
The requested Medicare statistics cannot be provided at the individual electorate or postcode level due to possible confidentiality considerations. The workload involved in identifying and suppressing or combining confidential cells in tables cannot be justified.

Under subsection 130(5) of the Health Insurance Act 1973, it is possible to publish Medicare statistics, provided that such publication does not enable the identification of an individual patient or practitioner.

In a number of postcodes, there may be only a small number of general practitioners practising under Medicare, or a small number of general practitioners rendering the majority of services. Similarly, in a number of electorates there may be only a small number of providers in a particular percentage of services bulk billed range. In accordance with appropriate statistical best practices, on which the Department is guided by relevant Australian Bureau of Statistics practices, it is not appropriate to publish statistics in these circumstances. Similar considerations apply to statistics by patient enrolment region.

Separate arrangements have been put in place covering the regular provision of non-confidential bulk billing statistics by electorate, as part of the proceedings of the Community Affairs Legislation Committee.

**Forestry: Saw Logs**

(Question No. 794)

**Senator O’Brien** asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 15 October 2002:

1. Since 1999, what programs have been conducted by, or sponsored by, Agriculture, Fisheries and Forestry Australia in order to provide incentives to Australian industry to value-add (by way of processing) to lower quality saw logs.
2. Who conducted each program.
3. When did each program start.
4. When did each program finish.
5. Of those programs not yet finished, when are they expected to be completed.
6. How much has the Commonwealth expended on each program.
7. What new types of commodity manufacturing have occurred as a directly result of these programs.
8. How many full-time jobs have been created as a result of the manufacturing of new commodities directly attributable to these programs.
9. For each financial year since 1999, what has been the export value of manufactured commodities as a direct result of these programs.
10. For each of the next 5 financial years, what is the annual projected export value of each of these new types of commodity manufacturing that have developed as a directly attributable result of these programs.

**Senator Ian Macdonald**—The answer to the honourable senator’s question is as follows:

1. No Commonwealth programmes conducted by, or sponsored by, Agriculture, Fisheries and Forestry Australia have as a specific objective the provision of incentives to Australian industry to value-add to lower quality saw logs.

However, the Industry Development Assistance element of the joint Commonwealth/State Forest Industry Structural Adjustment Programs (FISAP) in New South Wales and Victoria provides assistance for value-adding and further processing of saw logs from native forests, including lower quality logs.

Two projects which have been approved for funding under the NSW FISAP involve processing small logs to produce weatherboards, pallets, fencing, timber panels and furniture.

Two projects which have been approved for funding under the Victorian FISAP involve processing small logs to produce pallets and to increase the recovery of sawn timber from lower grade logs.

The objective of the Commonwealth’s Forest Industry Development Assistance Program for South East Queensland (FIDAQ) is to assist the continuing development of a responsible, sustainable, efficient and internationally competitive native forest timber industry in south-east Queensland.
The FIDAQ guidelines do not specifically refer to value-adding of lower quality sawlogs. However, three projects which have been approved for FIDAQ funding will increase sawn timber recovery from and add value to lower quality logs. Two of the projects involve upgrading production facilities to increase the recovery of sawn timber from lower grade logs, and one project involves the installation of a timber treatment plant and other equipment.

(2) The NSW FISAP is jointly administered by the Department of Agriculture, Fisheries and Forestry Australia (AFFA) and the NSW Forestry Structural Adjustment Unit. The Victorian FISAP is jointly administered by AFFA and the Victorian Department of Natural Resources and Environment. FIDAQ is administered by AFFA.


(4) All three programmes are still operating although it is unlikely that there will be any further funding rounds.

(5) All programmes are currently scheduled to finish on 30 June 2003.

(6) Commonwealth expenditure on Industry Development Assistance is as follows:
   NSW FISAP: $6.6 million spent and approximately $2.8 million committed but not yet spent.
   Victorian FISAP: $5.2 million spent and approximately $4.5 million committed but not yet spent.
   FIDAQ: $1.5 million spent, and approximately $3 million committed but not yet spent.
   The figures quoted above refer only to the Industry Development Assistance element of FISAP, and do not include expenditure on Business Exit Assistance, Worker Assistance, Rescheduling Assistance or Restructuring Assistance.

(7) On the assumption that the question refers to the use of low quality sawlogs to produce new products not previously produced in Australia, or not previously produced at the sawmill receiving FISAP or FIDAQ assistance, neither programme has provided any such grants. However, the programmes have assisted many sawmills in New South Wales, Victoria and Queensland to increase the recovery of sawn timber and to increase the percentage of timber which is dried, dressed and moulded for decorative and other high-value uses. As mentioned in response to part 1 of this question, seven of the projects funded by FISAP involve the use of lower grade logs.

(8) As mentioned above, no projects funded by FISAP or FIDAQ have involved manufacturing of new commodities.

(9) The Commonwealth does not have access to details of the value of exports by individual firms as such information is commercially confidential.

(10) The Commonwealth does not have access to details of the estimated value of future exports by individual firms as such information is commercially confidential.

Health and Ageing: Nursing Homes
(Question No. 824)

Senator Hutchins asked the Minister representing the Minister for Ageing, upon notice, on 23 October 2002:

(1) How many nursing homes are currently in operation in the Blue Mountains region in New South Wales.

(2) What is the present capacity of these homes.

(3) Are there any vacancies in these homes.

(4) Are there any plans for more homes to operate in this region.

(5) What locations might be suitable, and supported by the community, for any future nursing homes in the region.

(6) What number of nursing home bed licences are granted by the department in the region.
Senator Patterson—The Minister for Ageing has provided the following answer to the honourable senator’s question:

(1) The Blue Mountains region is part of the Nepean Aged Care Planning Region of New South Wales. At 30 June 2002 there were 28 operating aged care homes.

(2) At 30 June 2002 there were 1,813 operational residential aged care places in the Nepean Aged Care Planning Region.

(3) Total occupancy of all homes in the Nepean Aged Care Planning Region is 97.4 per cent.

(4) Each year, the Government makes new residential aged care places and Community Aged Care Packages available for allocation in each State and Territory. The number of new residential aged care places and Community Aged Care Packages is based primarily on State and Territory population projections and the current provision of aged care.

(5) The Aged Care Planning Advisory Committee (ACPAC) in each State and Territory provides advice to the Secretary of the Department of Health and Ageing on the distribution of new places across planning regions. The ACPAC considers relevant information on comparative need across the various regions. In addition to data on supply and demand provided by the Department, information is provided by community groups and organisations on the identified needs of particular areas.

(6) At 30 June 2002 there were 2,002 allocated residential aged care places in the Nepean Aged Care Planning Region.

Defence: North Penrith Urban Area Site
(Question No. 825)

Senator Hutchins asked the Minister for Defence, upon notice, on 24 October 2002:

With reference to the proposed development of the Defence-owned site within the North Penrith Urban Area:

(1) Is the Minister aware of recent public comments for the Member for Lindsay (Mrs Jackie Kelly) that the current master plan, on public exhibition, for the development of the site does not achieve its full potential and that, consequently, the site should be developed for some form of ‘Business Park’ to replace the current plan.

(2) In light of these comments, can the Minister confirm whether or not the land uses for the site contained in the master plan are acceptable to the Commonwealth.

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

(1) I am not aware of the detail of public comments made by the Member for Lindsay, the Hon Jackie Kelly MP, on the issue other that that the site could be better zoned in the interests of the local community.

(2) There has been extensive consultation to ensure the future uses for the land meet the planning requirements of the Council and State Government stakeholders, which has included numerous public exhibition processes.

Nevertheless, the Government will consider such matters as raised by the Hon Jackie Kelly MP as the Member for Lindsay.

Medicare: Unreferred Attendances
(Question No. 831)

Senator Chris Evans asked the Minister for Health and Ageing, upon notice, on 1 November 2002:

How many medical practitioners rendering unreferred attendances were there in each Australian postcode zone for the 12 months ending: (a) 30 June 2000; (b) 30 June 2001; and (c) 30 June 2002 (period of processing).

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

The requested Medicare statistics cannot be provided at the individual postcode level due to possible confidentiality considerations. The workload involved in identifying and suppressing or combining confidential postcodes cannot be justified.
Under subsection 130(5) of the Health Insurance Act 1973, it is possible to publish Medicare statistics, provided that such publication does not enable the identification of an individual patient or practitioner.

In a number of postcodes, there may be only a small number of medical practitioners rendering unreferral attendances, or a small number of practitioners rendering most unreferral attendances. In accordance with appropriate statistical best practices, on which the Department is guided by relevant Australian Bureau of Statistics practices, it is not appropriate to publish statistics in these circumstances. Similar considerations apply to statistics by patient enrolment region.

Separate arrangements have been put in place covering the regular provision of non-confidential bulk billing statistics by electorate, as part of the proceedings of the Community Affairs Legislation Committee.

**Forest Industries Structural Adjustment Program: Grants**

(Question No. 891)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 11 November 2002:

1. What Forest Industries Structural Adjustment Program (FISAP) grants were made in 2001-02.

2. For each grant, can the following information be provided:
   - grant date;
   - grant recipient;
   - registered address of grant recipient; and
   - full project description, including:
     - location,
     - project commencement and conclusion dates,
     - total funding, and
     - evaluation results; and can any grants that were made despite the applications not meeting program application criteria be identified.

3. What FISAP grants were approved in 2001-02 to projects that did not commence in that year.

4. For each grant, can the following information be provided:
   - the date the grant was approved;
   - approved grant recipient;
   - registered address of approved grant recipient; and
   - full project description, including:
     - location,
     - original and revised project commencement dates,
     - reason for delay, and
     - total approved funding; and can any grants that were approved despite the applications not meeting program application criteria be identified.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:
(1) and (2):
New South Wales

<table>
<thead>
<tr>
<th>Grant Recipient</th>
<th>Grant Approval date</th>
<th>Recipient Address</th>
<th>Project Description</th>
<th>Location</th>
<th>Project start and end dates</th>
<th>Total approved funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.E. &amp; J.M. Boon Logging</td>
<td>06/05/02</td>
<td>PO Box 4049 GOONELLABAH NSW 2480</td>
<td>Purchase an excavator, skidder, processing head, barcode scanner and software.</td>
<td>Coffs Harbour</td>
<td>Start – 6 June 02 Finish – March 03</td>
<td>$144,719</td>
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<tr>
<td>Big River Timbers</td>
<td>06/05/02</td>
<td>PO Box 281 GRAFTON NSW 2460</td>
<td>Develop a flooring and decorative panel production line to efficiently process re-growth and plantation forest resource, and to develop and expand domestic and export markets.</td>
<td>Grafton</td>
<td>Start – 18 June 02 Finish – February 03</td>
<td>$984,394</td>
</tr>
<tr>
<td>Boral Timber</td>
<td>11/10/01</td>
<td>89 St. Hilliers Road, AUBURN NSW 2144</td>
<td>Restructure and upgrade native hardwood processing facilities in NSW</td>
<td>Herons Creek, Koolkhan, Kyogle, Maxwell Creek Murwillumbah</td>
<td>Start – 14 November 01 Finish – Varies: March 2002 to March 2006</td>
<td>$22,500,000</td>
</tr>
<tr>
<td>Coffs Harbour Hardwoods Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 296 COFFS HARBOUR NSW 2480</td>
<td>Investment in additional kilns, comprehensive machining, docking, matching and stacking lines, storage areas and handling equipment at its Glenreagh plant.</td>
<td>Coffs Harbour</td>
<td>Start – 26 June 02 Finish – June 03</td>
<td>$989,480</td>
</tr>
<tr>
<td>Davis &amp; Herbert Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 455 NOWRA NSW 2541</td>
<td>Installation of a twin band log edger and upgrade of saw bench system and treatment plants at Nowra, installation of a multi-saw edger at the Narooma mill and installation of chip bins and conveyers at Nowra and Narooma.</td>
<td>Nowra Ulladulla Batemans Bay</td>
<td>Agreement not signed yet.</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Greensill Bros Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 141 SOUTH GRAFTON NSW 2460</td>
<td>Investment in excavator, bulldozer, timber felling head and truck/trailer, increasing efficiencies in production and enabling the company to handle a wider range of forest products, particularly smaller logs from younger regrowth forests and plantations.</td>
<td>South Grafton, Casino</td>
<td>Start – 9 July 02 Finish – September 02</td>
<td>$276,000</td>
</tr>
<tr>
<td>Grant Recipient</td>
<td>Grant Approval date</td>
<td>Recipient Address</td>
<td>Project Description</td>
<td>Location</td>
<td>Project start and end dates</td>
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<tr>
<td>Hardwood Resources Pty Ltd</td>
<td>06/05/02</td>
<td>Lot A, Fairway Drive, TUMUT NSW 2720</td>
<td>Purchase and installation of drying and milling equipment for the production of furniture which will be marketed in Australia and overseas, also business planning and feasibility studies.</td>
<td>Tumut</td>
<td>Start – 30 October 02 Finish – November 04</td>
<td>$450,000</td>
</tr>
<tr>
<td>Haul-Line Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 285 DORRIGO NSW 2453</td>
<td>Purchase excavators with associated winches, log grapple forks, felling head and skidders to improve log harvesting, extraction and handling, and to enhance the recovery and use of the timber resource.</td>
<td>Dorrigo</td>
<td>Start – 7 June 02 Finish – September 02</td>
<td>$204,224</td>
</tr>
<tr>
<td>Hurfords Hardwoods Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 393 LISMORE NSW 2107</td>
<td>Upgrade a sawmill including kilns, pressure treatment facility, forklift and an overlay flooring production line.</td>
<td>Lismore</td>
<td>Agreement not signed yet.</td>
<td>$424,000</td>
</tr>
<tr>
<td>J. Notaras &amp; Sons Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 228 GRAFTON NSW 2460</td>
<td>Purchase new kilns, a parquetry plant, wood waste grinder, grading station, new boiler facility, dust collection filter, sanding machine, glue spreader and rotary press and a wood chipper.</td>
<td>Grafton</td>
<td>Start – 19 June 02 Finish – January 04</td>
<td>$569,349</td>
</tr>
<tr>
<td>McGuire Logging Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 493 TUMUT NSW 2720</td>
<td>Upgrade harvesting/haulage machinery and equipment (ie. purchase of a harvester, forwarder and ‘B’ double trailer) enabling company to harvest smaller diameter logs for sale to pulp and paper mills.</td>
<td>Tumut</td>
<td>Start – 1 July 02 Finish – March 03</td>
<td>$122,000</td>
</tr>
<tr>
<td>R.A. Sweetman &amp; Son Pty Ltd</td>
<td>06/05/02</td>
<td>Hayes Road MILLFIELD NSW 2325</td>
<td>Investment in green mill equipment (including a twin edger, one man bench, 6 head moulder and a forklift) to produce quality green boards suitable for drying.</td>
<td>Millfield</td>
<td>Agreement not signed yet.</td>
<td>$284,210</td>
</tr>
<tr>
<td>S.A. Relf and Sons Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 129 BULAHDELAH NSW 2423</td>
<td>Purchase two pre-drying kilns.</td>
<td>Bulahdelah</td>
<td>Start – 18 June 02 Finish – Sept 02</td>
<td>$41,880</td>
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<tr>
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<tr>
<td>Weathertex Pty Ltd</td>
<td>06/05/02</td>
<td>PO Box 21 RAYMOND TERRACE NSW 2324</td>
<td>Upgrade plant and machinery, including a press upgrade and new plates, stretch wrap palletising machine, effluent disposal and a new boiler, and improve marketing and product development.</td>
<td>Raymond Terrace</td>
<td>Start – 30 July 02 Finish – January 04</td>
<td>$573,750</td>
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<tr>
<td><strong>Victoria</strong></td>
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<td><strong>Location</strong></td>
<td><strong>Project start and end dates</strong></td>
<td><strong>Total approved funding</strong></td>
</tr>
<tr>
<td>Timber Promotion Council</td>
<td>04/10/01</td>
<td>320 Russell Street, MELBOURNE VIC 3000</td>
<td>Implement industry plan</td>
<td>State-wide</td>
<td>Start – March 02 Finish – 31 December 02</td>
<td>$2,000,000</td>
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<tr>
<td>Drouin West Sawmills Pty Ltd</td>
<td>03/09/01</td>
<td>100 - 110 Old Sale Road DROUIN WEST VIC 3818</td>
<td>Purchase of Planthard at Morwell and value adding</td>
<td>Drouin</td>
<td>Start – 1 Feb 02 Finish – 30 June 04</td>
<td>$2,121,000</td>
</tr>
<tr>
<td>Forrest Timber Products Pty Ltd</td>
<td>03/09/01</td>
<td>Station Street FORREST VIC 3236</td>
<td>Kiln drying and further processing</td>
<td>Forrest</td>
<td>Start – 11 June 02 Finish – 31 Dec 03</td>
<td>$720,000</td>
</tr>
<tr>
<td>Australwood Pty Ltd</td>
<td>04/10/01</td>
<td>320 Russell St MELBOURNE VIC 3000</td>
<td>Export market development, especially in USA, China and Europe</td>
<td>State-wide</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$660,000</td>
</tr>
<tr>
<td>Austimber Industries Pty Ltd</td>
<td>03/09/01</td>
<td>129 Macleod Street BAIRNSDALE VIC 3875</td>
<td>1. Acquisition of land, drying and dressing facilities 2. Freight terminal/weighbridge 3. Marketing program</td>
<td>Bairnsdale</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$1,280,000</td>
</tr>
<tr>
<td>Dormit Pty Ltd</td>
<td>01/06/02</td>
<td>PO Box 4011 DANDENONG SOUTH VIC 3164</td>
<td>Expand Dandenong sawmill, purchase sawn timber, establish a satellite sawmill</td>
<td>Swifts Creek</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$608,000</td>
</tr>
<tr>
<td>Whittlesea Sawmills Pty Ltd</td>
<td>01/06/02</td>
<td>2412 Plenty Road WHITTLESEA VIC 3757</td>
<td>Upgrade and expand dry mill</td>
<td>Whittlesea</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$87,840</td>
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<tr>
<td>Grant Recipient</td>
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<td>Total approved funding</td>
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<tr>
<td>Spot Pallet Supplies Pty Ltd</td>
<td>01/06/02</td>
<td>PO Box 19</td>
<td>1. Purchase &amp; install a Gibson twin edge machine 2. Foundations &amp; extensions to mill</td>
<td>Corryong</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$47,000</td>
</tr>
<tr>
<td>Buchan Valley Sawmilling Pty. Ltd.</td>
<td>01/06/02</td>
<td>PO Box 1</td>
<td>Replacing existing resaws and breakdown saws, removal of redundant breaking down saw and pony carriage, covering in of green chain and installing sprinkler system</td>
<td>Buchan</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$14,000</td>
</tr>
<tr>
<td>Hallmark Oaks Pty Ltd</td>
<td>28/06/02</td>
<td>PO Box 18</td>
<td>Purchase of Hans Sumberg and upgrade of drying and processing equipment</td>
<td>Cann River</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>$709,574</td>
</tr>
</tbody>
</table>

Queensland

<table>
<thead>
<tr>
<th>Grant Recipient</th>
<th>Grant approval date</th>
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<th>Total approved funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schiffke Sawmill Pty Ltd.</td>
<td>11/03/02</td>
<td>PO Box 378</td>
<td>Kiln, end matcher, planer, forklift/loader, mobile salvaging mill and bench</td>
<td>Caboolture</td>
<td>Start – April 02 Finish – 30 June 03</td>
<td>$146,487</td>
</tr>
</tbody>
</table>

(2) (d) (iv) (1) All grant payments are evaluated on the basis of achieving project milestones which set out performance requirements. In NSW and Victoria, these milestones are set out in the formal funding agreement between the relevant government agency (on behalf of the respective state government and the Commonwealth) and the project proponent. In Queensland the funding agreement is directly between the Commonwealth and the project proponent.

(2) Grants were only approved for applications that met the eligibility criteria for Industry Development Assistance.
(3) and (4):

New South Wales

<table>
<thead>
<tr>
<th>Grant Recipient</th>
<th>Grant date</th>
<th>Recipient Address</th>
<th>Project Description</th>
<th>Location</th>
<th>Original and revised project commencement dates</th>
<th>Reason for delay</th>
<th>Total approved funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boral Timber</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>Koolkhan and Murwillumbah projects commenced, however other projects delayed, awaiting further information regarding resource supply details from State Forests of NSW.</td>
<td>As per table above</td>
</tr>
<tr>
<td>Davis &amp; Herbert Pty Ltd</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>Company has not finalised Long Term Wood Supply Agreement with SFNSW</td>
<td>As per table above</td>
</tr>
<tr>
<td>Greensill Bros Pty Ltd</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>Minor delay, project commenced 09/07/02</td>
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<tr>
<td>Hardwood Resources Pty Ltd</td>
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<td>Minor delay, project commenced 30/10/02 as per agreement</td>
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<td>Hurfords Hardwoods Pty Ltd</td>
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<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>Company has not returned signed Funding Agreement for execution</td>
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</tr>
<tr>
<td>McGuire Logging Pty Ltd</td>
<td>As per table above</td>
<td>As per table above</td>
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<td>As per table above</td>
<td>As per table above</td>
<td>Minor delay, project commenced 01/07/02</td>
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</tr>
<tr>
<td>R.A. Sweetman &amp; Son Pty Ltd</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>As per table above</td>
<td>Company is in negotiations with SFNSW for resource supply</td>
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<tr>
<td>Weathertex Pty Ltd</td>
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<td>Minor delay, project commenced 30/07/02</td>
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</table>
Victoria

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<tr>
<th>Grant Recipient</th>
<th>Grant date</th>
<th>Recipient Address</th>
<th>Project Description</th>
<th>Location</th>
<th>Original and revised project commencement dates</th>
<th>Reason for delay</th>
<th>Total approved funding</th>
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<td>Australwood Pty Ltd</td>
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<td>Agreement not signed yet. Negotiating grant details.</td>
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<td>Austimber Pty Ltd</td>
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<td>Dormit Pty Ltd</td>
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</tr>
<tr>
<td>Whittlesea Sawmills Pty Ltd</td>
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<td>Agreement not signed yet. Negotiating grant details.</td>
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</tr>
<tr>
<td>Spot Pallet Supplies Pty Ltd</td>
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<td>As per table above</td>
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<tr>
<td>Buchan Valley Sawmilling Pty Ltd</td>
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<td>As per table above</td>
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<td>As per table above</td>
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</tr>
<tr>
<td>Hallmark Oaks Pty Ltd</td>
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<td>As per table above</td>
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<td>As per table above</td>
<td>Agreement not signed yet. Negotiating grant details.</td>
<td>As per table above</td>
</tr>
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(4) (d) (iv) Grants were only approved for applications that met the eligibility criteria for Industry Development Assistance.
Consumers Telecommunications Network
(Question No. 929)

Senator Webber asked the Minister for Communications, Information Technology and the Arts, upon notice, on 15 November 2002:

1. What was the reason for reducing funding to the Consumers’ Telecommunications Network.
2. How much was its funding reduced (both as a percentage and the actual amount).

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


Funding under this Program is allocated each year as the outcome of a competitive process where applicants are asked to specify the amount of funds sought and how they would propose to use the funds. Applications are assessed against pre-determined selection criteria. The selection criteria were amended in 2002-03 to give greater priority for representation of people with disabilities and consumers from regional, rural and remote areas, in accordance with the Government’s response to the Telecommunications Service Inquiry.

Funding sought by applicants may exceed the funds available. In 2002-03, total funding sought was $2.8 million, however only $700,000 was available. Only one of the 14 successful applicants received the amount of funding sought.

In these circumstances, the Government must balance the available funding against the quality of applications and the amount of funding sought.

2. The grant made to the Consumers’ Telecommunications Network was $280,000 in 2001-02 and $245,000 in 2002-03.

International Foot and Mouth Disease Vaccine Bank
(Question No. 936)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 18 November 2002:

1. What is the cost of Australia’s membership of the International Foot and Mouth Disease Vaccine Bank.
2. What assessment has been made of its adequacy to meet Australia’s needs.
3. What alternatives are available.

Senator Ian Macdonald—the Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. Approximately $175,000 per annum over the last four years.
2. Two major reports were commissioned by The Commonwealth Department of Agriculture, Fisheries and Forestry (AFFA) to firstly assess Australia’s technical needs for foot and mouth disease vaccine (Foreman Report of December 2000) and secondly to develop business options for commercial supplies of FMD vaccine (Baron Report of February 2002). From these reports the decision was made that the current International Vaccine Bank (IVB) is not sufficient to meet Australia’s needs in the long term, so AFFA commissioned Animal Health Australia to progress the findings of these reports. Animal Health Australia has recently presented a business case for future options to government and industry representatives for their consideration.

3. The main alternatives are contracting with commercial suppliers for rapid provision of vaccine doses; membership of other vaccine banks; revision of the existing IVB arrangements; or a combination of these options.