INTERNET
The Journals for the Senate are available at:
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the Senate and committee hearings are available at:

SITTING DAYS—2003

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RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following
Parliamentary and News Network radio stations, in the areas identified.

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FORTIETH PARLIAMENT
FIRST SESSION—FOURTH PERIOD

Governor-General

His Excellency the Right Reverend Dr Peter Hollingworth, Companion of the Order of Australia, Officer of the Order of the British Empire

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert
Deputy President and Chairman of Committees—Senator John Joseph Hogg
Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Richard Kenneth Robert Alston
Leader of the Opposition—Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Ian Gordon Campbell
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Richard Kenneth Robert Alston
Leader of the National Party of Australia—Senator the Hon. Ronald Leslie Doyle Boswell
Leader of the Australian Labor Party—Senator the Hon. John Philip Faulkner
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Andrew John Julian Bartlett

Printed by authority of the Senate
### Members of the Senate

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<tr>
<th>Senator</th>
<th>State or Territory</th>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Warwick Raymond Parer, resigned.

(3) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Woodley, resigned.

(4) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Andrew Quirke, resigned.

(5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.

(6) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Joseph Herron, resigned.

(7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.

PARTY ABBREVIATIONS

AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal Party; Ind.—Independent; LP—Liberal Party of Australia; NP—National Party of Australia; PHON—Pauline Hanson’s One Nation

Heads of Parliamentary Departments

Clerk of the Senate—H. Evans
Clerk of the House of Representatives—I. C. Harris
Departmental Secretary, Parliamentary Library—J. W. Templeton
Departmental Secretary, Parliamentary Reporting Staff—J. W. Templeton
Departmental Secretary, Joint House Department—M. W. Bolton
### HOWARD MINISTRY

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<tr>
<td>Prime Minister</td>
<td>The Hon. John Winston Howard MP</td>
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<tr>
<td>Minister for Transport and Regional Services and Deputy Prime Minister</td>
<td>The Hon. John Duncan Anderson MP</td>
</tr>
<tr>
<td>Treasurer</td>
<td>The Hon. Peter Howard Costello MP</td>
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<tr>
<td>Minister for Trade</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Minister for Defence and Leader of the Government in the Senate</td>
<td>Senator the Hon. Robert Murray Hill</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate</td>
<td>Senator the Hon. Richard Kenneth Robert Alston</td>
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<tr>
<td>Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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<tr>
<td>Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation</td>
<td>The Hon. Philip Maxwell Ruddock MP</td>
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<tr>
<td>Minister for the Environment and Heritage and Vice-President of the Executive Council</td>
<td>The Hon. Dr David Alistair Kemp MP</td>
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<tr>
<td>Attorney-General</td>
<td>The Hon. Daryl Robert Williams AM, QC, MP</td>
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<tr>
<td>Minister for Finance and Administration</td>
<td>Senator the Hon. Nicholas Hugh Minchin</td>
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<tr>
<td>Minister for Agriculture, Fisheries and Forestry</td>
<td>The Hon. Warren Errol Truss MP</td>
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<tr>
<td>Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women</td>
<td>Senator the Hon. Amanda Eloise Vanstone</td>
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<tr>
<td>Minister for Education, Science and Training</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<tr>
<td>Minister for Health and Ageing</td>
<td>Senator the Hon. Kay Christine Lesley Patterson</td>
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<tr>
<td>Minister for Industry, Tourism and Resources</td>
<td>The Hon. Ian Elgin Macfarlane MP</td>
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(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

Minister for Justice and Customs
Senator the Hon. Christopher Martin Ellison
Minister for Fisheries, Forestry and Conservation
Senator the Hon. Ian Douglas Macdonald
Minister for the Arts and Sport
Senator the Hon. Rod Kemp
Minister for Small Business and Tourism
The Hon. Joseph Benedict Hockey MP
Minister for Science and Deputy Leader of the House
The Hon. Peter John McGauran MP
Minister for Regional Services, Territories and Local Government
The Hon. Charles Wilson Tuckey MP
Minister for Children and Youth Affairs
The Hon. Lawrence James Anthony MP
Minister for Employment Services
The Hon. Malcolm Thomas Brough MP
Special Minister of State
Senator the Hon. Eric Abetz
Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence
The Hon. Danna Sue Vale MP
Minister for Revenue and Assistant Treasurer
Senator the Hon. Helen Coonan
Minister for Ageing
The Hon. Kevin James Andrews MP
Minister for Citizenship and Multicultural Affairs
The Hon. Gary Douglas Hardgrave MP
Parliamentary Secretary to the Prime Minister
The Hon. Jacqueline Marie Kelly MP
Parliamentary Secretary to the Minister for Transport and Regional Services
Senator the Hon. Ronald Leslie Doyle Boswell
Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate
Senator the Hon. Ian Gordon Campbell
Parliamentary Secretary to the Minister for Foreign Affairs
The Hon. Christine Ann Gallus MP
Parliamentary Secretary to the Minister for Defence
The Hon. Frances Esther Bailey MP
Parliamentary Secretary to the Minister for the Environment and Heritage
The Hon. Dr Sharmain Nancy Stone MP
Parliamentary Secretary to the Minister for Finance and Administration
The Hon. Peter Neil Slipper MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
Senator the Hon. Judith Mary Troeth
Parliamentary Secretary to the Minister for Family and Community Services
The Hon. Ross Alexander Cameron MP
Parliamentary Secretary to the Minister for Health and Ageing
The Hon. Patricia Mary Worth MP
Parliamentary Secretary to the Minister for Industry, Tourism and Resources
The Hon. Warren George Entsch MP
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<tr>
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<td>The Hon. Simon Findlay Crean MP</td>
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<td>Jenny Macklin MP</td>
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<td>for Employment, Education, Training and Science</td>
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<td>Leader of the Opposition in the Senate, Shadow</td>
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<td>Special Minister of State and Shadow Minister for</td>
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<td>Home Affairs</td>
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<td>Senator Stephen Conroy</td>
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<td>Shadow Minister for Population and Immigration</td>
<td>Julia Gillard MP</td>
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<td>and Shadow Minister for Reconciliation and</td>
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<td>Shadow Minister for Economic Ownership and</td>
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<td>Senator Kerry O’Brien</td>
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Senator Kim Carr

Shadow Minister for Employment Services and Training
Anthony Albanese MP

Shadow Minister for Justice and Customs
Daryl Melham MP

Shadow Assistant Treasurer
David Cox MP

Shadow Minister for Retirement Incomes and Savings
Senator the Hon. Nick Sherry

Shadow Minister for Consumer Protection and Shadow Minister for Consumer Health
Alan Griffin MP

Shadow Minister for Information Technology and Sport
Senator Kate Lundy

Shadow Minister for Veterans’ Affairs
Senator Mark Bishop

Shadow Minister for Regional Services, Territories, Local Government and Tourism
Gavan O’Connor MP

Shadow Minister for Citizenship and Multicultural Affairs
Laurie Ferguson MP

Shadow Minister for Resources
Joel Fitzgibbon MP

Shadow Minister for Ageing and Seniors and Assisting the Shadow Minister for Family and Community Services on Disabilities
Annette Ellis MP

Shadow Minister for Children and Youth and Shadow Minister for the Status of Women
Nicola Roxon MP
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

REPRESENTATION OF AUSTRALIAN CAPITAL TERRITORY

The PRESIDENT (12.30 p.m.)—I inform the Senate that Senator Reid resigned her place as a senator for the Australian Capital Territory on 14 February 2003. Pursuant to section 44 of the Commonwealth Electoral Act 1918, I notified the Chief Minister of the ACT of the vacancy in the representation of that territory caused by the resignation. I table the original and a facsimile copy of the letter of resignation and a copy of the letter to the Chief Minister of the ACT. I have received, through the Governor-General, from the Chief Minister of the ACT the certificate of the choice by the ACT Legislative Assembly of Gary John Joseph Humphries on 18 February 2003 to fill the vacancy caused by the resignation of Senator Margaret Reid. I table the document.

SENATORS SWORN

Senator Gary John Joseph Humphries made and subscribed the oath of allegiance.

BUSINESS

Rearrangement

SENATOR IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.35 p.m.)—I move:

That government business notice of motion No. 1 standing in the name of the Minister for Justice and Customs (Senator Ellison) for today, relating to a proposal for approval of works in the parliamentary zone, be postponed to Thursday, 6 March 2003.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002 [No. 2]

Second Reading

Debate resumed from 6 February, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator FORSHA W (New South Wales) (12.35 p.m.)—I formally welcome Senator Humphries to the Senate. I am glad he has brought along a large audience to hear the remarks that I am about to make, because they are very important. Once again, we find ourselves back here debating the government’s Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]. As I said on the last occasion I was speaking on this bill, which was on 6 February, this is the seventh time that the government has endeavoured to pass through the parliament laws to reduce the rights of employees in small businesses. This used to be called the ‘unfair dismissal’ legislation. The government has tried to dress it up by now calling it the ‘fair dismissal’ bill. But it does not matter what you call it; it ends up being exactly the same piece of legislation with the same result—that workers in small businesses are denied the right enjoyed by all other workers in the country to seek redress under the Workplace Relations Act if they are dismissed unfairly.

One wonders why this government has brought this legislation back before the parliament. There is a host of other incredibly important issues in the public arena at the moment. There are matters of vital concern to the Australian public, issues such as the potential war in Iraq, the declining state of our health industry, the abolition of bulk-billing that is occurring under this government and the difficulties faced by students endeavouring to get into tertiary education. There is a host of issues affecting this country, but what is this government’s priority? It is the priority it has had all along: an ideological obsession with hopping into Australian workers.

The Workplace Relations Amendment (Fair Dismissal) Bill, as they call it, clearly discriminates against a large number of Australian workers—that is, those employees in small businesses where there are fewer than 20 employees. This government is saying to those workers, ‘Because you happen to be employed in a small business where there are fewer than 20 employees, if you are dismissed you will have no rights under the Workplace Relations Act to seek redress if
that dismissal is unfair.’ It is a right enjoyed by all other workers covered under the federal legislation, it is a right enjoyed by all workers under state jurisdictions, but this government wants to single out this large group of employees in small businesses and say, ‘Sorry, but you are going to have fewer rights than your fellow Australians.’ If you are talking about fairness, I regard that as unfair. That is grossly unfair.

It is even more unfair when you consider that these are the very workers whom this government seeks to claim it is protecting. These are the Prime Minister’s ‘battlers’, people who are working in small businesses, not on huge salaries, many with families, struggling on minimum award wages, trying to make a go of it in this country and keep their heads above water. What is this government’s solution for them? It is to make it easier for them to lose their jobs. It is a nonsense. It is illogical to say, as this government claims, that you can create more jobs by making it easier to put people out of work. That is just a preposterous, nonsensical proposition, but this government argues it. The government says, ‘If we could only make it easier for employers in small businesses to sack workers, we could create more jobs.’

Senator Boswell—Of course you could.

Senator FORSHAW—Senator Boswell interrupts and says, ‘Of course you could.’

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Boswell, if you intend to interject, please do so from your seat—and even then I would suggest you refrain.

Senator FORSHAW—I too suggest you refrain, Senator Boswell. Not even you would believe the nonsense of that proposition. This is a bit like saying to your constituency that you could make it better for small farmers out there in the country if you put them out of business. That is the same proposition. This is the doctrine that was run, as we all remember, during the Vietnam War: ‘We had to destroy that village in order to save it.’ It is just illogical nonsense. Not only is it nonsensical but it is also refuted by the statistics themselves. On the last occasion this bill was before the parliament, back in May last year, I quoted ABS statistics. I will refer to what I said on that occasion, because it is still holds true today:

… according to the ABS figures, in 1983-84 there were 620,700 small businesses in this country. In 1999-2000 that had grown to 1,075,000, a growth of 73 per cent. So in the period from 1983-84, when the Labor government was elected—

the great Hawke Labor government; we celebrate the 20th anniversary of that victory this week—

right through the period of the Labor government and since this government came into office—

that is, the Howard government—

up until the latest figures available in 1999-2000 the number of small businesses in this country grew by 73 per cent.

The employment figures pretty well match that same percentage growth. In 1983-84 the number of employees employed by small business in this country, according to the ABS, was 1,963,700. In 1999-2000 the figure had reached 3,181,000, an increase in the total number of employees in small business of 62 per cent. So over the last 20 years, from the election of the Hawke government through to today, under the legislation that has continued to provide rights to employees in small businesses to seek redress for unfair dismissal, we have seen a phenomenal increase in the number of small businesses in this country and the number of employees in small business. They have increased by 73 per cent. Yet the government tries to argue that there is a massive problem in small business and that the way to create more employment is to make it easier to sack people. Frankly, it is nonsense. This government also tries to claim credit for the growth of employment in small business. If you are going to claim the credit, you cannot then turn around and say there is a huge problem and the only way you can fix it is by making it easier to sack workers.

Clearly, employment in small business is related particularly to activity within the consumer market, and that is where you will drive employment growth. That was an objective of the previous Labor government. This government has got some of these things right, such as recognising the need to
grow employment in the small business sector, but it is not going to grow it by taking the axe to the workers in that sector—by belting the battlers.

This bill is supposed to be about what is fair when workers are dismissed. I want to concentrate on what is unfair. I will tell you what is unfair: it is unfair that the chairman of AMP walks away with a payout of $1.6 million after presiding over a loss of $900 million. That is what has happened under this government. We have seen a situation where one of Australia’s major financial institutions, whose decisions affect the lives and the savings of hundreds of thousands of Australians, has recorded a $900 million loss in the last year alone. It is time for the chairman to get out, so he gets out with a payout of $1.6 million. And he is just the chairman—Mr Stan Wallis.

Let us have a look at what has happened with the chief executive of this company, this great Australian institution. The previous chief executive officer, Mr Paul Batchelor, is still trying to negotiate for himself a payout of up to $20 million—yet this is at the conclusion of his period of employment, when he was clearly forced to go because the company had accumulated losses of over $5 billion. Its share market value, according to commentators, has dropped by around $14 billion, maybe more. This is the sorry record of what has happened in AMP, one of Australia’s great corporations.

What we see is these corporate high fliers either being forced out or falling on their swords, getting out and taking with them huge payments, incredible payments. The mind of the average person in the community can only boggle at the sorts of figures that these people are being paid. As I said, Stan Wallis himself was paid $1.6 million, and that is on top of his annual salary of $430,000. Paul Batchelor, as I said, wants $20 million. The chief executive before Paul Batchelor—the man who was forced out to make way for Paul Batchelor, who was going to fix up the problems—was George Trumbull. He walked away with $13 million. That is unfair. In my view, it is unfair even if the company does well; but it is certainly unfair when the company has gone through the floor in terms of its operating position.

Let us look at the other ones quickly. Paul Anderson from BHP Billiton got a payout of $10 million, and look at the disasters that have befallen that company, given some of its overseas investments. Similarly, John Fletcher of Coles Brambles walked away with a $7.7 million payout. That is not a bad payout for leaving a company. And I have not even got time to speak about those involved in the HIH collapse, people such as Ray Williams, Rodney Adler and others.

This government talks about fairness. They are the issues that Australians are concerned about. That is unfair. It is unfair when workers in small businesses are being set up to be screwed by this government by having their legitimate rights under the law taken away from them if they are unfairly dismissed while at the same time the government stands idly by and mouths a few mealy words about how concerned it is about what is happening in the corporate sector. Let’s get real. This government should start to address the real issues that are concerning Australians—concerning the battlers, the people working in small business and in other businesses—who are totally outraged at what is happening in the corporate sector in this country. The government should stop belting the battlers and start addressing what is happening in terms of these huge payouts, because that is what Australians are really concerned about. That is what is unfair, and this legislation is unfair as well.

Senator NETTLE (New South Wales) (12.50 p.m.)—This is the second time around for the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2], and it is in fact the 21st attempt by the coalition government to strip small business employees of the right to seek reinstatement or compensation in the Australian Industrial Relations Commission for being unfairly sacked from their jobs. This is the government that promised that no worker would be worse off under the coalition’s industrial relations policies and then proceeded to gut industrial awards through the Orwellian named ‘award simplification process’ upon gaining office in 1996.
As others have mentioned, it should not surprise us then that this bill that targets vulnerable small business workers is named the ‘fair dismissal’ bill. As others have said, this bill is anything but fair. It tries to create a two-tiered system of employment rights and, in doing so, offends the fundamental legal principle that all people have the right to equal treatment before the law. What the Minister for Employment and Workplace Relations is attempting to construct with this bill is a form of industrial apartheid. He wants to set up a system whereby the rights of people at work are defined by the arbitrary factor of the number of people that they work with. There is nothing rational about such a proposal, and the cut-off seems entirely arbitrary. Earlier attempts to remove this right contained a 15-employee limit, and now the magical figure has gone to 20.

Arguing in support of its earlier attempts to make this change, the government claimed that the current entitlement to seek reinstatement or compensation was costing jobs. The government told us that as many as 50,000 jobs would be created if only employers had more freedom to sack people. The government provided no evidence to support this claim, and departmental officials could offer no evidence to support it when making a submission to the Senate inquiry into the bill last year. They were still exploring the link. The government’s own expert witness in a Federal Court case dealing with an unfair dismissal case in late 2001 revealed that the claim was baseless; yet in the Australian newspaper today the Prime Minister continues to support this argument.

Employment growth in the 1990s was strongest when unfair dismissal laws were at their most protective. We know that the state of the economy and business confidence are major factors that drive employment growth. Now the government is seeking to rely on a report it commissioned from the University of Melbourne, released last October. The report expresses concern for the plight of young unemployed and long-term unemployed and people with minimal educational qualifications. But this bill is not directed at protecting these people or improving their circumstances. This bill delivers more of the unfairness that we have come to expect from the coalition government—the same government that has diverted vast amounts of public moneys to propping up privileged schools at the cost of public education, and the same government that has made it more difficult to qualify for Austudy, has increased HECS fees and has allowed wealthy students to buy their way into universities. All this has been done at the expense of those not blessed with wealth and privilege. This is more unfairness from the government that slashed the wage subsidy programs that offered long-term unemployed people the opportunity of a job and that is now content to force them to work for the dole with no real prospect of employment. This is the same government that slashed one-third of the budget of the National Occupational Health and Safety Commission upon attaining power in 1996, demonstrating its complete lack of interest in ensuring healthy and safe workplaces.

The University of Melbourne report argues that the current unfair dismissal laws have had unintended consequences for some workers and that they discourage employers from employing people at the low-wage end of the labour market. This, the report says, means workers looking for jobs are treated less favourably than workers in employment. Even if we accept this argument—and we do not; workers are already subject to probationary periods on hiring, which provide time to monitor work performance and assess suitability—to assert that this is a basis for abolishing protection that stops workers being dismissed without good cause or the opportunity to discuss their performance is morally wrong. It suggests that we should choose between disadvantaging one group of people or another. This is unacceptable to the Australian Greens.

The consequence of this bill becoming law is that employees of small businesses would have no protection from arbitrary sacking. This would further erode the relatively low level of worker protection in Australia. An OECD report titled Innovations in labour market policies: the Australian way, published in 2001, found that Australia scored at the low end of the scale on dis-
This government has not taken the issue of stubbornly high unemployment seriously for the entire time it has been in office. Official unemployment remains stuck at around six per cent, but this figure masks the true extent of joblessness. Many people who have part-time work want more hours, and almost one million more people are discouraged job seekers. The work of people such as the Australian National University’s Professor Bob Gregory, who has mapped the geography of unemployment, has revealed the blighting of entire communities with high levels of joblessness.

The government’s response to this serious problem, which causes great social dislocation and individual distress, is to further weaken the protective mechanisms that mediate the relations between employer and employee. The government describes this as deregulating the industrial relations system—a rather benign-sounding process. The description belies the intention and the outcome, which is to give more power to the powerful at the expense of working people.

The Minister for Employment and Workplace Relations, in speaking to this bill last October, said the government trusted that employers and employees could arrange their working relationship without the need for ‘excessive regulation’. The Australian Greens agree that most people will seek to work cooperatively to establish the best working arrangements for themselves. But laws such as unfair dismissal laws are not made for the majority of employers and employees. They are designed to protect the vulnerable—those with little or no bargaining power in the industrial relations arena.

It is not enough, as the minister has argued, simply to have a job. Workers have the right to a safe workplace. They have the right to work with dignity and a right to fair pay and reasonable working conditions; and they have the right not to be sacked from that job without good cause and without the opportunity to discuss their work performance. That is what the unfair dismissal laws do—they require discussion, negotiation and fairness. What could possibly be unreasonable about that? The minister has failed to make a case to exempt small businesses. It is not the
characteristic of an employer that matters in this circumstance. What matters is ensuring that all workers have the same level of protection. There may be a case for improving some of the processes and procedures governing current unfair dismissal laws, and we will listen to Labor’s arguments in support of their amendments at the committee stage of this bill, but there is no case for denying some employees the protection afforded to others on the basis of an arbitrary figure of the size of an enterprise’s work force.

Just why the government has decided to reintroduce this legislation is unclear. Thankfully, it has no hope of securing Senate support. The government has also introduced another bill—the Workplace Relations Amendment (Termination of Employment) Bill 2002—which is currently before a Senate committee for inquiry and which seeks to extend the federal unfair dismissal system from around 27 per cent to 85 per cent of people working in small businesses. That bill contains changes to the existing unfair dismissal laws which are not as extensive as this bill before us but which, nevertheless, would disadvantage many workers.

We suspect that the government’s real intention in bringing forward this bill now has more to do with trying to feed speculation that the coalition is laying the ground for a double dissolution election. This is the first bill on the Notice Paper for the Senate, at the start of the year’s parliamentary proceedings, and it is one of the three bills that the government has listed for this week that have the potential to become a trigger for a double dissolution election. We have been presented with no evidence to justify this bill and the Australian Greens certainly will not be pressured into supporting legislation that under-mines the rights and the protection of working people.

Senator JACINTA COLLINS (Victoria) (1.02 p.m.)—It was with some hesitation that I chose to speak on the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] today. On a rough count I think it is probably about eight times that the Senate has dealt with this particular piece of legislation. Senator Nettle is quite correct: I think there have been at least three occasions on which this has been a double dissolution trigger that has been sitting in the back pocket of, or was the baton used by, most of the time, former Minister Reith.

What provoked me today to visit some of issues relevant to this bill was an article by Dennis Shanahan with respect to comments made by the Governor of the Reserve Bank of Australia to cabinet. Obviously, I can only rely upon Dennis Shanahan’s report on this issue because, as the library has assured me today, cabinet papers are not available to us. But the government is using the Reserve Bank governor’s commendation of flexibility in the labour market and labour market reform as the basis of making the point that further labour market reform is desirable. On reading this, and then reading that this bill was on yet again today and being lined up as a double dissolution trigger, I thought it was relevant for us to reflect on what this bill really is about and about how it does not in any sense attract the title of genuine labour market reform.

This bill is not genuine labour market reform. It will do nothing about unemployment. I have tired in the past of challenging the claims at the time of former Minister Reith and then Minister Abbott and now it appears, according to this article, of the Prime Minister that unemployment will be ameliorated by this bill. There is no basis for it. The courts have highlighted that there is no basis for that claim and, from my recollection, even the industry—the small business lobbyists—accept that this bill is a furphy. In fact, I can recall that on the last occasion I was dealing with this bill in a Senate committee Mr Bastian, from COSBOA, was basically pleading for the government to get genuine on this issue. Stop just trotting out this bill time and time again. It is not about genuine reform in relation to unfair dismissal; it is about rhetoric and ideology and it is doing nothing to ease the pain that small business claims it is feeling as a consequence of red tape.

So this morning, when I saw Dennis Shanahan covering this issue and commenting on this bill under the guise of genuine labour market reform, I decided it was time to perhaps list a few areas where the government...
could be more genuine about such matters. If the government is going to be genuine about labour market reform, let us see the current minister, Minister Abbott, deal with schedule 1A of the Workplace Relations Act. Let us see him stop the two classes that exist in relation to workers in the federal jurisdiction and do something about the changes that Jeff Kennett introduced in Victoria that were probably a significant cause for his later loss in Victoria because of their establishment of two classes of workers. Let us give industry what it wants in terms of the federal jurisdiction. Let us introduce national uniformity.

This challenge is with the government at the moment. Minister Abbott has been issued with the challenge: ‘Do something to fix the double standards regarding schedule 1A workers or the Victorian government itself will act to rectify the problem.’ It is an enormous challenge for the minister. He has the opportunity to establish appropriate standards of employment for Victorian workers in the federal jurisdiction or to go back to having to deal with these issues across jurisdictions. This minister has the opportunity to demonstrate that the government is genuine about labour market reform and to do something genuine about ensuring that appropriate standards apply or he can prove true the comments made by the Victorian Minister for Industrial Relations, Rob Hulls. Last week Mr Hulls accused Mr Abbott—perhaps a tad cruelly but I think the phrase captures the essence of the challenge to Minister Abbott—of being a lazy ideologue. That is the point about this debate. Mr Abbott can just continue on the path of the discredited labour market program—I think ‘reforms’ would be a poor word to use here—of Minister Reith or he can seriously grapple with some of the important issues in the Australian labour market.

Remedying the gross inequities that were introduced in Victoria by Jeff Kennett—and, to some extent, the federal government was complicit in that for setting up schedule 1A and allowing this double standard to occur—is one thing that Minister Abbott could do. He could do that and satisfy genuine business interests in creating a nationally uniform system, or we could add further complexities as the Victorian government acts to ensure that appropriate standards apply for Victorian workers. Minister Abbott can demonstrate that, like Minister Reith, his agenda is really that of the H.R. Nicholls Society, which would like to see fewer than five minimum standards relevant for workers whether in a state or a federal jurisdiction, or he can endorse the system that was introduced by this government, applying 20 allowable matters and a variety of other standards for workers in the federal jurisdiction, and extend that to the masses of Victorian workers who were forced by Jeff Kennett into the federal jurisdiction under this double standard.

This is not the only example of genuine labour market reform I can come up with; there are probably many more. The level of casualisation in the Australian workforce is another example. In part, some of the changes introduced by this government in 1997 have contributed to the problem of the terms and conditions of employment for part-time and casual employees. The government now needs to take stock of the level of casualisation that has occurred across Australian industry and ensure that access to part-time and casual employment is on a just and fair basis, and also on the basis that Australian families can earn a living wage and manage their lifestyles accordingly. It is not very easy if you are a casual employee—or perhaps part of a family with two casual employees, as is often the case—to get a bank loan to purchase a family home. You simply cannot get that bank loan. Very little thought has been given by this government to many of these issues, and they are something that the minister should grapple with very seriously. What is really happening? Unfortunately, Minister Abbott is demonstrating the lazy ideologue tag that Minister Hulls attached to him in a whole series of other issues foreshadowed in this Dennis Shanahan article.

We are talking about further attacks on trade union organisation. We are talking about, as Senator Nettle said, further ways of trying to shift power away from workers or away from collective organisation and into the hands of management. That is, essen-
tially, the H.R. Nicholls Society agenda. It is an agenda that was challenged very strongly in state elections around the nation. It is an agenda that has failed to attract any community support. In terms of the unfair dismissal issue, apart from being a technical double dissolution trigger, I think the government needs to think carefully about whether the electorate really does see this as constituting general labour market reform. There is a mixture of polls that show a variety of different views, and I think you can pretty much pluck out anything to suit your purpose at the time from the current polls on this issue, but if you ask people whether fixing the unfair dismissal laws is actually going to genuinely do something about unemployment or genuinely introduce labour market flexibility I think you will discover that most informed people understand that that is not the case. It is a cynical, political objective first introduced into this place by the discredited Mr Reith. Unfortunately, Mr Abbott is now just following that path.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.12 p.m.)—The Senate is considering the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]. This issue is one that the coalition has been committed to for many years and has pursued vigorously during the life of this government, which has just passed the seven-year mark. It was prosecuted by one of Australia’s most successful workplace relations ministers, and that of course was Mr Peter Reith. He was a minister who successfully introduced more workplace reform through this parliament than any other workplace relations minister. He was the minister who took on the very hard job of reforming Australia’s waterfront—

Senator Eggleston—Hear, hear! He did it well.

Senator IAN CAMPBELL—and succeeded. For those people who come from Western Australia, like me and Senator Eggleston, the success of Peter Reith has seen significant results. The port of Fremantle has recorded record after record in turnaround times and crane rates as a result of those reforms. We have seen roughly double the number of container movements across ports throughout Western Australia, not just at that great port of Fremantle but also at the regional ports as far north as Broome and Derby and as far south as Esperance.

The Labor Party did not like Peter Reith because he was so successful. In his success he not only achieved benefits for the nation and our trading competitiveness but also, by doing so, provided benefits for those people who run enterprises which rely on trading across borders—and this is just waterfront reform, not to mention all the other reforms. One of the great beneficiaries were the workers themselves. People who work on the waterfront in Australia are doing better now than they have ever done before because their pay is related explicitly to productivity. Many of those hard-working waterfront workers receive significant benefits from that improved productivity. The Labor Party people, who are the ones who have an ideological obsession with maintaining their grip over the trade union movement and over workplace relations, do not want to see the power of unions diminished one iota.

Labor’s failure here, and their failure to stand up for the rights of workers, is that they would rather protect their own political base by taking a tight control over the organised industrial relations sector in Australia. Even though it is diminishing—year on year, fewer and fewer people are joining unions—they would rather look after the people who are members of unions and have jobs and that, of course, is at the expense of those people who are not in unions and do not have jobs. This brings us to the core of this debate. I heard Senator Forshaw in his contribution taking the low road, the low-brow position, saying, ‘How can you increase employment by making it easier to sack people?’ That is a nice, glib line, but the reality is that every small businessperson in this country and every person in this country who has ever employed anyone knows that what Senator Forshaw is saying is false and wrong.

The reality for an employer, be it a small businessperson or any other sized enterprise, is that, when you have an increase in the demand for your goods or services and you
need to expand your work force or you need to expand your capacity, you have a couple of choices to make. One of those choices can be to expand your work force. But, if you have just been through the experience, or have seen another business going through the experience, of being dragged through the unfair dismissal process through the courts and the tribunals, and if you have seen someone spending tens of thousands of dollars on the processes and being tied up in courts for hundreds of days at a time, you become a little bit careful about adding another person to your payroll. That is the practical reality workplace by workplace.

Employers in Australia, and particularly employers in small business who do not have on hand the resources of a big legal department and a big law firm with an industrial relations practice within the law firm, are particularly cautious about employing new people—and that is the reality for small businesses.

If Senator Forshaw dares—he would not dare because he would be laughed out of every small business—to go and talk to small businesses about why they continue to oppose unfair dismissal law reform, he would be lucky to find a single small businessman or businesswoman anywhere in Australia who would believe any of the codswallop he seeks to develop as an argument in this place. He says, ‘Since Mr Hawke brought in this wonderful reform, all these small businesses have been established and all these extra people have been employed in small businesses,’ as if it has all happened in spite of the unfair dismissal laws or happened because we have had them. The reality is that it has in fact happened in spite of the unfair dismissal law regime. The question we ask—and you can go to different surveys and get the answer—is: what would happen to small business employment if we could get rid of these requirements which overburden small business and which ensure that small businesspeople do not employ the numbers of people they would otherwise employ?

This government has seen a huge boost in employment in the small business sector and a huge growth in the number of small businesses for a number reasons. We reduced the debt—over $96 billion worth of debt—that this country inherited from the Hawke and Keating governments. We said to small businesses, ‘We agree with you that you can’t run a small business when you’re paying mortgage interest rates of over 17 per cent, overdraft rates of over 20 per cent and, in some cases, loan repayment rates in excess of 30 per cent.’ I quoted ‘in excess of 30 per cent’ because a number of people who were in business at the time complained to me that a couple of banks were in fact charging them effective interest rates of 31 per cent. It is pretty hard to make a profit of 10 per cent, 15 per cent or 20 per cent when interest rates are so high.

In fact, if you read Paul Keating’s biography by John Edwards, you find that Paul Keating himself in his early days in parliament said that, once interest rates got over 10 per cent, small business was unprofitable. Paul Keating made that assumption. We have been reading about this economic guru in the Financial Review over the last few days and about what marvellous economic reformers Mr Keating and Mr Hawke were. The articles so far have ignored the fact that those gentlemen were sitting around the cabinet table when they got interest rates up to over 20 per cent for small businesses and drove a million workers onto the streets; a million breadwinners were shoved onto the streets by these incredible social and economic reformers. When you hear Labor talking about the workers and saying, ‘We care about the workers,’ never forget that, the last time they had a chance to sit around a cabinet table and put together an economic and workplace relations policy, the result of that policy was to send a million people onto the streets and onto the dole. You wonder what the impact was on those breadwinners’ children. I get a bit frustrated when I see Senator Forshaw and Senator Jacinta Collins getting up in this place and feigning some sort of support for working-class Australians, when it is in fact the Liberal Party and the National Party—the coalition government—through our continual attempts to get sense into our unfair dismissal regime, that are sticking up for those in the workplace who are trying to establish a career, trying to establish a job or, if they are unemployed, trying to get a job.
The fact of the matter is that the unfair dismissal laws that we are trying to reform militate against the opportunities and the chances of those who are most disadvantaged in the labour market. I would like to quote from, I think, a speech to the H.R. Nicholls Society, an organisation that has done an enormous amount to progress reform in Australia. It is an organisation that, of course, the Labor Party cannot stand the name or the sight of, but it has done an enormous amount to assist with reform in Australia. I quote from an article entitled ‘The unemployment consequences of unfair dismissal laws’ by Jason Soon. He says:

By making dismissals more costly in terms of both time and money, unfair dismissal laws reduce the demand for labour. The higher the costs of firing, the more akin the act of hiring a worker becomes to making an irreversible investment (such as buying a new machine), and consequently the more cautious the employer, particularly the small business employer, becomes in making this decision.

Mr Soon goes on to say:

This has particularly severe impacts on the long term unemployed.

This is the point I am seeking to make. It is the most at risk in our society who suffer the most as a result of these laws that we have now on 21 occasions sought to reform. Mr Soon’s article continues:

Workers who have been out of the labour market for a long time may turn out not to have the necessary skills for performing the job they were hired for. Thus there is a higher probability that they may later have to be dismissed than is the case with other job-seekers. Given the added risks introduced by the unfair dismissal laws, employers might decide it is simply not worth the trouble and avoid long-term unemployed job-seekers altogether. A similar argument might be made for young job-seekers and workers from socially disadvantaged minority groups, especially those without further education.

Mr Soon makes a very important point. These laws discriminate against the long-term unemployed—the people for whom we should put in the most effort to try to get them back into the work force and to build their self-esteem. They are the least likely to get jobs in the first place and are less likely to do so because of the unfair dismissal laws that this government is seeking to reform. I think Mr Soon makes the fair point that the same issue would affect younger job seekers and those from socially disadvantaged minority groups. It goes back to the point I made at the beginning. Who are the Labor Party seeking to protect here? They are protecting their mates in the unions and unionised workers, that diminishing base for the Labor Party, which is diminishing at about the rate that their current leader’s popularity is diminishing.

The coalition delivers, for small business and for the nation, low interest rates, industrial relations reform, telecommunications reforms to get the cost of telecommunications down, and financial system reforms to give more access to banking facilities, but Senator Forshaw says: ‘You don’t need to reform unfair dismissal laws. All of your other policies are working.’ He actually said today, ‘I give you credit for some of your policies.’ He says: ‘Don’t touch this area. It is out of bounds because the unions don’t like it. We don’t want disadvantaged people to get a job. We don’t want them to have a chance.’ Every small businessman in the country is saying, ‘We don’t like these laws.’ Every survey that is done by the Yellow Pages or anyone else says this is an issue for us, but Labor says no because their union mates have said: ‘You can’t touch it. You can’t even negotiate on it.’

I will conclude on this point: this government is committed to ensuring that Australia has an economy that will drive growth in this country, which will provide employment opportunities in Australia. That will put us in a position to have a strong economy providing security for all Australians—not leaving behind the disadvantaged, the young, those from a socially disadvantaged background or those whose English is not very good, but actually giving all of those people the best opportunity they can get. We are not going to give up in that respect. We have been trying to reform the economy against the will of an opposition that is stuck in a 1950s ideological trench. They say no to tax reform, no to fiscal reform, no to industrial relations reform, no to social reform. They do not know what they stand for on the other side except
that they oppose whatever this government puts forward.

They may ask themselves why they are so unpopular out there across the community, even with old Labor voters, even with long-time Labor voters. These people are throwing their hands in the air and saying, ‘What does Labor stand for these days?’ No wonder they are turning across to Senator Brown’s party. They might even turn back to Senator Murray’s party. Let us hope. But they are turning away from Labor because they do not stand for anything. They are just a trenchant oppositionist party—negative, carping, whining and whingeing. We are here to create opportunities for young people, disadvantaged people and long-term unemployed, and Labor says: ‘No, you can wait. You’ve got no hope. We are not prepared to stand up for you because you are not part of our unionised industrial network. You do not sit on our preselection, so we do not care about you.’ That is Labor’s attitude. It is a disgraceful attitude. You should take this opportunity to reform yourselves and help us reform the labour market in Australia to give more people a chance to get a job. It is not too late. You have had 21 opportunities. Let us hope that we do not have to go through this charade of a debate again.

I genuinely hope that the Australian Democrats will come to the party here. Senator Murray in particular knows, from being in small business—and he would know enough people in small business to know—that this is a genuine and serious concern for small businesspeople. A contribution that the Democrats could make to making themselves relevant again would be to do what they did under Senator Meg Lees’s leadership and have the guts to stand up for solid economic reform. This is an opportunity for them to begin to do that again. If Labor want to throw young, socially disadvantaged long-term unemployed people on the scrap heap and let them rot, then let them suffer the consequences, but the Democrats do not need to do that. I genuinely thank all senators for their contributions to this debate and wish this bill a safe passage through the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (1.29 p.m.)—I will move first to some general questions. Parliamentary Secretary, in 1996 the coalition made an election campaign promise that all workers would be covered for unfair dismissals. Did you disagree with that promise at the time or has there been a reason for you to change your attitude since then?

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that the bill stand as printed.

Senator MURRAY (Western Australia) (1.30 p.m.)—I have not had a response to that question, so I will add another one to it. Parliamentary Secretary, are you aware that the Democrats negotiated the 1996 Workplace Relations Act with the coalition? Part of that agreement was that all workers would be covered by unfair dismissal laws. Is the minister aware that this is the seventh time the coalition have breached their agreement with the Democrats, and do you regard that as a good example to set in terms of integrity?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.31 p.m.)—The coalition have taken this policy to the electorate and were successfully re-elected. The coalition have maintained our commitment to creating and delivering policy that delivers employment opportunities for all people. We are particularly focused on getting unemployment down below six per cent. On very good advice, the government know that rigidities within the labour market in Australia still need to be reduced. It is still an area of reform in which there is a lot of unfinished business where we know that reform will deliver better employment outcomes.

I reiterate that parties that stand in the way of that reform and say, ‘We don’t even want to give it a try,’ stand in the way of people who do not have jobs at the moment getting jobs. I think Senator Murray knows that. I think he knows that there are small business people out there who, because of unfair dismissal laws, defer decisions on employing
people, contract in employment services in times of peak demand when in fact they could bring new people into their firm and develop further demand by using the skills of those people, or employ more mechanisation and more computerisation to achieve that. This is a measure which is designed to encourage more full-time employment and reduce the barriers to employing people, particularly the long-term unemployed and people from socially disadvantaged backgrounds.

Senator MURRAY (Western Australia) (1.33 p.m.)—The serious policy proposition put to us is that harm done to the rights of some is justified by the greater good that would result from the creation of employment for many. If you are going to make that proposition you then have to test it. Parliamentary Secretary, for the year ended November 1996 there were 14,707 federal unfair dismissal cases. Following improvements in these laws that were negotiated between the coalition and the Democrats, and despite the addition of Victoria to the federal jurisdiction which would lift the number of cases, that figure of 14,707 dropped to 7,897 in the following year—a reduction of 46 per cent. If the proposition put by the Prime Minister, then Minister Reith, Minister Abbott and many others is that well over 50,000 jobs would be created by the loss of these rights, could the minister indicate the effect of dropping federal unfair dismissal cases from 14,707 applications in November 1996 by 46 per cent by the end of the following year.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.35 p.m.)—There are two points that need to be made. One is that the changes in 1996, which were supported by the Australian Democrats, had the result of reducing significantly—Senator Murray has already quoted the figures—the number of cases under the federal jurisdiction, but there has been a significant increase in the number of cases before state jurisdictions. It seems to me that Senator Murray wants to make the point that, as there has been a significant improvement as a result of the 1996 law, why would you want to make any more improvements? Yes, the 1996 laws made significant improvements, Australia has benefited significantly economically from them, there are many more enterprises—and successful enterprises—in Australia as a result of the 1996 laws and many successful small businesses have flourished as a result of that law reform and liberalisation of workplace relations, but Australia needs more. There are significant disincentives to hiring new people, particularly by small businesses, as a result of the law as it stands at the moment, and we need to change it.

That date 1996 was a long time ago, and if Australia is to be successful she must keep her eye on being internationally competitive wherever she can be. We should bring about whatever change we can to make it easier for small business to employ people and make it easier for businesses to compete successfully internationally and grow their businesses, thereby allowing them to employ more people. We should not say: ‘You fixed that in 1996; she’ll be right. We don’t have to do any more there. We’ll go and find something else to do.’ The reality is that reform, and economic reform in particular, which is driving the economy and making it more efficient and more internationally competitive—ensuring opportunities for all Australians to be part of that growth and prosperity—is a job that did not stop with the passage of that law in 1996. It continues, and it will continue if we are successful today in passing this legislation through the parliament.

Senator MURRAY (Western Australia) (1.38 p.m.)—My point was that the central proposition of the government’s case is that the exemption of small business from federal unfair dismissal legislation would result in the creation of over 50,000 jobs. If that proposition is true, you are advocating that the destruction of rights for a minority would result in a greater public good for the majority. Therefore, if you are going to take away people’s rights, you have to test the proposition. If the government does not know how many jobs resulted, because it was not looking at the figures, from a reduction of 46 per cent in the number of unfair dismissal cases, perhaps we will try to bring things closer to a
time when the government might have had a look. For the 12 months ended November 2001, the total number of federal unfair dismissal applications for all businesses, not just small business, was 8,188. As a result of the amendments determined between the coalition and the Democrats in September 2001, there were considerable changes to the law that resulted in savings in terms of both the process and the time effects. Consequently, for the 12 months ended November 2002, the number of federal unfair dismissal applications dropped from 8,188 to 7,227—a reduction of 12 per cent, or nearly a thousand. My question is: how many jobs resulted from that?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.40 p.m.)—It may in fact be the case that the changes in those figures and applications were entirely due to a decision of this parliament, not to any other cause in the economy. It may also be the case that, if we were to further liberalise the unfair dismissal laws in the way we are seeking to do, you would increase employment by 50,000. As Senator Murray would know, it would be very hard to measure that. You may well find—

Senator Sherry—You make a claim, though.

Senator IAN CAMPBELL—No. Senator Murray in another debate, one that is dear to my heart—and he will probably have a wry smile when I mention it—said that on balance, at that time, he did not want to reform Australia’s takeover laws in the way that the government proposed back in 1999. To his credit, he said, ‘I’d like to look at the matter of takeovers reform again once the effect on takeover activity of the government’s reforms to tax relief on scrip for scrip offers has been assessed.’ The trouble with that—and I welcome the fact that at the time Senator Murray left the door open for takeovers reform—is that a series of economic events can affect takeover activity, and tax relief on scrip for scrip bids was one part of that. Equally, employment activity and unfair dismissal cases lodged can be affected by a range of different things. I think that is the closest answer I can provide to Senator Murray’s question.

We strongly believe that, if you reduce the disincentives to small business employers to employ new staff, they will do so. It may be the fact—and I stress that this is a highly hypothetical case—that you could pass this legislation today and that there may be an economic downturn today. Senator Murray could come back next year and say, ‘Look, we gave you the reform, and employment in the small business sector went down.’ The opposite may be true: you might have a big surge in employment. The US economy may pick up or the Japanese economy may pick up—a year from today there may be a massive surge. I make Senator Murray this absolute promise: if you pass the legislation today and we have an upsurge in activity, and employment in the small business sector grows by 50,000—that is, the Australian growth rate surges—I will not give all the credit to unfair dismissal law reform.

I make that promise because there are lot of factors. You cannot just say, ‘Let’s get fiscal policy right and keep interest rates down,’ or get transport reform or telecommunications reform—all of these things make a difference. Senator Murray knows that better than most because he is a rare exception on that side of the aisle, to use an American term: he is one of the rare people who has actually run a business. He has had to find the money in the bank or in the overdraft to pay the wages bill at the end of the month; he knows what it takes to run a small business, or a medium sized business in his case. He knows that there is a whole load of factors that will affect the success of small business. So the government are committed to getting all of the factors as conducive to doing small business, any business, as we can. That means a good fiscal policy: keeping interest rates down, not borrowing more than we spend, making sure that tax policy works, making sure that the tax burden on small business is not too high, reforming telecommunications so that there is more choice in suppliers and so driving down those costs, and ensuring more competition among Internet suppliers so that businesses can get good broadband access at low
costs—making sure there is more competition in a range of areas, even in the financial sector. Whereas businesses used to be able to choose from four or five banks, they can now choose from hundreds and get competition. So we have a whole range of policies, and probably many that I have not mentioned today—workplace relations is but one of them.

We believe very strongly that reform of the unfair dismissal legislation in the way that we are proposing today will be an incremental improvement in that environment. We believe that, if you reduce the disincentives to employers from employing new staff, they will be more likely to employ a new person when demand for their goods and services goes up. That is the proposition we put. It is as simple as that. Senator Murray claims that it would disadvantage other people. Senator Murray would know from his own experience that there are people in employment who do not work out. Probably in this very building all senators, if they were frank about it, would say they have employed people on their own staff who have just not worked out. They were not cut out for the job. They were not cut out to serve in a liquor store or they were not cut out to serve in a senator’s office. The best thing you can do for those people is go through a process of assisting them to find a more appropriate job. The worst thing you can do is allow those people to hide behind a legal structure and system which means they can continue being employed in a circumstance which is not suited to their personal skills and attributes. Anyone who has been in that employment relationship knows that to be the case.

We are saying that we need a regime which provides opportunities and encourages more people to have a job. The current regime puts in place disincentives to what we would all want. Senator Murray is grappling with the balance between the diminution of the legal rights of the individuals who are in employment and the greater benefit of the whole community. It is a fair thing to try to balance. We believe that it can be a win-win situation. We do not see it as purely a win-lose situation.

Senator MURRAY (Western Australia) (1.46 p.m.)—Thank you, Parliamentary Secretary. You are quite right: there are multiple effects on business creation. The difficulty for us has been, as you have summarised, trying to see whether there is empirical evidence as opposed to commonsense statements that reducing disincentives to employ will result in more employment. The minister may be aware that there was an opportunity in Queensland to identify an experiment of just this kind—where, during a period of the coalition’s rule, unfair dismissal exemption was applied to small business for a period long enough to identify the consequences. Is the parliamentary secretary aware that the Queensland government put a submission to the Senate which said that there was no job creation as a result? That is the only time that proposition has been tested in a real life situation. I have no reason to believe that they did not tell the truth in Queensland.

The other point I make to the parliamentary secretary is that every survey has indicated a great deal of ignorance about these laws, which seems to imply that many people are not affected by them because they just make up a view concerning this situation. Is the parliamentary secretary aware that in the Yellow Pages business index survey in July 2002, of the businesses surveyed in the Northern Territory there were some very strange answers? In the Northern Territory there should never have been confusion about which jurisdiction unfair dismissals fall under, because in the Northern Territory unfair dismissals have always fallen under federal law. This was the result of the figures, and I will round the figures out. In the small businesses survey of the Northern Territory 10 per cent said they were mainly covered by Commonwealth law, 15 per cent said they were mainly covered by state law, 48 per cent thought they were covered equally by state and Commonwealth law and 26 per cent did not know. Frankly, when people are really incensed and affected by law, they know damn well where it is coming from.

In another area in which I have been at the centre of controversy, the GST, if you went to the same businesses and said, ‘Is this a state or a Commonwealth law?’ I bet that 100
per cent would say it is a Commonwealth law and they would know about the matters intimately because most of them produce a BAS statement every quarter. The point I make is that from a federal perspective this law seeks to withdraw the rights of a little more than 2,000 employees—about one half of those disputes are resolved in favour of employers—on the proposition that jobs are created and that impediments which feature large in the mind of small business will be removed. My understanding is that those propositions do not withstand rigorous testing.

I am the first to admit that every business in this country, large, small and medium, wants to get rid of unfair dismissal laws—of course they do. They want to get rid of a lot of other laws as well. As someone who was a chair of a leading committee and a leading business organisation once said to me: ‘I want to be able to hire and fire at will. Whether my preference is to hire somebody who is blond and blue eyed and I hire and fire them on that basis, that is how it should be.’ That person did not realise that the day they said that to me they stiffened my spine against that kind of discriminatory behaviour, because it is awful. I would be the first to admit that, as a employer who has had to deal with thousands of employees, the less law you have restraining you, the easier it is to run your business. But the fact is that these laws are designed for rogue employers, not for good employers. The Democrats recognised, with the coalition, that the laws needed reforming and we really have paid attention to the reforming process in time and cost and so on. I see in front of us more amendments from the Labor Party, who have now joined that particular cause and will seek to tighten it up. The question is: at what stage do you finish the process of reform to get rid of the vexatious and the manipulative and accept that there is a legitimate minority who need some kind of protection from the worst employer? That is why I continually test the proposition against the number of unfair dismissals that there are and the assertion surrounding it which says that jobs can be created.

Parliamentary Secretary, you and I are singularly blessed among the senators by being from Western Australia. That is the first big blessing. The second big blessing is that, in Western Australia, the maths is mostly made very easy by the fact that Western Australia is around 10 per cent of Australia, so that makes it simple to work out things. In Western Australia, for the twelve months ended November 2002, there were fewer than 300 federal unfair dismissal cases, of which fewer than 100 involved small business. The maths says this: if the Prime Minister, former Minister Reith, Minister Abbott and many others say that over 50,000 jobs could be created, they are presumably saying that 5,000 jobs could be created in WA. Perhaps that is not true; perhaps that is not the way they produce their figures. Using WA as an example, getting rid of fewer than 100 federal unfair dismissal applications in WA will create 5,000 jobs. I just do not believe it. Perhaps the minister would tell me whether he believes removing, say, 80 federal unfair dismissal applications for small business in WA would create 5,000 jobs. I do not think so. By the way, I have the figures and the graph available on WA, if anybody wants to see them.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.54 p.m.)—The first question that Senator Murray asked was in relation to Queensland. I do not want to misrepresent this, but apparently the Queensland government submission was referred to in an ACTU submission. There was a discussion paper released by the Queensland government in response to a series of discussion papers which were issued by the former minister, Mr Reith. The point that needs to be made in relation to that is that the trend in Queensland, concerning employment growth by larger businesses vis-a-vis smaller businesses, was the same for both Queensland and Australia as a whole. For Australia as a whole during that period, 37.3 per cent of employment growth occurred in small businesses, and a similar amount—just slightly below that, at 35.3 per cent, by way of proportion—was observed for Queensland. Over this period—this is a point worth making—the rate of small business employment
growth in Queensland was higher than for Australia as a whole. Small business employment grew by 11.2 per cent in Queensland compared with 8.1 per cent for Australia as a whole. So it puts a different complexion on the Queensland government report.

In relation to the example and the mathematics that Senator Murray applied to Western Australia, you will not find 5,000 jobs in employment growth just from 100 companies. You have 100 companies one year, 100 companies another year and roughly 100 were found against—correct me, if this is wrong, but I think you said that 300 companies went before the courts, Senator Murray.

Senator MURRAY (Western Australia) (1.56 p.m.)—Just to clarify for you, the number of federal—you have to remember it is federal—unfair dismissal cases in WA applications as at November 2002 was less than 300 and the small business component of that, which is of course what this bill attends to, is less than 100. It is about 80.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.57 p.m.)—Thank you for that clarification. That is helpful. The point that I would like to make in response is that those figures do not reveal the angst and anguish that this creates amongst thousands of businesses who know the cost and pain to the business and to all involved, the process and the length of the process, and the distraction that takes away from their businesses. For every case that goes in, there are probably many that never get there, because the employee gets a payout as a result of the threat and there is an understanding of this amongst the business community.

The figure you quoted of about 50,000 was put together by the small business community. It was COSBOA, as I am informed, who did the survey. So it is not a government figure; it is a figure that was created by the small business peak body at the time. The fact is that there are thousands of small businesses who are aware of the threat and the cost involved in unfair dismissal cases and that is what creates the concern small businesses have about employing new staff. That is why I reiterate that reducing that disincentive to the employment of new staff, particularly in small businesses, will remove an impediment and should, and I believe will, have the effect of increasing employment in the small business sector.

Progress reported.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.00 p.m.)—by leave—I inform the Senate that Senator Rod Kemp, the Minister for the Arts and Sport, will be absent from question time today and tomorrow. Senator Kemp is attending the world anti-doping conference in Copenhagen. During Senator Kemp’s absence, Senator Alston will take questions relating to the arts and sport.

QUESTIONS WITHOUT NOTICE

Centrelink: Family Payments

Senator MARK BISHOP (2.00 p.m.)—My question is to the Minister for Family and Community Services. It concerns the Commonwealth Ombudsman’s report into family payments, released last Friday. What is the minister doing in response to the Ombudsman’s very clear statement that, even if his report recommendations, which take account of the government’s most recent changes to the family payments system, are implemented in full, ‘the scheme is likely to continue to result in significant numbers of unavoidable debts for families’? Minister, isn’t this an admission from the independent arbiter that a family payments system that is actually designed to put families into debt is rotten to the core?

Senator VANSTONE—There is a short answer to that: no. There is a slightly longer answer. It will not need to be very long. Senator Bishop, because you do play with roughly 52 cards in the deck and it will not be hard to explain it to you. Most other people have cottoned on at this point. This is not a new system—it was introduced in 2000 and it is now 2003—but I will never tire of explaining this system to you. It is a system where families with the same income in a taxable year get the same amount of help from the government through family tax payments. That is the great equity of this system. That is achieved by aligning it more
with the tax system. We have been through this, Senator Bishop, but I am going through it slowly for you.

At the end of the year there is a reconciliation. This is not a foreign concept to Australians. Our whole tax system works on this basis. Some people get a letter saying, ‘You have to pay more,’ some get a cheque as a refund. With the family tax benefit system, where people choose to take these payments through the year on an estimate of their income, it is inevitable that at the end of the year some people will have overpayments and some people—unlike under the previous system, where you did not get a top-up—will get a top-up. So it is actually a feature of the system to have a reconciliation at the end of the year. Frankly, I am amazed that it has taken somebody this long to figure out that it means that, at the end of the year when you have a reconciliation, some people will have an overpayment and some people will get a top-up.

Having said that you do not need to be gifted to figure out that a system designed to have reconciliation at the end of the year will have some people with overpayments and some people with top-ups, the only other point I want to make is that two things are often not mentioned when people refer to this. One is that most people either get it right or get a top-up. The other is that—since the average payment on the last advice I had is $5,700—this is not a bill or an overpayment or a debt, if you prefer to call it that, for a family with, say, a bill of $700 which comes out of the blue and where they have no money to pay it. In the example of a $700 overpayment, it is $700 more than a family in the same situation got, and, of course, you have money to pay, because you are entitled to your payments in the next year.

Senator MARK BISHOP—Mr President, I ask a supplementary question. I would have thought that a system that is designed to create 600,000 problems per annum has got problems. Let me come to the supplementary question. What action will the minister take in response to the Ombudsman’s concern that the estimation rules at the heart of the family payments system ‘inherently result in large numbers of debts and that many debts are significantly high’, that they ‘are affecting many lower income families’ and that ‘debts may be unavoidable’? Minister, given that the Prime Minister admitted on 19 September last year that the government’s changes to the rules would still see more than 400,000 families continuing to receive debts, why have you ruled out action to address the Ombudsman’s concerns?

Senator VANSTONE—Firstly, no-one has ruled out any action to look at proposals put forward by the Ombudsman. No-one that I know of has done that. I would be happy for you to correct the record and show me where someone has done that. I suspect that it is just a figment of your imagination or a bit of political rhetoric you have chucked in, thinking that no-one will notice. Secondly, when you say that this overpayment system would affect low-income families, I remind you that low-income families on incomes of $30,000 or less get the maximum rate. Therefore, they are not near a taper zone and will not be incurring overpayments, except for where the second earner chooses to go back to work. As to debts being unavoidable, I do not believe that is the case. The Ombudsman acknowledges in this report the very significant changes we have made, which have really only just come on line. He also says that it will be a long time, maybe 18 months, before we can see the full value of that. That is when we will have a look at it. (Time expired)

Health: Policy

Senator HUMPHRIES (2.06 p.m.)—My question without notice is to the Minister for Health and Ageing. Will the minister update the Senate on Howard government initiatives to improve access to health services for all Australians? Is the minister aware of any alternative policies?

Senator PATTERSON—I am delighted to answer Senator Humphries’s maiden question. Obviously, he is going to be interested in the things that are of real concern to Australians. I thank you, Senator Humphries. In 1996 the Howard government took over a health care system that was in deep trouble. Since then we have brought in a wide number of programs to address the issues of both providers and consumers to improve access
and services for all Australians. As health minister, I am most interested in Medicare as the vehicle through which we deliver good health outcomes for all Australians.

Our list of initiatives is very long, and I am not going to go through them all. But we have increased spending on Medicare by $2 billion—that is, it has gone from $6 billion to $8 billion—and we have spent $640 million over four years to get more doctors into rural areas and outer metropolitan areas. We inherited a maldistribution of doctors, which was one of the issues that was affecting access and equity for people. Our private health insurance rebate of 30 per cent is a tax break for almost nine million Australians, saving them up to $750 each year.

But what is Labor’s policy and plan for the health system? For about a year they have hidden behind a veil of secrecy and, a bit like Victoria, they are going to have a review. They have been reviewing private health insurance and Medicare. Every time they are asked to explain a position on key issues, Mr Smith is having a review. He has hinted and implied that he is considering scrapping the 30 per cent private health insurance rebate. He has hinted and implied that he is considering means testing the rebate. He has hinted and implied that he is considering taking it off ancillaries. I feel he must turn it and think, ‘That looks pretty good; I’ll say that today. This is my Medicare kaleidoscope,’ because every weekend he comes up with a new policy and a new implication about what he might do—and this is supposed to pass as Labor’s health policy.

Last week in Sydney, Mr Smith went along to address a health conference. We were all waiting to hear what he was going to say; he was going to reveal his stance on bulk-billing. What emerged was an uncosted wish list, a ‘dial a bulk-billing’ option. Once again, we were none the wiser as to what Mr Smith was thinking—until he went out to the doorstop interview. Then emerged what looked like a concrete proposal. He suggested that people would be willing to pay an increased Medicare levy to address the issue of bulk-billing. That was the nearest he had come to a policy in a year.

Under his plans, private health insurance will become 30 per cent more expensive—I repeat, 30 per cent more expensive—and families will lose $750 a year. Now he has said, ‘We’ll hit them again for a Medicare increase.’ If you increase it for a family on an income of $50,000, every 0.5 per cent increase of the Medicare levy is $250. So he was going to have a double slug—slugging families by taking away the rebate and slugging them by putting on a Medicare increase. How long did it last? Three days—three days until Mr Crean came on the Sunrise program and said, ‘Oh, no, we’re not going to have an increase in the Medicare levy.’ Mr Smith’s little view through the kaleidoscope was blocked because Mr Crean came between the kaleidoscope and the light and said, ‘No way—we’re not going to increase the Medicare levy.’ I do not know how long that will last but, anyway, that is the position this week. Neither of them has lifted the veil of secrecy on what they are going to do about the 30 per cent rebate. So one thing we know is that Mr Crean is not very interested in Medicare increases, but we do not know whether Mr Crean is interested in the rebate. Then Mr Crean goes on the radio this morning and gets it wrong, saying that $700 million of the rebate that goes to hospitals is $1.6 billion. (Time expired).

Centrelink: Family Payments

Senator JACINTA COLLINS (2.10 p.m.)—My question is to Senator Vanstone as Minister for Family and Community Services. How does the minister respond to the Commonwealth Ombudsman’s finding that family payment rules that govern families of young people who are making a transition from school to apprenticeships or work are ‘unfair’ and that ‘a parent can incur a substantial debt as a result of an unplanned change in a child’s circumstances’? Given the minister’s blunt and offhand dismissal of the concerns of families with children leaving school during the Senate estimates hearing on 12 February, how can her press release of Friday, where she promised to consider the Ombudsman’s report and do it promptly, be believed?
Senator VANSTONE—I thank Senator Collins for her question. I am pleased to see, Senator, that you have seen the release from Friday which in fact confirms that we will look at the Ombudsman’s report. I am only sorry that apparently Senator Bishop did not see it, which entitled him to say that nothing was going to be done. Since you have seen the release, Senator Collins, you know that we will look at what the Ombudsman had to say. But it is important to keep that in focus and not just have a few selective negative quotes, as you might choose. Bear in mind that the Ombudsman recognised that this was a simplification of an old system, where 12 payments were put into three, which was given a tick; that much more assistance was provided, particularly to sole parents, which was a good thing; and that this system now provides top-ups to people who overestimate their income in a way that the previous system did not. The system gives the same outcome to families on the same income in the same circumstances. I cannot see how you can argue that as being inequitable.

A further point that needs to be made—I made it earlier to Senator Bishop, but it might be helpful to Senator Collins if I repeat it—is the generosity of this system. Members opposite, who presided over an appalling government in the past, might not recognise just how much this government is doing for families. For example, a single income family on $30,000 per annum, which is not a high income if you have two kids, gets $9,442 tax free with this payment, in addition to their income. So if you are a low-income family on $30,000 with two kids, you should get $9,442. It is a very generous payment.

Bear in mind that we have over two million families all around Australia getting this assistance. I note that, over the year and a half of reviewing by the Ombudsman, he received fewer than 2,000 complaints, and I think that is relevant. With over two million people a year, he had fewer than 2,000 complaints over more than a year. His review commenced in February 2002, and it is understood that a significant number of reforms have been introduced since the close-off of data made available to the Ombudsman. What is even more interesting and needs to be constantly brought to the attention of the Australian community, and in particular of my colleagues opposite, is that over the last three years this government has spent over $33 billion assisting families. During Labor’s last three years, they spent $20.5 billion in real terms. So we are in the position of having increased assistance for families by 60 per cent in real terms when you compare our last three years with Labor’s last three years in government. I think I know which of those positions Australians would prefer.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Let me focus on just one of the many specifics. Can the minister confirm that if a dependent child currently earns $1 more than the cut-off in the financial year every cent of family payments made to their parents will become a debt? It could be just $1, and the parents might not be aware that it had even occurred. Minister, isn’t it irresponsible to condone rules that can deliver massive debts simply because they could not know in advance whether their child would leave school, find a job or get an apprenticeship?

Senator VANSTONE—I thank the senator for the question. It is true that where a child gains a measure of independence—I think the amount is about $8,000—the family will not be entitled to family tax benefit for that child. I come back to what I said to you originally: this system will pay families in the same circumstances the same amount of money. I do sometimes get letters from parents, when a child becomes entitled in their own right to a benefit in some way, saying that the parents are unhappy that they do not get the benefit. There is nothing I can do about that; the benefit is going to go to only one person. When children do earn $8,000 a year, as we covered in the estimates, this is not a one-hour or two-hour job—it is not occasional work—and parents will know about it. Furthermore, one of the options we provided was for parents, where they are uncertain about whether a child will come into that category, to take the FTB for that child at the end of the year. (Time expired)
Health: Tough on Drugs Strategy

Senator TIERNY (2.16 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate about the success of the government’s Tough on Drugs strategy? Is the minister aware of any alternative policies which would undermine the gains in health and law enforcement?

Senator ELLISON—That is a very important question from Senator Tierney which all Australians would be interested in. The Howard government’s Tough on Drugs strategy is unprecedented. It is tackling, for the first time in a whole-of-government approach, the issue of drugs in Australia—to fight drugs on the fronts of health, education and law enforcement. Just recently we saw the diversionary programs extended for another four years and an extra $215 million put in by the Howard government, bringing to a total $840 million spent on the Tough on Drugs strategy. We also saw international endorsement of this government’s approach to the Tough on Drugs strategy by the International Narcotics Control Board’s report for 2002, which was released last week. That report noted a number of successes, including Australia’s participation in significant international drug law enforcement operations, a drop in the number of heroin overdose deaths and the fact that this had largely been the result of law enforcement. If we are to educate the younger generation of Australians against drugs, if we are to treat those people who have a drug addiction, we have to reduce supply and have an environment in which those two other areas can succeed.

We have seen recently—and this is the second part of Senator Tierney’s question—a thoroughly irresponsible policy by the Greens in New South Wales. We have seen the revelation of the Greens’ policy in New South Wales, which supports the removal of all criminal sanctions for personal drug use; the controlled availability of heroin and safe injecting rooms; programs leading to the controlled availability of other drugs, such as ecstasy and speed; and the removal of all criminal sanctions for the possession and cultivation of cannabis for personal use. This flies in the face of the runs that we are putting on the board in the fight against drugs. We are not complacent that we have won the war against drugs, but what we can say is that this requires a united approach, and a policy of this sort would undermine the gains that we are making in that fight against drugs. So we see a very principled stand by the New South Wales opposition leader, John Brogden, when he rules out any preference negotiations with the Greens on account of their drug policy. It is also worth while to note that, despite the opposition of the New South Wales Labor Premier, Mr Carr, to these Greens policies, we do not see him refusing to rule out preference deals. In fact, he has remained non-committal on that very important issue.

We can only win the war against drugs if we have a united stance in this country, and the policies which are being proposed by the Greens in New South Wales would directly undermine those successes—the successes that we have seen with our diversionary programs, the successes we have seen with law enforcement and, for the first time ever, a national strategy in relation to drug education in our schools. The only way that we can win the war against drugs is with a whole-of-government approach. As I say, we have seen some successes with the heroin shortage since last 2000, and that has resulted in a reduction in heroin overdose rates.

Australians should realise that a policy such as this in New South Wales by the Greens serves only to undermine the very good work being done in the Tough on Drugs strategy. Mr Brogden, the New South Wales opposition leader, is to be applauded for the principled stand he has taken in relation to ruling out any preference deals with the Greens in New South Wales on account of their policy on drugs, which would totally undermine the gains that we have seen at the national level.

Senator Hutchins—You gave them Cunningham. You put them into power in Cunningham.

Senator ELLISON—I hear interjections from the opposition. Of course, we have seen Premier Carr oppose these policies by the
Greens, but he still watches what preference deals are made. *(Time expired)*

**Centrelink: Family Payments**

Senator FAULKNER (2.21 p.m.)—My question is directed to Senator Vanstone, the Minister for Family and Community Services. What action will the minister take in response to the Ombudsman’s criticism of the government’s policy in relation to shared care, in which one parent can claim a portion of family payment at the end of a tax year? Minister, do you recall Senator Newman’s promise to the Senate to evaluate the shared care provisions in the family payments system after its first year of operation? Can the minister confirm whether this evaluation ever took place and, if so, can she make public the findings of the review?

Senator VANSTONE—Thank you for your question about the family tax payments system, Senator Faulkner. Before I answer your question in detail, I will take the opportunity to highlight that this government has spent something like 60 per cent more in real terms in the last three years than your government did in its last three years. We have spent $33 billion on family payments in the last three years compared to $24.5 billion in real terms. So that is a 60 per cent increase. I can confirm for you that a family on $30,000 with two kids under five gets $9,442—nearly $10,000.

I have seen the Ombudsman’s remarks about shared care. It would be an ideal situation if parents could sort out those percentages at the beginning of the year. That is just one aspect—there are a number of aspects—that we will of course look at. I have some things to say about the Ombudsman’s report. These are not criticisms; they are just statements of fact. We have over two million clients each year. In 1¼ years, he had fewer than 2,000 complaints. All of the period when the data was collected relates to a time prior to the changes that we have made. I do not say that as a complete criticism of the report but to indicate that people should understand the basis on which the report is made, and that is on an outdated situation, because since then further changes have been made.

I use that as an example to underscore my view that in any aspect of government—and I am sure you will find the same from any minister here—if there is a way we can make things better we will. But we will not simply say, ‘Oh, well, somebody suggested this change, so we’ll make it.’ We will make change, as appropriate, when the time is right. I do not think now is the time to make a wholesale change, when we have just about finished implementing changes that were announced last year. The Ombudsman highlights in his report that it will be a while before the benefits of those changes come to fruition. If it is not the case now that shared care arrangements can be sorted out at the beginning of the year—except for families who vary them during the year—then I think the opportunity should be there for that to be the case. If it is not, I will have a good look at it and I will come back to you. You also asked me about Senator Newman’s inquiry. No, that does not come to mind. I will chase it up and get back to you on that.

Senator FAULKNER—Mr President, I ask a supplementary question. I ask whether the minister recalls that Senator Newman said in the Senate (page 14046 of *Hansard*): ...

... the government will monitor the measure over the first year of operation and will table a report in the Senate towards the end of 2001, next year, when most parents will have lodged tax returns. The report will detail the effects of the shared care arrangements on separated parents.

Given that it is almost three years since the family payment system was introduced and given that the minister cannot even confirm whether Senator Newman’s promised review ever eventuated or was tabled, can the minister now provide the Senate with an undertaking that an evaluation will be started immediately, completed quickly and made public upon completion?

Senator VANSTONE—I have not seen that page of *Hansard*. Since you have quoted the *Hansard*, I do not doubt what you say. I will have a look and see what the situation is. But I invite you to clarify Labor’s position on this. We did change the shared care arrangements and we did say, primarily to fathers, that if they have their children in their custody for more than 10 per cent of the time
they should be able to have a portion of the family tax payments that relate to that child. If you are thinking of undoing that in the horrific event that you are ever re-elected to government—and, frankly, that is looking to be a bit in the distance—I think families would want to know that. We think it is fair that the payments are shared out according to the proportion of care engaged in by both parents. But I will have a look at what Senator Newman said and at what has been done.

Iraq

Senator BARTLETT (2.27 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. Minister, are you aware of an article published yesterday in the Independent, a British newspaper, titled ‘US prepares to use toxic gases in Iraq’? The article claims that the US is preparing to use the toxic riot control agents CS gas and pepper spray in Iraq in contravention of the chemical weapons convention and that so-called calmative gases, similar to the one that killed 120 hostages in Moscow last year, may also be employed. Since the government has failed to get public guarantees from the US or the UK that nuclear weapons will not be used, I assume the government has also failed to get guarantees that chemical weapons will not be used by the US. Has the US informed the government of which chemical weapons may be used? If so, will the minister inform the Senate?

Senator HILL—I did not see the article in the British newspaper the Independent. Personally, I have heard of no such suggestion. I will make inquiries and see whether there is any further information I can provide to the Senate, but I would be very surprised if the US has any intention of using chemical weapons.

Senator BARTLETT—Mr President, I ask a supplementary question. I thank the minister for his answer. Can he also check the veracity of reports that the US Marine Corps confirmed last week that both these substances, CS gas and pepper spray, had already been shipped to the Persian Gulf? Can he also give a guarantee that, if there is any possibility of any agents in contravention of the chemical weapons convention being used, Australian forces will not be operating in support of any such actions?

Senator HILL—I have said I will make further inquiries. The suggestion that pepper spray may be used is of a slightly different dimension to that to which I understood the initial question to relate. I will make some inquiries and see whether I can provide anything.

Centrelink: Family Payments

Senator WEBBER (2.29 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Is the minister aware that the Ombudsman described the family payment debt waiver rules—that is, those rules which deny families who are victims of Centrelink administrative errors a waiver unless they are in severe financial hardship—as ‘harsh and unreasonable, particularly given the circumstances in which debts arise’? When will the minister implement the Ombudsman’s recommendation to remove the financial hardship clause that protects the government from paying for its administrative mistakes? In the meantime, when will she waive the debts that her rotten system has caused?

Senator VANSTONE—I thank the senator for her question. I cannot believe that her English dramatisation skills are so low that she wrote that question herself. Nonetheless—

Opposition senators interjecting—

Senator VANSTONE—It must be if Senator Cook’s at it again. This is not my system; this is the government’s system. It is a system we all stand proudly behind because it pays families in the same circumstances the same amount of money. Over the last three years, Senator, we have paid out 60 per cent more in real terms than the previous government of your persuasion ever did. Families are now getting a very significant amount of assistance. As I have said, a family on $30,000 or less with two children under five would get $9,442, and this is not taxable payment. This is an extremely generous system.

I have indicated—and I think this is the third, fourth or maybe the fifth time since Friday that I have indicated—that we will of
course look at the Ombudsman’s report. This is a government that is always looking to find a better way to do things—

Senator Conroy—A bit of finetuning!

Senator VANSTONE—and if there is something in there that can be done quickly and that should be done quickly we will do it. But we are not going to rush to prejudge changes that have already been implemented. But if there are other recommendations—let me make it clear—we are not going to rush to make further changes in areas where we have already made the changes. If there are other areas where changes have not been made—

Senator Conroy—What drama! What pathos!

Senator VANSTONE—and where simple things could be done quickly and easily that would be sensible, then we will do them. In other words, like any other government, we will consider the report and make public our response at an appropriate time.

Senator Conroy interjecting—

Senator WEBBER—Mr President, I ask a supplementary question. Minister, you would recall that I have raised the case of Peta Harben and her family tax benefit debt on an earlier occasion here in the Senate—a case you have not been rushed into dealing with. Given that Ms Harben’s case has been arbitrated by the SSAT, was highlighted by the Today Tonight program last week and is an example of the Ombudsman’s concerns about this system, will you now waive Ms Harben’s debt?

Senator VANSTONE—Senator, I have to tell you that the particular case does not come to mind, but I will immediately make some inquiries about it and if there is anything to further to say with respect to that matter I will come back to you. Can I tell you that I am very pleased that I live in a country where the social security minister does not have the individual power to give one person a break but not another person a break. These things are governed by legislation and are all handled in appropriate ways through tribunals.

Senator Conroy interjecting—

Senator VANSTONE—You should be pleased that we have a situation where ministers cannot interfere, and the fact that you did not recognise that before surprises me somewhat. But I will have a look at the case—

Senator Conroy—Touch glasses, look sincere!

Senator VANSTONE—and get back to you if there is anything further I wish to add on that matter.

The PRESIDENT—Before I call Senator Brown, Senator Conroy, you are being particularly noisy today. I ask you to desist.

Government senators interjecting—

The PRESIDENT—Order!

Howard Government: Policies

Senator BROWN (2.33 p.m.)—My question without notice is addressed to Senator Minchin representing the Treasurer and the Minister for Industry, Tourism and Resources. Do you agree with a UK government statement that global poverty, the deteriorating relations between the Muslim world and the West plus environmental degradation are as devastating in their potential impact as terrorism and weapons of mass destruction or even more so?

Senator Alston—Mr President, on a point of order: this may be a futile exercise because no-one on this side knows who Senator Brown is addressing his question to.

The PRESIDENT—Senator Brown, because of the noise on my right at the beginning of your question, it was very hard to hear what was being said. I know the Minister for Finance and Administration did not hear you. Could you please ask the question again? Will senators on both sides please keep quiet while Senator Brown asks his question?

Senator BROWN—My question is to Senator Minchin in his capacity representing the Treasurer and the Minister for Industry, Tourism and Resources. Do you agree with the UK government statement that global poverty, the deteriorating relations between the Muslim world and the West plus environmental degradation are as devastating in their potential impact as terrorism and weap-
Does the government agree or not with international opinion that greenhouse gas emissions must be cut by 60 per cent by 2050? If so, what is your strategy for achieving that goal in Australia?

Senator MINCHIN—There were two questions there I think, which were totally unrelated. One was about greenhouse gases and I am not quite sure what the first part of the question was really about. You referred to some UK government statement which I have not seen. All I want to say on that matter is that I applaud the work being done by Prime Minister Blair, the Labour Prime Minister of Great Britain, in his strong support for the United States in their attempts to ensure the full disarmament of Iraq. I think Mr Blair’s colleagues on the other side of this chamber could take note of the statesmanship shown by Mr Blair. I will have a look at the statement to which you refer, although I am not aware of it.

On another tangent you raised the issue of greenhouse gases. This government’s policy on that matter is very well known, and all I can do is repeat it. The policy is that we will not sign up to the Kyoto protocol as it currently stands because it does not include the major developing countries, who will produce the greatest growth in greenhouse gases over the ensuing years, and because of the nature of our economy—a resource intensive economy and one that is incredibly competitive in the production of things like aluminium and magnesium—we would place ourselves at a huge competitive disadvantage vis-a-vis those developing countries if we were to sign up to the protocol as it currently stands. Given the absence of the overwhelmingly largest economy in the world, the United States, from the protocol, it is hard to see how it can possibly work.

However, we do have a comprehensive range of domestic policies in place to deal with the growth in greenhouse gases. We are spending some $1 billion over four years, largely at the behest of the very good work done by Senator Hill, as the former Minister for the Environment and Heritage, to put those programs in place and ensure that we do work cooperatively with Australian industry to ensure that we play our part in containing the growth in greenhouse gases in a way that does not cost Australians their jobs.

Senator BROWN—Mr President, I ask a supplementary question. I was quoting Prime Minister Blair, and I note that the minister applauds the work being done. I ask him: does he also applaud the statement by Prime Minister Blair that:

There can be no lasting peace while there is appalling injustice and poverty. Look around the world today, and it has to be said the quality of leadership on sustainable development elsewhere falls a little short of inspirational, especially in some of the world’s most powerful nations. We can’t allow ourselves to be thwarted by this sort of blind business-as-usual bigotry.

Do you think he was referring there to the honourable member for Werriwa, Mark Latham, or to the Prime Minister in that reference to the failure of countries like Australia, and Prime Minister Howard, to meet the global warming requirements that Britain is now agreeing to meet?

Senator MINCHIN—We are all anxious to see improved levels of wellbeing and standards of living in the poorer world. The sorts of policies advanced by the Greens are likely to condemn those people to poverty for the rest of eternity. The way to alleviate poverty in the poor parts of the world is by the spread of democracy and capitalism to those countries, to ensure that we lower trade barriers as far as we possibly can, and to ensure that the countries of Europe open up their markets for agriculture so that the people of the poorer parts of the world can have market access for their products. The spread of the policies which you oppose at every opportunity are the policies that will relieve the poverty of the people you speak of.

Business: Executive Remuneration

Senator CONROY (2.39 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware of a statement by Mr Howard last week in relation to the recent spate of obscene executive payouts, where he said:

... I feel a bit sorry for one or two of the people ... well, can I say that Stan Wallis is a person who I know quite well and Stan’s contributed a lot to the
corporate world and he’s become the butt of some criticism.

Given that Mr Wallis has presided over a $900 million loss this year at AMP and that, in spite of this loss, he received a retirement benefit of almost $1.6 million on top of his normal salary of over $430,000, would the minister agree that the people we should be feeling sorry for are the shareholders of AMP, and not Mr Wallis?

Senator COONAN—I thank Senator Conroy for his question. Senator Conroy, as usual, misrepresents what people on this side of the record say. What Mr Howard said, if I heard the same statement, was clearly that Mr Stan Howard—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator COONAN—Stan Wallis, at least—had undertaken a significant amount of public service and had made a significant contribution to a number of matters to do with the Wallis report. It was in that context that Mr Howard’s statements were made, and not in relation to the amount of money that he received.

This government, of course, supports the need for tighter controls on executive pay-outs. The government is committed to principles of enhanced transparency in the corporate sector, including disclosure of director and executive remuneration. The Corporations Act contains substantial rules requiring disclosure of director and executive remuneration. A bill has recently been released for exposure that does clarify the disclosure requirements in the Corporations Act for director and executive remuneration. Proposed new accounting standards will require more detailed disclosure of remuneration paid or payable to directors and executives, including details of termination payments. A further international accounting standard, ED108, is expected to be finalised later this year. It will require the expensing of share options and will prescribe the date at which options should be valued and the disclosure of the valuation methodology selected.

But more relevantly, perhaps, the Australian Stock Exchange’s Corporate Governance Council is considering this issue and is expected to release its best practice disclosure recommendations in March this year. My colleague Senator Ian Campbell has in recent interviews explained some of the matters that the guidelines direction will take into account. The requirement is expected to be part of a comprehensive set of corporate governance standards drawn up by the ASX Corporate Governance Council, which comprises 20 representatives from business, shareholder and consumer bodies. The new corporate governance standards are expected to be released next week. If a company did not comply with the remuneration disclosure requirement it would be required to make an explanation to the market. A range of penalties apply to non-compliance with listing rules, including ASX sanctions such as delisting. Disclosure breaches can be referred to ASIC for investigation and would attract civil or criminal penalties. The government’s CLERP 9 proposals provide ASIC with a new infringement notice power for breaches of disclosure laws.

So the new requirement will ensure that companies have to disclose the details of the remuneration packages of key executives up-front and in real-time. It will make boards accountable to shareholders before executives and directors are paid out, not after the event. Clearly, what is angering shareholders and the community generally is the size and secrecy of payouts and, in the case of AMP, the fact that shareholders’ value was heading south while for ex-directors and executives it was heading north. If companies do not comply with the new disclosure rules, then the government stands ready to put them into law.

Senator CONROY—Mr President, I ask a supplementary question. Given that Mr Howard—and that is John Howard, not Stan—said that Stan Wallis was someone ‘who contributed a lot to the corporate world’, and the fact that this comment was made in spite of Mr Wallis presiding over an $8.6 billion implosion in value whilst chairman of AMP, would the minister agree that the Howard government are just protecting their mates, at shareholders’ expense, by doing nothing?
Senator COONAN—It seems that Senator Conroy has sat through four minutes of an explanation and has not heard a word of it. At the end of the day, it is the owners of companies, the shareholders, and their representatives, the boards, who can clearly play the most relevant and effective role in containing and setting the appropriate level of remuneration, but I have just gone into great detail about how the ASX will be releasing guidelines and rules that will address this issue.

Quite clearly, the ALP seem to think that the government should be some sort of arbiter, sitting in on company boards and setting pay rates. Those opposite should thank their lucky stars that their constituents do not get the same opportunity because, can you imagine, if the Labor Party were in government and setting remuneration, those opposite would not be getting any pay.

Australian Industry Development Corporation

Senator BRANDIS (2.45 p.m.)—My question is directed to the Minister for Finance and Administration, Senator Minchin. Will the minister advise the Senate whether the claims that the accounts of the Australian Industry Development Corporation were deliberately misleading and designed to avoid the AIDC reporting a loss of over $2 billion have been substantiated? Has the Auditor-General provided a report to the minister, as was agreed to at the recent Senate estimates hearing? If so, what is the Auditor-General’s expert advice about those allegations?

Senator MINCHIN—I thank Senator Brandis for the question. Senator Brandis, in particular, will remember the pretty outrageous display put on by Senator Conroy at the finance department estimates a couple of weeks ago, when he abused finance department officials and made slanderous remarks about officers of the AIDC.

Senator Conroy interjecting—

Senator MINCHIN—I thank him for not perpetrating these outrageous claims. His most offensive behaviour was his abuse of finance department officials. At the suggestion of Senator Murray—and I thank him for the suggestion—we asked the Auditor-General to review the situation, and the Auditor-General has done that and has provided his report. The Auditor-General confirmed his December 1998 audit opinion, in which he issued an unqualified audit opinion on the AIDC. He concluded in his most recent letter:

... there is no evidence from my audit of the AIDC’s financial statements for the year ended 1998 to indicate an improper construction of those financial statements to avoid reporting a loss of $2 billion.

The Auditor-General’s finding, of course, is consistent with the written advice of the AIDC’s chief executive that Senator Conroy’s claims were quite baseless in every respect and quite without any substance—a view the AIDC’s advisers in Treasury matters, KPMG, have also confirmed. The AIDC letter shows that Senator Conroy’s claims arose from his lack of understanding and
erroneous interpretation of the AIDC’s financial statements’.

Further, a letter from UBS Warburg, an internationally renowned bank, which bought most of the AIDC business, states that there were no grounds for asserting that the transactions to which it was a party were in any way designed to cover up any so-called losses, and it goes on to explain the nature of the transaction. That view was confirmed by the AIDC’s auditors, Ernst and Young, and its accountants, PricewaterhouseCoopers. PricewaterhouseCoopers’ written advice states, ‘There was no $2.1 billion hole in the AIDC portfolio and there was no loss. Senator Conroy was clearly confusing loans and losses,’ AIDC’s auditors, Ernst and Young, also confirmed: There was no loss of $2.1 billion trading currency derivatives.

As Ernst and Young clearly showed, what happened was Senator Conroy came in with this outrageous assertion based solely on a small note at the bottom of the balance sheet, which he could not understand or maliciously misrepresented.

There is no $2 billion loss by the AIDC, there is no sneaky change to accounting policies and there is no attempt to cover up. Senator Conroy owes an apology to the department of finance officials he abused and to the AIDC officers he slandered. I table the relevant documents that I have referred to today.

Business: Executive Remuneration

Senator CONROY (2.50 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware of Senator Ian Campbell’s comments on the John Laws program last week in relation to the multimillion dollar payouts to AMP executives that:

... these deals should be revealed to the shareholders—and revealed to the whole world, quite frankly—at the time they’re entered into so that the grilling can take place at the annual general meeting when the ink’s not even dry.

Given that the minister believes that it is up to shareholders to grill company executives, why has the government circulated for comment a draft bill called the Corporations Amendment Bill 2002 that actively reduces shareholders’ rights by abolishing the right of a single director of a listed company to call a meeting of members and by reducing the 28-day minimum notice period for calling a meeting of a listed company to 21 days?

Senator COONAN—Thank you. Senator Conroy, for yet again a non-question. Senator Conroy does not seem to be able to understand what is being achieved by the government in its suite of reforms that will relate to the disclosure of executive remuneration. The Labor Party’s approach to this whole matter is flawed. The government has now addressed the fact that it is important that there be tighter controls and greater transparency. The government has released an exposure draft to amend the Corporations Act that will provide for more effective disclosure of director and executive remuneration. Also, if companies become insolvent, the government has introduced the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002 to allow for unreasonable bonuses paid to directors in the lead-up to a company failure to be reclaimed for payment of the company’s employees and creditors.

That, together with the ASX Corporate Governance Council guidelines and rules, will amount to best practice on disclosure recommendations, and of course the ASX will be releasing its report next week—that is, in March 2003. Senator Conroy is once again barking up the wrong tree. Not only has he been rude to officials and not only can he not distinguish between a loss and a profit, in these circumstances he has absolutely no idea how to address the problem of excessive employee payouts.

The comments by Senator Campbell have addressed the fact that there does need to be real-time disclosure so that shareholders can have a better opportunity to have a say at the time that a contract is entered into or shortly afterwards and that these amounts are not paid out at the end when the shareholders have no idea what amount has been agreed. It is largely a matter for contract and for boards, but clearly the disclosure rules need to be improved and they need to be improved so that there can be a better opportunity at
the time that a contract is entered into or shortly thereafter.

The suite of responses by this government, together with boards being more responsive and shareholders being more responsive collectively, will in fact address this problem. Generic rules and a one-size-fits-all approach clearly are not desirable. It is a matter where you have to balance interests and where the shareholders clearly have to have opportunities to be able to query executive payouts. It is not for government to be sitting in boardrooms and fixing remuneration and it is not for governments to decide on the performance of executives and what pay they should receive. As I said a little earlier, if it were up to the Labor Party, based on performance none of them over the other side would get any pay. But this government clearly understands the need for greater transparency, and the suite of responses will in those circumstances more adequately and appropriately enable shareholders and empower shareholders to have some say in the setting or at least the monitoring of executive pay.

**Senator CONROY**—Mr President, I ask a supplementary question. I thank the minister for that answer. While she is hearing the rest of the question, she might want to try and find the right brief—it is about the Corporations Amendment Bill 2002. Given that Senator Campbell should have tipped you off to the fact that you were reading the wrong brief, and that he believes that shareholders should actively participate at company meetings and grill their executives on excessive payouts, would the minister agree that it is time to scrap this draft bill which slashes shareholder rights?

**Senator COONAN**—The government will certainly not be withdrawing the bill or the rule. It certainly does not slash shareholders’ rights. In fact, you have to have some balance so that a company can operate. How ridiculous is Senator Conroy to be suggesting that you have a situation where a few shareholders can simply hijack the way a company operates! Senator Conroy needs to grow up, understand something about how corporation law works, and then he might be able to ask a sensible question.

### Medicare: Bulk-Billing

**Senator ALLISON** (2.56 p.m.)—My question is to the Minister for Health and Ageing. I refer to the report in the *Sydney Morning Herald* today that GPs are sending bulk-billing patients to the end of their queues. Are you concerned about this development? Shouldn’t your government be insisting that all patients are treated with fairness and dignity, and will you tell GPs that giving people on low incomes their left-over time is unacceptable?

**Senator PATTERSON**—I would have thought that Senator Allison would have stayed away from health issues. She will have an opportunity later on today or tomorrow to actually assist in managing the health bill by agreeing—or by the Democrats agreeing—to a modest increase in the copayment in order for us to rein in the cost of the Pharmaceutical Benefits Scheme, which has gone from $1 billion to $4.5 billion last year.

**Senator Allison**—Mr President, I rise on a point of order. The minister is debating an entirely different matter and I ask you to direct her to answer the question I raised.

**The PRESIDENT**—I cannot tell the minister how to answer the question, but she still has three minutes and 28 seconds and I hope she will return to the question.

**Senator PATTERSON**—I think that just demonstrates that Senator Allison thinks in silos, that she does not understand there is a whole health bill and that I have to balance, as the responsible minister, the whole of the health bill and we have—

**Senator Allison**—Mr President, I rise on a point of order. Perhaps you will remind the minister that, since that bill is on the bills list, she ought not be debating it in this place.

**Senator PATTERSON**—I will debate the issue. Senator Allison does not want to hear the truth.

**The PRESIDENT**—You will not debate the Pharmaceutical Benefits—

**Senator PATTERSON**—No. I am debating the issue of the Pharmaceutical Benefits Scheme and its sustainability and the fact that we need a modest increase in copay-
ments to ensure that we can deal with the fact that it is growing at the rate of 10 per cent. Senator Allison wants to divorce that from the issue of the Medicare Benefits Scheme, but Medicare is about the whole suite of issues for health. It is about the MBS, it is about the PBS, it is about public hospitals, but you cannot separate one from the other. If Senator Allison wants to divide them and say, ‘Don’t let’s talk about the PBS; let’s talk about the MBS and bulk-billing,’ I want to impress on her that, as the responsible health minister, I have to balance the whole of the health budget. She has to understand that. If you have the PBS growing at the rate of 10 per cent a year—14, it was; we have tried to drive that back—it will be $7 billion, which is a third of what we now pay for the whole health bill. She might be concerned about bulk-billing, and there are issues with bulk-billing and I have talked about that, but most doctors are not involved in placing people at the end of queues. I am concerned if that is the case but I would say that it would be a handful of doctors, if they are doing it. She drags out one case, when we have to look at the whole of the health bill: how do we balance it? How do we deal with an ever-burgeoning increase in the cost of health, in the cost of the MBS and in the cost of the PBS? The only time she has had a chance to do something to assist me, she has balked at it—-the Democrats have balked at it.

I have said to Senator Allison that one of the concerns I have is about the Labor Party, the Democrats and the Greens not agreeing to assist in passing a modest copayment, which does have an influence on the amount of money we have to spend on the MBS. Every dollar that we spend on the PBS is a dollar we do not have to spend on the MBS. At some stage, the chickens will come home to roost. At some stage, the PBS will have to go up. There are people with young families now who are paying a smaller proportion of their income on the PBS. When it has to go up, and it will have to go up at some stage—Labor increased it a number of times when they were in government, and we were fiscally responsible and actually agreed with it, but when we put up something they disagree with it—-there will then be people with small children who will pay a higher proportion of their income to look after their children on the PBS. They are causing microintragenerational disadvantages between groups, but they are not prepared to accept that. So a young family that uses a high number of pharmaceuticals will be paying more for their pharmaceuticals. But Senator Allison wants me to do something about bulk-billing. Well, Senator Allison, give me a break on the PBS so I have some money to do something about the MBS.

Senator ALLISON—Mr President, I ask a supplementary question. I thank the minister for her answer. I ask her to elaborate on what she said—namely, that there are just a handful of doctors who are pushing patients to the end of their queue if they are bulk-billed. How many is a handful? Can figures be provided to the Senate? And, again, does the government approve of this approach to people? Is it treating all patients with fairness and dignity in the way that most of us expect?

Senator PATTERSON—I said that I presumed there were only a handful. I presume that most doctors would be dealing with people in a fair and equitable way, and that is what we expect of doctors. There will always be some. There are pharmacists who have defrauded the system. There are some doctors who may be doing that. I would encourage them not to and hope that they do not do it, but if Senator Allison would go back and rethink the issue we have before us from the budget that would help me deal with some of the issues of bulk-billing. Money does not grow on trees, Senator Allison.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Centrelink: Family Payments

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—In relation to the Harben case that was raised, the advice I have is that this particular family chose one particular method of hav-
ing their maintenance payments taken into account. They would have been advised, as all families are, that there is a choice. On two occasions they have chosen the method that is not recommended, and on those occasions they have ended up with an overpayment. The family have now switched to the recommended method—the default method, which is used if someone does not make the choice—and would therefore be less likely to incur an overpayment. Lastly, the advice I have is that Centrelink have no record on the file indicating any administrative error on their part. I invite the senator to contact me privately—or raise it in the chamber if she prefers—to indicate what this alleged error is so that I and the management of Centrelink can pursue the matter, if there is such an error. I also invite her, if there is not such an error, to admit it.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator CONROY (Victoria) (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) and the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked by opposition senators today relating to remuneration for executives and to a report by the Commonwealth Ombudsman on family payments.

What we have seen today is another demonstration of the apathy of the Howard government in relation to corporate greed. Mr Howard, Mr Abbott, Mr Costello, Senator Minchin and Senator Ian Campbell wring their hands and talk about the shocking size of recent executive payouts. But that is all they do—talk. In relation to corporate greed, the Howard government is the classic all talk, no action government. Last week, with regard to the recent spate of obscene executive payouts, Mr Costello said that if the ASIC chairman:

... wants to recommend any heightened requirements that can work, the Government will be very sympathetic to introducing them ...

Well, the Labor opposition do not need ASIC to tell us there is a problem. It does not need the ASIC chairman to ring up and say, ‘Look, Mr Costello, there’s a problem.’ There has been an avalanche of obscene payments. Just to list a few: Chris Cuffe got $33 million from Colonial; Steve Jones got an estimated $30 million from Suncorp Metway; Brian Gilbertson got an estimated $24 million to $30 million from BHP; Peter Smedley got $20 million from Colonial and a lifetime pension; Paul Anderson got $19 million from BHP; George Trumbull got $13 million from AMP; John Prescott got $11 million from BHP; Tom Park got $10 million from Southcorp; John Fletcher got $8 million from Brambles; David Higgins got $6.7 million from Lend Lease; Keith Lambert got $4.4 million from Southcorp; Tom Fraser got $4.7 million from the AMP’s UK arm and Stan Wallis got almost $1.6 million. How much evidence does the government need before it acts, before it puts its hand up and says, ‘We’ve got to do something,’ not just make sympathetic noises? We still do not know how much Paul Batchelor will slug those poor AMP shareholders with—and I should declare that my wife is an AMP shareholder—although it is rumoured to be around $20 million. Terry McCrann says that the losses on AMP shares from its real peak, setting aside its listing day, are now approaching $20 billion. And this government says, ‘If the ASIC chair will just let us know if there’s a problem, we might do something.’

It is the 1980s all over again. The famous ‘bold riders’ are back—only this time, they are doing it by the book. Some executives, like those at AMP and Southcorp, are giving themselves multimillion dollar payouts for failed performance, and do you know what? It is 100 per cent legal. We cannot stop them under the current law. Labor have tried to increase disclosure of the policy behind payouts. We have tried to give shareholders a say on executive remuneration. Just three weeks ago, this government voted down amendments to give shareholders more power to do something about executive remuneration.

The Howard government are good at talking about obscene salaries, because they have had heaps of practice at talking about it. They keep talking about it but never actually
get around to doing anything about it. Back in 1996, in response to the $1.24 million pay rise to then Coles Myer CEO, Peter Bartels, the Prime Minister said:

I hope that I would have the support of all members of this parliament when I say to the working men and women of Australia that we would understand if you felt that there were one law for you and one law for the rest of the community. That would be quite unacceptable, and I would simply say to all people who have wage setting responsibilities in the Australian community that it is essential that there be equality of sacrifice in the Australian community.

In 1999, Mr Howard said, ‘We have to ask the corporate sector to just be a bit better behaved.’ Also in 1999, in response to the then CEO at Coles Myer, Dennis Eck, being awarded a bonus package of $8 million, Mr Howard said, ‘Corporate Australia should exercise a degree of restraint and self-surveillance.’ Again in 1999, in relation to chief executive salaries, Mr Howard said, ‘It’s hard to believe that it could be in the interest of the public company to be paying them such high salaries.’ In 2000, in response to George Trumbull’s $13.2 million payment, Mr Howard said that the payment was indefensible and that ‘there is no way you can defend an arrangement of that magnitude; no way at all.’ Fast forward to 2002, and what did John Howard say? He said, ‘If the big end of town don’t start taking notice of community sentiment, I might have to act.’ (Time expired)

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.09 p.m.)—We have just heard five minutes of a so-called contribution from Senator Conroy. He said, ‘You’ve got to do something.’ His whole plea was, ‘You’ve got to do something.’ But, of course, Senator Conroy has no policy alternative. Senator Conroy implied that a Labor government would set up some sort of corporate remunerative tribunal that would sit there and judge what an appropriate salary is for a director or a manager.

Senator Conroy interjecting—

Senator IAN CAMPBELL.—One thing I would tell Senator Conroy, if he would ever listen, is that the last person the public of Australia need to give them a lecture about appropriate remuneration is a highly paid senator on the front bench of the Australian Labor Party who will walk away from this place with well over a million dollars in superannuation. Senator Conroy should ask himself why he deserves to take a million out of this place after a lazy, self-serving contribution. The public of Australia are upset when politicians walk away with huge super sums for no contribution whatsoever. They are equally upset when executives and directors of Australia’s companies walk away with millions of dollars.

Senator Conroy was the person who in fact introduced the amendment to the Corporations Law that requires disclosure of executive remuneration. I stood in this very place in the Senate in 1999, as Senator Chapman will know, and said: ‘This amendment is flawed; it will fail. ASIC don’t support it; it is unworkable.’ Senator Conroy’s only contribution to the debate on executive remuneration in the last seven years has been to stick in one flawed piece of legislation. He put it in there; we told him it would not work. We said that prescriptive black-letter law in the Corporations Law is not the way to approach it. What did he do? He went ahead with it anyway. This the law that he put in place that has failed. It is in fact a Labor Party amendment that governs executive remuneration.

So what has the government done? We have had a comprehensive approach to disclosure by corporations. I believe that the self-regulation that applied in the past has not worked. The Prime Minister and the Treasurer agree with that, and it is this government that has established the mechanisms that will improve, and have improved, disclosure. Labor asked questions today about the abolition of the 100-member rule. They go around corporate Australia and say, ‘Let’s abolish the 100-member rule,’ which allows 100 members of a company to call an AGM, racking up millions of dollars in expense and hijacking a company’s governance processes. They go around saying, ‘Let’s reform it,’ but they come in here and criticise the government when we want to reform it.
They cannot have it both ways. They cannot go to the NRMA executives in New South Wales and say, ‘We’ll reform the 100-member rule and back reform,’ and then come in here and say that they will not. You cannot go around corporate Australia and say one thing to the executives and other things to the shareholders. The reality for Senator Conroy and Senator Sherry is that the Australian Shareholders Association and the Australian Consumers Association know that they say one thing behind closed doors to the shareholders and the opposite thing to the directors.

The government have put in place a series of institutions and legal responses that ensure that Australia has very good corporate governance practices, but we are not prepared to accept that they cannot be improved. So, through the Corporate Law Economic Reform Program, we have established improvements to the Corporations Law to ensure that shareholders get good quality, accurate information, and that they get it in real time. I am confident, as I have said during radio and press interviews during the week, that the Corporate Governance Council, established with the full support and encouragement of the Australian government, will ensure that the disclosure of the remuneration of key executives will take place in real time and will be up front so that shareholders can scrutinise them. They should be able to scrutinise them; they will be able to scrutinise them. If companies breach the law in relation to disclosure under the CLERP 9 regime, new penalty powers will be in place for ASIC to ensure that those companies are prosecuted before the law with either a civil penalty or, under our new regime, an infringement notice.

The Labor Party are long on talk; they took no action in 13 years. Senator Conroy referred to the collapses in the 1980s. The Labor Party made no response then. They were prepared to let their mates in big business get away with blue murder during the 1980s, which was a disgraceful period in Australian company history. We have spent our time in government trying to build better Corporations Law, better disclosure and a better stock market. (Time expired)

Senator MARK BISHOP (Western Australia) (3.14 p.m.)—I rise to take note of responses to questions by Senator Vanstone and to shift the discussion from the entitlements of those in our community who are better off—that is, company directors—to those in receipt of family assistance payments. At the outset, I make the point that any shred of credibility that the Howard government thought it had on family policies has been stripped away with the Commonwealth Ombudsman’s special report into family and child-care benefits entitled Own motivation investigation into family assistance administration and impacts on Family Assistance Office customers. While the government dithers over paid maternity leave and new policies to help young families, it refuses to address the mess that is the current system. In its first year of operation, one in two families received the wrong payment and one in three had debts averaging $800. In the second year of operation, which sees the government denying families top-up payments, tax returns have been stripped and around 600,000 families who have played by the rules will again get caught. The Ombudsman’s investigation has slammed the government’s family payment system and admits that, without fundamental policy changes, it will continue to trap families in debt. The report attacks the estimation rules at the heart of the family payment system, arguing that they ‘inherently result in a large number of debts and that many debts are significantly high’, that they ‘are affecting many lower income families’ and that ‘debts may be unavoidable’. The Ombudsman concedes that, even if his recommendations are implemented in full, ‘the scheme is likely to continue to result in significant numbers of unavoidable debts for families’.

Minister Vanstone clutches at a thread—that is, the systems adjustments announced by the Prime Minister in September last year. The Prime Minister was forced to admit then what the Ombudsman clearly points out now: tinkering will not substantially reduce the number and impact of debts. The Prime Minister admitted that around 400,000 families would continue to be slugged. That is why the Ombudsman has called for a fundamental rethink. The Ombudsman’s report is
highly critical of many elements of the current system which the government has refused to address. He recommends that the government abandon its controversial up-front stripping of tax returns. He argues that it should extend current provisions relating to waiving debts that arise from administrative error. Currently, families must prove not only that the government has messed up but also that they are suffering severe financial hardship. This is just a tricky way for the government to avoid responsibility for the administrative problems that permeate the entire family payment scheme.

The Ombudsman also criticised the current limitations relating to top-up payments which saw 25,000 families denied $30 million in payments last year. He has criticised the government’s policy in relation to shared care which allows one parent to claim a proportion of family payment at the end of a tax year. The Ombudsman made it clear that he considered it unreasonable that one parent can make a retrospective claim that has the effect of putting the other parent into debt. When Labor warned that the government’s shared care rules would result in debts and acrimony between separated parents, Senator Newman, the then Minister for Family and Community Services, promised to evaluate the provisions in the family payment system after its first year of operation. Today it is clear that this never happened. Through laziness or sloppiness, the review was never commenced. So the families who rely on payments to see them through each week have to bear the brunt.

Finally, the Ombudsman points out that family payment rules governing families of young people who are making a transition from school to apprenticeships or work are unfair and that a parent can incur a substantial debt as a result of an unplanned change in a child’s circumstance. One dollar of income over the threshold earned by a young person can turn a year’s worth of family payments into a massive debt. Surely, that is not the way to support families who have a child trying to make the transition from school to employment. The coalition’s family payment system is fiscally and socially irresponsible. Minister Vanstone takes home a nice salary of—(Time expired)

Senator KNOWLES (Western Australia) (3.19 p.m.)—It is interesting: we get Senator Mark Bishop coming in here reading a little prepared speech but it does not bear any relevance to what is happening today. Today we have had a series of questions based on the Ombudsmen’s report. It is worth stating right here and now—Senator Bishop does not want to stay to listen to this; he is leaving the chamber; he does not want to listen to the facts—

Senator Jacinta Collins—Just get on with it!

Senator KNOWLES—Don’t tell me what to do, Senator Collins! Senator Bishop does not want to learn the facts. He is walking straight out the door now. He was referring to a report—as did Senator Collins during question time—that related to a period between 1 July 2000 and 3 September 2002. At no stage did we hear any of the Labor opposition refer to the fact that the Ombudsman’s report referred to the details of the system prior to the More Choice for Families measures being implemented in November 2002 and February 2003. At no stage did the Labor Party refer to that very crucial point—that there was a measure released after the Ombudsman’s report and the issues it addressed. Senators opposite do not want to know that, of course. In that regard, the report does not reflect on the current family tax benefit.

It is also interesting to note that here we have the Labor opposition bleating and crying again about a system that pays out 60 per cent more to families than the system under the Labor government. I would have thought that a Labor government would have been bragging about how generous it was in its time and that that Labor government, when put into opposition, would continue to brag about how generous it was to families, yet that is not the case. The fact of the matter is that the current system pays 60 per cent more to families than did the system under the Labor government.

Additionally, the Labor opposition would think that they would be able to brag about
this wonderful, generous system that they had—which was 60 per cent less than the current one—and that they would be able to cater for people in a top-up situation. Is that right? No, it is not, because the Labor government never had a top-up system. If someone incorrectly estimated their income, their income from the taxpayer was lost, and lost forever—an income to which they would have otherwise been entitled. The Labor opposition still complain about a system that now treats everyone equally. The Labour Party, when they were in government, had a system which was so confusing that people had to deal with 12 different payments. The coalition government has reduced that to three and, in so reducing it to three different payments, has in fact made sure—as I said before—that it is 60 per cent more generous.

I want to hear what the Labor opposition are prepared to do if ever this country is stupid enough to trust them with the purse strings again, because the clear message here is, firstly, that the Labor opposition do not want to top up any shortfall; secondly, that they do not want a more generous system; and, thirdly, that they do not want everyone to be treated in the same way. They simply want to try and look at a report that is outdated with respect to the current situation and say, ‘That is the problem today.’ That is not the problem today. They do not want to know what the situation is. They do not reflect accurately the generosity of the system and nor do they reflect, at all or ever, the fact that if people underestimate their income then they can be topped up.

Senator JACINTA COLLINS (Victoria) (3.24 p.m.)—Perhaps I should correct some of the errors in this debate in which Senator Knowles has just contributed. Senator Vanstone was quite accurate in describing the Ombudsman’s report as an executive summary of some of the transitions that have occurred in the system. However, what Senator Vanstone overlooked, and what I suspect Senator Knowles has not even read, is that further on in the report—where the Ombudsman tries to suggest what further changes might be necessary to this system to introduce some equity, particularly for low-income families—it mentions that families did not have a good understanding of the nature of the new family assistance system and the implications of income testing based on annual total income. The report notes:

This is not surprising given that the new system is very different in its effects than other government payments.

What we now have is a system which averages people’s needs over a 12-month period, and it just does not work. The question I asked Senator Vanstone today highlighted that in one particular case. You cannot expect families to anticipate that their 15-year-old children will go out and work at the end of the school year halfway through the year prior. As the Ombudsman points out, under the new arrangements families can now—so, yes, Senator Knowles, who has also left the chamber, families do have some more choices under these arrangements—make a more informed choice about how to receive their entitlement. Senator Vanstone now calls this an ‘advance’. However, to quote the report:

... many lower income families will still be unable to afford to choose to defer receiving their payments.

This government is asking families, if they have a 15-year-old child who, at the end of the school year, might choose to take up an apprenticeship, to say, ‘I had better defer receiving any family support payments just in case my child does make that choice. So I do not have the income I need to provide support for the child.’ The government needs to seriously look at the objective of these payments. These payments were introduced to help support families to provide for children, and you cannot defer those needs for six months just to fit in with the tax cycle. It just simply does not work that way.

What today’s question time highlighted was perhaps another issue: the inconsistency that this government has in many areas. It is quite happy to let corporate excess continue, to let larger and larger corporations in Australia make their own rules and make huge payouts to their senior executives, but when it comes to low-income families the government rips its money back through the tax system—in quite unanticipated ways, according to the Ombudsman’s report. Senator
Vanstone implied in question time that this really is not a matter that affects low-income families. That is where she differs with the Ombudsman’s report, and I encourage her to read that report. In estimates and now again in question time she has implied that this is not such a big issue and that we are talking about higher income families here. That is definitely not the case. The Ombudsman’s report highlighted again the issue that I have raised with Senator Vanstone through estimates and other forums.

The questions remain. Senator Vanstone says that families can choose to put their 15- or 16-year-olds onto youth allowance. Let these children become financially independent at the age of 15 or 16 because they may later get work. This is the same government that says that students up until the age of 26 should be regarded as dependants. With respect, you cannot have it both ways. When you are talking about youth allowance the minister must answer the following question: are families told to make a decision between family tax or youth allowance so that they will avoid debts? I doubt it very much. I doubt that Centrelink has been issuing those warnings to families once their children get to that relevant age. I think you will find that there are many families in this debt system who, had they chosen to put their children on youth allowance, would not have had a debt. But they were not forewarned, and this is just some off-the-cuff answer by the minister. She is not ensuring that the system deals with the real problems that the Ombudsman has raised in relation to the current system—not just the one prior to the tinkering that the minister did at the end of last year. The minister has to confront those outstanding problems and do something to fix the system. (Time expired)

Question agreed to.

Iraq

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.30 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Bartlett today relating to the possible use of chemical weapons during any military action against Iraq. That question related to whether or not the United States was going to use weapons that are in contravention of the chemical weapons convention. This very serious allegation was raised in the Independent newspaper just yesterday. The fact is that, despite repeated prompting and requests, including from the Democrats, the Prime Minister does not have any public confirmation from either the United States or the UK that they would rule out using nuclear weapons. As the Senate would recall, the Democrats specifically requested that the Prime Minister use his so-called peace mission a couple of weeks ago to ensure that he got that guarantee from the President of the United States and the Prime Minister of the UK. No such guarantees were made and they were presumably not given.

If we cannot get those sorts of guarantees then, presumably, we do not have any guarantees about chemicals being used by the United States as well. This is not just in relation to pepper spray, as the minister was suggesting today—although reports are that that would actually be banned for use on the battlefield under the chemical weapons convention—but also in relation to other gases, including a similar type of gas to that which was used in the hostage situation in a theatre in Moscow, which resulted in many hostages being killed.

The point here is not just that this is a nasty weapon that is going to kill people but that this is potentially undermining an anti-weapon convention. According also to that Independent report, Rear Admiral Stephen Baker, a navy commander in the last Gulf War, told the Independent that US special forces had knockout gases that can ‘neutralise’ people. The Pentagon said last week that the decision to use such agents is made by the commander in the field. Mr Rumsfeld, the Secretary of Defense, gave evidence to the United States House of Representatives Armed Services Committee on 5 February which attacked the straitjacket imposed by bans in international treaties on using the weapons in warfare. The Chairman of the US Joint Chiefs of Staff spoke of using weapons such as these against human shields.

It is very difficult to justify any action aimed at reducing the proliferation of weap-
ons of mass destruction or at disarmament if, as part of that action, those very weapons—nuclear or chemical weapons—are going to be used. Global measures that are trying to achieve global disarmament are undermined by the unilateral action of any nation—in this case, the United States. Instead of cooperative global efforts where everybody agrees to disarm, the US government is heading down the path of a new arms race by ensuring they have the biggest and most powerful weapons. They are not ruling out using weapons that are currently illegal under international conventions. I quote from the Prime Minister’s own statement to the parliament on 4 February. He said:

Every time a nation is allowed to undermine the international treaties and agreements put in place to restrict or prohibit the spread of chemical, biological or nuclear weapons, the world becomes more dangerous for all nations.

That statement by the Prime Minister is one that I very much agree with. That is why reports of the possibility of chemical weaponry being used by the United States, as well as the plentiful reports that they have not ruled out using nuclear weapons, are of such concern.

This action is in part about destroying weapons of mass destruction—that is part of the rationale. The obvious hypocrisy there is galling enough. It is not just a matter of hypocrisy or of political points in an argument but a matter of the fundamental undermining of global conventions aimed at reducing weapons of mass destruction and enhancing disarmament. There is no justification for this sort of action, and the government must get absolutely clear guarantees that no weapons that breach the chemical weapons convention will be used. (Time expired)

Question agreed to.

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

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 opposing Australia’s involvement in preemptive military action or a first strike, against Iraq.

We believe a first strike would undermine international law and create further regional and global insecurity.

We also call on the Government to pursue diplomatic initiatives towards disarmament in Iraq and worldwide.

by Senator Bartlett (from 897 citizens).

Petition received.

NOTICES

Presentation

Senator Allison to move on the next day of sitting:

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

(a) environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations—to 9 April 2003; and

(b) the role of libraries as providers of public information in the online environment—to 24 June 2003.

Senator Watson to move on the next day of sitting:

That the Select Committee on Superannuation be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 5 March 2003, from 6 pm till 8.30 pm, to take evidence for the committee’s inquiry into the Superannuation Industry (Supervision) Amendment Bill 2002 and the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002.

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 an order for the production of 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 Ian 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) on 12 December 2002 Senator Ian Campbell advised the Senate that, ‘consideration of the documents is close to conclusion’ and committed to tabling the requested documents out of session by 17 December 2002,
(iv) on 5 February 2003 Senator Ian Campbell advised the Senate that, ‘the government is seeking to conclude its consideration of these documents and its compliance—albeit very late—with the order of the Senate’, and
(v) more than 130 days have passed since Senator Ian Campbell gave the Senate a commitment that the Government would ‘shortly’ comply with the Senate order, and
(b) calls on the government to comply with the order of the Senate no later than 5pm on 6 March 2003.

Senator Allison to move on the next day of sitting:
That the Senate—

(a) notes that:
(i) the Centres for Disease Control and Prevention in Atlanta and the National Cancer Institute (USA) draft report estimates that 11 000 people died from cancers relating to nuclear testing during the Cold War,
(ii) this is the first study to consider the health effects of nuclear detonations, including those done in foreign countries, between 1951 and 1962, when open-air testing was banned, and
(iii) the report concludes that radioactive fallout from the Cold War nuclear testing exposed virtually everyone in the United States and contributed to cancer deaths;
(b) calls on the Federal Government to adopt blood testing, as New Zealand has done, for all veterans who have been exposed to nuclear testing or munitions in light of this new report; and
(c) urges the Federal Government to contact servicemen who are found in the current Australian health study to have been exposed to high levels of radiation, for the purpose of assessing their health condition and providing medical services.

Senator Allison to move on the next day of sitting:
That the Senate—

(a) notes that:
(i) Eileen Kampakuta Brown, senior Yankunytjatjara/Antikarinya woman and member of the Kupa Piti Kungka Tjuta from Coober Pedy, was awarded an Order of Australia (AO) for services to the community ‘through the preservation, revival and teaching of traditional Anangu (Aboriginal) culture and as an advocate for Indigenous communities in central Australia’,
(ii) Mrs Brown’s extensive traditional cultural knowledge has compelled her to lead a 10-year struggle against the Federal Government’s proposal to dump radioactive waste in the South Australian desert,
(iii) just days before Mrs Brown was awarded the AO, the Federal Government released its final environmental impact statement for the waste dump project, and
(iv) the Government also announced that $300 000 is to be spent to ‘re-educate’ the South Australian public and to nullify opposition to the dump;
(b) points out to the Prime Minister (Mr Howard) the hypocrisy of the Government in giving an award for services to the community to Mrs Brown but taking no notice of her objection, and that of the Yankunytjatjara/Antikarinya community, to its decision to construct a national repository on this land;
(c) calls on the Government to reverse its decision to construct a national repository in South Australia.

Senator Brandis to move on the next day of sitting:
That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 6 March 2003, from 4 pm, to take evidence for the committee’s inquiry into the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002.

Senator Chapman to move on the next day of sitting:
That the Parliamentary Joint Committee on Corporations and Financial Services be
authorised to hold a public meeting during the sitting of the Senate on Wednesday, 5 March 2003, from 4.30 pm, to take evidence for the committee’s inquiry into the disclosure of commissions on risk products.

Withdrawal

Senator NETTLE (New South Wales) (3.55 p.m.)—Due to changed circumstances, I withdraw general business notice of motion No. 347 standing in my name for today, relating to the construction of the nuclear irradiation facility at Narangba, Queensland.

Presentation

Senator TCHEN (Victoria) (3.36 p.m.)—I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1 standing in my name for 13 sitting days after today for the disallowance of the Bankruptcy Amendment Regulations 2002 (No. 1), as contained in Statutory Rules 2002 No. 255 and made under the Bankruptcy Act 1966. I seek leave to incorporate in Hansard the committee’s correspondence concerning these regulations.

Leave granted.

The correspondence read as follows—

Bankruptcy Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.255
5 December 2002
The Hon Daryl Williams MP
Attorney-General
Parliament House
CANBERRA ACT 2600
Dear Minister
I refer to the Bankruptcy Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 255. The Regulations make a number of amendments concerning the role of the Official Trustee, the registration of trustees and related matters. The Committee notes two matters with respect to these Regulations.

First, regulation 8.30 deals with the process for interviewing a registered trustee to determine whether that trustee should continue to be registered. The Committee notes that subregulations 8.30(2) and (5) refer to an ‘applicant’ participating in such an interview, while the other subregulations refer to the ‘trustee’. It is not clear who the ‘applicant’ is, or whether this is the correct terminology.

Secondly, the new regulation 16.07B provides that the Official Trustee is entitled to interim fees. The Explanatory Statement, however, explains that “Under the Act, the OT has no right to a fee until the work is completed”. It is not clear whether the Explanatory Statement is referring to an express prohibition in the Act, or to the fact that the Act does not address the payment of interim fees. The statutory basis for regulation 16.07B is thus unclear.

The Committee would appreciate your advice on these matters as soon as possible, but before 24 January 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

5 February 2003
Senator Tsebin Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Senator Tchen
I refer to your letter of 5 December 2002 concerning the Bankruptcy Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.255 (the Regulations).

In relation to the Committee’s question concerning the consistent use of terminology in regulation 8.30, I note that the word ‘applicant’ has been inadvertently used in subregulations 8.30(2) and (5) to refer to a ‘trustee’. Subsection 155H(2) of the Bankruptcy Act 1966 provides for the Inspector-General to convene a Committee to consider if the registration of a trustee should be continued when the trustee has not provided an explanation of the matters set out in paragraphs 155H(1)(a) to (f). Accordingly, regulation 8.30, which deals with the involuntary deregistration of a trustee can only deal with a person who is already registered as a trustee under the Bankruptcy Act. The reference will be corrected in proposed amendments to the Bankruptcy Regulations 1996 which are being prepared to facilitate the commencement of the
Bankruptcy Legislation Amendment Act 2002 expected in May this year.

In relation to the Committee’s question concerning regulation 16.07B, the Bankruptcy Act does not expressly prohibit the Official Trustee’s (OT) entitlement to interim fees. Under former regulation 16.07, now repealed, the OT was not entitled to take interim fees during the course of the administration because of the method of calculating the fees payable to the OT provided in subregulation 16.07(4). Former subregulation 16.07(4) prescribed the fees payable to the OT by calculating the ‘amount realised, or brought to credit’ after deducting sums paid to secured creditors and business costs. In *Re Athanassopoulos* (1982) 61 FLR 294 Lockhard J considered the application of rule 182 of the Bankruptcy Rules which provided for the calculation of the OT’s fees in the same manner as former subregulation 16.07(4). His Honour concluded that, because the ‘amount realised’ could not be determined until the completion of the estate, the OT had no right to a fee in the bankruptcy administration before that time.

New regulation 16.07B allows the OT to claim fees for work which has been undertaken without having to wait for administration of the estate to be finalised. The statutory basis for regulation 16.07B is found in s 163 of the Bankruptcy Act which provides for the OT to be remunerated as prescribed by the regulations. The Office of Legislative Drafting is of the view that the section supports a regulation to provide the OT’s entitlement to interim fees.

I trust this has assisted the Senate Committee in its consideration of the Regulations.

Yours sincerely

Daryl Williams
Attorney-General

Senator Bartlett to move, five sittings after today:

That items [2356], [2357] and [2358] of Schedule 2 to the Migration Amendment Regulations 2002 (No. 10), as contained in Statutory Rules 2002 No. 348 and made under the Migration Act 1958, be disallowed.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) notes the tragic fires and destruction of property which occurred over December 2002 and January 2003 at five Australian immigration detention centres and the ongoing consequences in terms of the impact for asylum seekers;

(b) condemns the acting Minister for Immigration and Multicultural and Indigenous Affairs (Senator Ellison) for the imputations in his media statements accusing refugee advocates for inciting arson; and

(c) calls on the Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) and the Department for Immigration and Multicultural and Indigenous Affairs to ensure that refugees not involved in the fires at these detention centres are not arbitrarily detained or punished.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) congratulates the Globalism Institute, the New Internationalist magazine and David Bridie, the organisers of the successful West Papua conference and concert held in Melbourne last week; and

(b) condemns the RMIT University administration for withdrawing, after pressure from the Indonesian Government, permission for the conference to be held on its campus.

Senator Brown to move on 5 March 2003:

That the Senate supports the rights of the people of West Papua to develop their own distinctive culture and institutions and to determine their own political future.

AUSTRALIAN LABOR PARTY

Leadership and Office Holders

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.38 p.m.)—by leave—I table a list of shadow ministry representation and shadow parliamentary secretaries for the opposition in both chambers.
NOTICES

Presentation

Senator Brown to move on the next day of sitting:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 26 June 2003:

The operation and effectiveness of Australia’s security and intelligence agencies in the lead up to the Bali bombings, including:

(a) the discrepancies, if any, between Australia and other nations (including the United States of America) in intelligence received regarding terrorist operations prior to the bombings;
(b) action taken in Australia and elsewhere to warn the public of potential dangers; and
(c) any other matters concerning security and intelligence agencies affecting Australians in relation to the Bali bombings.

COMMITTEES

Economics Legislation Committee

Senator McGauran (Victoria) (3.40 p.m.)—by leave—At the request of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002 be extended to 19 March 2003.

Question agreed to.

LEAVE OF ABSENCE

Senator McGauran (Victoria) (3.41 p.m.)—by leave—At the request of Senator Harris, I move:

That leave of absence be granted to Senator Harris for the period 3 March to 6 March 2003, on account of parliamentary business overseas.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 2 standing in the name of Senator Murray for 4 March 2003, relating to the reference of matters to the Economics References Committee, postponed till 16 June 2003.

Business of the Senate notice of motion no. 3 standing in the name of Senator Nettle for 4 March 2003, relating to the reference of matters to the Community Affairs References Committee, postponed till 6 March 2003.

General business notice of motion no. 1, under committee reports and government responses, standing in the name of the Chair of the Standing Committee of Senators’ Interests (Senator Denman) for 6 March 2003, proposing amendments to the resolutions on senator’s interests, postponed till 15 May 2003.

General business notice of motion no. 327 standing in the name of Senator Stott Despoja for 4 March 2003, relating to the commercial release of genetically-engineered crops, postponed till 18 March 2003.

General business notice of motion no. 342 standing in the name of Senator Cherry for today, relating to the Government’s response to a report of the Rural and Regional Affairs and Transport References Committee, postponed till 4 March 2003.

General business notice of motion no. 348 standing in the name of Senator Stott Despoja for today, relating to Flinders University Health and Counselling services, postponed till 4 March 2003.

Senator Brown (Tasmania) (3.42 p.m.)—by leave—I move:

That general business notice of motion no. 349 standing in my name for today, relating to the death of Buddhist monk Lobsang Dhondup, be postponed till the next day of sitting.

Question agreed to.

FOREIGN AFFAIRS: COLOMBIA

Senator Brown (Tasmania) (3.42 p.m.)—I move:

That the Senate—

(a) recalls the following resolution, agreed to by the Senate on 19 November 2002:

That the Senate—

(a) notes that former Colombian Senator Ingrid Betancourt and Ms Clara Rojas have been held captive by Revolutionary Armed Forces of Colombia (FARC) guerrillas in Colombia since February 2002; and
(b) requests the Australian Government to write to President Uribe asking that
he take urgent and active steps to secure the release of Ms Betancourt, Ms Rojas and other captives of the FARC;

(b) notes that the Government has failed to respond to this request; and

(c) calls on the Government to now seek action from President Uribe to secure the immediate release of Ingrid Betancourt and her fellow captives.

Question agreed to.

MINISTERIAL STATEMENTS

Defence Update 2003

Senator HILL (South Australia—Minister for Defence) (3.43 p.m.)—I seek leave to make a statement relating to the Defence Update 2003.

Leave granted.

Senator HILL—Mr President, the government has issued a document headed Australia’s National Security: A Defence Update 2003. This document is an update to Australia’s strategic guidance, which in its current form is principally the 2000 defence white paper. That document was a comprehensive analysis of Australia’s defence and security issues and set the framework within which we seek to protect Australians and Australian interests. We said at that time that it would be updated from time to time, and the update I am referring to now is the first revision of the white paper.

Not surprisingly, in many ways this is consistent with what is happening around Western countries at the moment. The United Kingdom issued an update to Australia’s strategic doctrine late last year, which it referred to as a ‘new chapter’. I think these updates which are being instituted reflect the rapidly changing strategic environment which countries that share our values are facing. What we found in this update is that our strategic environment has changed, principally in three areas. The first relates to global terrorism, which is clearly upon us and which is found to not be transitory. We state that we believe the war against terror will last for some years. The second relates to weapons of mass destruction and the possibility of the use of such weapons by rogue states or even non-states. The third relates, unfortunately, to a continuing deterioration of our own neighbourhood, of our own region.

In the 2000 white paper, the growth of terrorism and the threats associated with weapons of mass destruction and the difficulties within our region were all noted. Of course, the paper noted that and forecast a trend towards an increase in these threats but was nevertheless unable to predict the extent to which they would become profound in the following two years. Nobody could have predicted what happened on 11 September 2001 in the United States and, of course, nobody predicted what happened in Bali late last year.

The issue of weapons of mass destruction was appreciated, but at that time basically it was believed that the rogue states who had weapons of mass destruction could be contained and that that was a sufficient response. In relation to the region, problems were obviously being experienced but deterioration has been seen since. Just to illustrate that, I will remind you of what has happened in the Solomon Islands since then, with an almost total breakdown of law and order. What happened during the last election in PNG, where of course the election within the Southern Highlands was void through violence, is now being repeated and there are a number of other instances within our region of a continuing worrying trend.

Therefore, what this update does is focus on these principal areas, not only recognising what Australia is doing—for example, in relation to the war against terror, the way in which we have been involved in tackling that terrorist threat at source and that the ADF is in and around Afghanistan—but also looking at ways in which we are seeking to respond to the threat as it is expanded across the globe and particularly into our own region and, in relation to our region, how we are seeking to combat it by assisting regional states, who are of course as much threatened by terrorism as we are. We should never forget that, although the loss of 88 Australian lives in Bali was appalling, Indonesia was also a great loser in that horrifying experience. Using the example of Indonesia, it is therefore obvious that we and Indonesia jointly have a vested interest in effectively
combating this terrorism threat. The same sentiment applies to other South-East Asian countries. It is about working with the island states that surround us to ensure that the terrorist threat is not expanded within their small, fragile states to take advantage of what are often economic and political weaknesses. The paper looks at what Australia is doing to combat the threat and also looks at how we will be able to contribute in the future.

In relation to weapons of mass destruction, we reflect upon our observations of Iraq and our disappointment that the Security Council in 12 years has been unable to effectively address that threat. We express our concerns about what is happening in North Korea, which seems to have abandoned the prospect of economic growth and social development to return to a path focusing on nuclear weapon development and extending its other military capabilities—in particular, its long-range missile technologies. We look at the trends that exist within our region as well.

What is then important from a defence planning perspective is to consider how the Defence Capability Plan, the plan within which we give our forces their capability, should be modified by this changing strategic environment and, in particular, the uncertainty that exists in the global strategic environment at the moment. What we conclude is that there need not be a fundamental change from what was set out in the white paper and its supporting Defence Capability Plan; nevertheless, there needs to be some modification around the edges to ensure that when we do send our forces abroad to protect Australia’s interests in relation to these new and emerging threats they are properly equipped for that task. To be able to do so in the past has been somewhat incidental.

We say it is a primary responsibility, not just an incidental responsibility, and so the government has already made some changes to force capability, in particular to our special forces where we have increased the size of the special forces, we have doubled our counter-terrorism capability in Australia, we are providing helicopters for the special forces and we have given them their own command. That is a recognition that a particular aspect of our Defence Force has a very real responsibility in combating these new threats. It is important that, notwithstanding the form of the DCP under which we are operating, we nevertheless ensure that the force is fully and properly equipped to meet these tasks. We foreshadow in this update that we are continuing to consider other modifications to the DCP that can better reflect the changing strategic environment in which we live.

In conclusion, because some have said otherwise I think I should repeat that we would always see the defence of Australia as our primary responsibility. But it is important not to simply structure a defence force for that objective when the threat is seen as a reducing threat and, as a consequence, fail to effectively prepare our force for the tasks that we are actually giving it. At a time of unprecedented high operational tempo, when we are asking the ADF to undertake a large number of different and challenging tasks across the world, it is particularly important that we see it is fully and properly equipped for those tasks. That is a responsibility that we accept.

I want to thank those people in my department and in other departments and agencies which have roles in relation to national security who have contributed to this paper. A lot of thought and effort has gone into it, and we think it properly appreciates the strategic environment, as it exists at the moment, and the new and emerging challenges that we are going to have to face in the future. I table the document to which I have been referring, Australia’s National Security: A Defence Update 2003, and I seek leave to move a motion in relation to the statement I have just made.

Leave granted.

Senator HILL—I move:

That the Senate take note of the statement.

Senator CHRIS EVANS (Western Australia) (3.55 p.m.)—Somewhere in the middle of a fierce cabinet debate and a Department of Defence resisting its Minister for Defence’s global ambitions, the much anticipated strategic review of the 2000 defence
white paper became Australia’s National Security: A Defence Update 2003. It would be easy to dismiss this slim, lightweight update were it not for the shift in strategic doctrine that it signals and the serious consequences it holds for ADF capability. I think Senator Hill could be satisfied that he escaped from cabinet with a 1-1 draw. He got rhetorical support for a more global role for the ADF, albeit watered down from his more grandiose ambitions but, critically for the ADF, he lost the claim for $1.5 billion of additional funding to finance this new role. The minister has delivered a vision of an expanded role for the ADF but no funding to pay for it.

It was therefore not surprising that, when launching the update, the minister foreshadowed cuts to the existing Defence Capability Plan. These cuts reflect the fact that the government is increasingly keen to deploy the ADF well beyond our region but does not want to pay the bill. Without massive funding increases, the government will have to sacrifice existing and planned defence of Australia capabilities to cover the cost of its global ambitions. When the government finally reveals the extent of the planned cuts to capability, we will get a real sense of the long-term costs of the government’s commitment to a US led invasion of Iraq and an expanded global role for the ADF. We will also see the cost of the government’s mismanagement of defence procurement, for in reality much of the pressure for cuts will be driven by the blow-out in the cost of the Defence Capability Plan over the last two years.

Significantly, the update also represents an abandonment of the principle of self-reliance, which has underpinned our defence strategy for decades, in favour of a view of the world predicated on dependence on the United States. The Defence Update also fails in its other key purpose, which was to provide strategic justification for John Howard’s commitment to rush with the US to a war with Iraq. The update does nothing to change the fact that Australian involvement in a US led invasion of Iraq is contrary to the priorities set out in the white paper—priorities which, according to Senator Hill, remain basically sound and which the update does not adjust.

For more than a year, the minister has been talking about the strategic review of the white paper. We have had speeches, interviews and articles all speculating on the scale and breadth of the review, with teasers on what it might bring in the way of new capability for the ADF. The minister signalled support for the US first-strike doctrine and speculated, at great cost to diplomacy, on Australia mounting pre-emptive attacks in our region. It is fair to say that the collective response to the slim document that was released last week was one of overwhelming indifference. Having built up expectations, the minister was seen as having failed to deliver.

In assessing the Defence Update, it is important to remember the nature of the document it is purporting to review. The white paper is a plan for the next 20 years and is based on assessments of threats over that period and the capability the ADF needs to counter those threats. Given the long time lines involved in defence projects, the white paper notes that any assessment of ADF needs must take into account possible threats emerging in 10 to 20 years time. On this basis, the key question to be asked of the Defence Update is: does it provide a long-term assessment of Australia’s defence needs over the next 20 years? The answer is clearly no. It provides a discussion on the events of the last two years but makes no attempt to put these events into a long-term context and analyse in any detail the implications for ADF planning and capability. Because cabinet would not fund the changed strategic direction that Senator Hill wanted, we got instead a news summary.

The update does not even attempt to take a long-term focus. In discussing the threat of direct military attack, the Defence Update states that the threat of conventional military attack on Australia has diminished ‘for the present’ and in ‘the near term’. These reflect political assessments, not a strategic assessment by the Department of Defence. Instead of a clear analysis of Australia’s long-term strategic environment, we have a confused and contradictory assessment that says we
need a more flexible and mobile ADF but delivers no new capability. What became of the strategic airlift capability flagged by the minister last year to support overseas deployments? Was that one of the elements of the minister’s $1.5 billion package knocked off by cabinet? After over 12 months of posturing about the need for a more flexible and mobile force, Senator Hill has failed to deliver. The Defence Update provides not one new capability to the ADF.

The update claims that in the two years since the white paper was released the threats faced by Australia have significantly changed. In particular, it notes that the threats of terrorism and weapons of mass destruction have increased while the threat of direct military attack has diminished. The tragic events of September 11 and the attack in Bali have dramatically highlighted the threat posed by terrorism. Al-Qaeda has shown the potential for a sophisticated terrorist organisation to establish links across the globe and commit horrific attacks against nations. The emergence of this threat requires much greater focus on intelligence gathering, international cooperation and domestic security arrangements. While the ADF needs some enhanced capability to respond to terrorist attacks, it would be civilian agencies and state governments that would have primary responsibility for dealing with attacks on Australian soil.

The government first announced its defence response to terrorism in October 2001 when it said it would create a second Tactical Assault Group and the Incident Response Regiment. To put those measures in perspective, they will cost $51 million this year, out of a Defence budget of $14,300 million, and will involve only 400 personnel out of an ADF of over 50,000. While they are a legitimate response to possible domestic threats from terrorism, clearly those measures do not represent a major change to the ADF’s capability, structure or role.

For decades, successive governments have agreed that our primary security concerns rest in the Asia-Pacific region. These priorities were reaffirmed in the white paper, which asserted that the second, third and fourth strategic priorities related to the ADF fostering stability and security in the Asia-Pacific region. With our limited military resources, this is often the most significant contribution Australia can make to global security and stability. The update rightly devotes five pages to a section titled ‘A troubled region’. Those five pages reinforce the logic of the white paper and its focus on our region. There clearly is the real potential for events in the immediate region that would require a response from the ADF. In recognising the potential instability of our region, this section of the update is a compelling argument against the global ambitions of the government. It highlights the need for us to concentrate our modest assets on our responsibilities and the security threats within the region.

In calling for a more global role for the ADF, Senator Hill has cited Australia’s involvement in the war on terrorism. That operation, which saw the ADF deployed to Afghanistan, was highly unusual in that it saw conventional military forces being used against a terrorist organisation in intensive battles. No further conventional military operations appear planned for the war on terrorism. Instead the argument for operating beyond our region now appears to have shifted to the threat of weapons of mass destruction, principally the efforts to disarm Iraq. The linking of weapons of mass destruction and ‘rogue states’ is a clear echo of the US administration’s ‘axis of evil’, with the update singling out Iraq and North Korea. The update ominously notes that the government may need to consider future requests to support coalition military operations to prevent the proliferation of weapons of mass destruction.

The document then identifies a number of capabilities that are relevant to Australia’s participation in international coalitions, including enhanced communications, electronic warfare protection, ballistic protection of assets, the joint strike fighter and airborne early warning aircraft. All of these are capabilities planned for in the white paper and already scheduled in the Defence Capability Plan. It is absurd for the government to claim that it is implementing these measures ‘as a result of Australia’s new strategic environ-
ment’. They merely reflect the fact that our contribution to previous and future military coalitions will continue to draw from the capability needed for the defence of Australia.

The one real surprise in the Defence Update was the endorsement of Australia’s involvement in ‘son of Star Wars’—the US missile defence system. Clearly this came out of the cabinet process rather than from the defence department. John Howard was keen on the idea when Ronald Reagan first proposed it to defeat the then ‘evil empire’ of the Soviet Union. In an opportunistic response to concern over North Korea, the government has committed to Australian involvement in the US missile defence plans. This announcement will further lock us into US military planning and strategy, alienate our neighbours and undermine our longstanding commitment to disarmament. The development of a missile defence system runs counter to diplomatic efforts to deal with the proliferation of weapons of mass destruction. Australian involvement would undermine our participation in international, and more particularly regional, security cooperation towards effective arms control.

Labor is seriously concerned about the long-term implications of strategic nuclear build-ups in the Asia-Pacific region and the implications of such developments for Australia’s national security. One cannot help wondering whether the government’s real intention in flagging Australia’s potential involvement in NMD was to divert attention from its decision to commit to a US-led invasion of Iraq. It has certainly had the effect of increasing anxiety in the community about the prospect of a ballistic missile attack from North Korea, despite Senator Hill’s claim less than two months ago that North Korea did not represent a threat to Australia. Any commitment to missile defence can only come with greatly expanded Defence budgets or at the expense of existing capabilities designed to promote defence of Australia and the role of the ADF within our region.

Perhaps the most controversial statement in the update is that the ‘prospect of a conventional military attack on Australian territory has diminished’, in the near term. The white paper assessed Australia as being ‘secure’, with the threat of attack from conventional military forces as ‘least likely’ in terms of an invasion, a ‘remote possibility’ in terms of a major attack and ‘most unlikely’ for even minor disputes. How exactly can you diminish assessments of ‘least likely’ or ‘remote possibility’? How can the threat against a ‘secure’ country be diminished? The answer is: it cannot. This is not a proper strategic assessment of the threat faced by Australia. Threat assessments are not on some sliding scale or gradient. This is a political convenience, no doubt drafted in the minister’s office, to justify cuts to the capability plan. The government will use this dubious assessment to justify its walking away from the capability plan it committed to just two years ago. The explanation provided for the reduced threat assessment is the deterrent effect of its strong alliance with the US. The white paper includes our alliance with the US as one factor in a number of factors that contributed to our ‘secure’ status.

But, importantly, it goes on to say that of all the factors contributing to our security only our geography was immutable. That is a significant and legitimate qualification given the white paper is a 20-year plan. If we were to go back 20 years from today, the Cold War was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics. Gorbachev had yet to come to power in the Soviet Union, which was still very much dominating global politics.

The world was a very different place in 1983 and will be a very different place in 2023.

There is the real potential that the US will find itself drawn into the long-term stabilisation and administration of Iraq following any war. Domestically in the US a bloody war in Iraq could see the current administration’s willingness to act decline suddenly and markedly. Potential tensions between the US and China could flare over Taiwan at any point—as highlighted in the update—and draw the US into major conflict. The white paper correctly recognises that nothing is certain in this world except change. We must plan for a range of contingencies not merely
rely on the current environment remaining fixed. In doing so, the update is fundamentally flawed and exposes the document’s political pedigree.

Perhaps more than anything else, it is what Defence Update does not say about ADF capability that causes me the most concern. In the doorstop after launching the update, Senator Hill admitted that all aspects of the DCP were under review. The minister has signalled that severe cutbacks to the DCP are being debated by the government. These cuts have the potential to seriously compromise the ADF’s capability to defend the nation and respond to events in our own region. These cuts will no doubt be justified on the update’s dubious assessment that in the near term the threat of direct military attack on Australia has decreased.

The reality is that the cuts to the DCP are due in part to the government’s inability to manage defence procurement. We know that the total cost of the top 20 equipment projects alone has blown out by $5.1 billion. In December last year, conveniently on the last day of parliament, the minister announced an independent review of defence acquisitions. It was an admission of his failure, and it was an admission of the Howard government’s failure, to bring defence mismanagement under control, despite seven years of reviews and reform programs. The capability needed for the defence of Australia has been compromised by the government’s inability to manage defence acquisition projects.

The implication of the threat assessment in Defence Update is that the need for Australia to provide for its own defence has decreased because of our close relationship with the US. The update sees Australia’s national security largely in terms of our alliance with the US. This statement strikes at the heart of Australia’s longstanding doctrine of self-reliance. That policy was clearly spelt out in the white paper, which states that the ADF should be able to defend Australia without relying on the combat forces of other countries. The principle of self-reliance reflects, fundamentally, our sense of independence as a nation. Importantly the white paper states that a healthy alliance with the US should not be a relationship of dependency but of mutual help and that dependency would weaken the alliance both in the eyes of Australians and in the eyes of Americans.

The Howard government is retreating from this long-held principle. Prime Minister John Howard appears set on binding us into a relationship of dependency with the US, a relationship that would see us winding back on the capability needed to defend Australia on the basis that the US will come to our rescue. That is not the ‘healthy’ US alliance described in the Defence white paper. Any increased dependency on the US will inevitably come at a cost and would not be without risks.

Labor believes that the military planning principles established by successive white papers and endorsed by successive Australian governments continue to be a sound basis to promote Australia’s national security. While there are obviously legitimate reasons to fine-tune our defence policy in response to terrorism and weapons of mass destruction, any change should be considered in the context of our primary strategic priority to defend Australia and our responsibilities in the Asia-Pacific region and not for any unsustainable vision of a global expeditionary force. Labor urges a steady approach, specifically one that recognises the principle of flexibility consciously underlying the force structure decisions taken in the white paper. The defence of Australia and our regional defence role must remain the principal drivers of our strategic policy and force structure.

If Senator Hill is serious about equipping the ADF for a high profile global role, he will have to find the billions of dollars of additional funding for defence. Increased defence spending on this capability without new money can only come at the expense of key capabilities providing for the defence of Australia. Labor supports the view that Australia’s alliance arrangements with the USA remain fundamentally important to our national security. However, the alliance relationship does not require concurrence by Australia with every element of United States strategic policy. Labor will not compromise Australia’s longstanding commitment to self-reliance.
In relation to national missile defence, Labor’s view is that the best way to combat the proliferation of weapons of mass destruction in our neighbourhood is through multilateral diplomatic efforts, not the pursuit of untested and costly systems that could have the effect of sparking another arms race.

The Defence Update was not the strategic review that we were promised. It is not what Defence drafted nor was it exactly what Senator Hill wanted. As a news summary of the past two years it will disappear into the ether. Its importance will be in signalling the government’s increasing commitment to interoperability, coalition roles and increasing dependence on US military strategy. The commitment to ‘son of Star Wars’ will reverberate around the region. Its reflection of Senator Hill’s determination to pursue a more global role for the ADF at the expense of the defence of Australia will face its acid test when the update to the DCP is finally revealed. Senator Hill’s failure to release changes to the DCP clearly reflects the dissonance in cabinet and the Howard government’s ongoing failure to manage the cost of defence procurement. The Defence Capability Plan is to be reviewed in the context of an increasing strategic reliance on the US, budget pressures to pay for a war in Iraq and a minister arguing for a global role for the ADF rather than focusing on the defence of Australia.

Labor is seriously concerned that the culmination of those pressures will see the deferral or abandonment of key assets in the Defence Capability Plan. Those decisions, if taken, will put at risk our capacity to adequately ensure the defence of Australia in the longer term. The Defence Update reflects the victory of politics over defence strategy. It is vitally important that the DCP reflect a very different outcome.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.14 p.m.)—The Australia’s National Security: A Defence Update 2003, which has been tabled today by the Minister for Defence, is potentially an extremely significant and, in the Democrat’s view, a very serious evolution in the policy of the federal government in relation to the prioritisation and resourcing of the Australian defence forces. The test will be how much it is simply political flag-waving as opposed to genuine, coherent, structural modification to the future operations and expenditure priorities of defence forces. If it is actually a genuine document that is going to be implemented, in the Democrat’s view it is a very dangerous paper and a very serious diversion in the future direction of Australia’s defence.

It is correct for the paper to identify weapons of mass destruction, terrorism and regional low-level conflicts as priorities, but it is wrong to see Australia’s alliance with the United States as the primary solution. The Democrats are not against our alliance with the United States; we are not anti-American. We are pro-Australian. We support the need for Australia to have an independent foreign and defence policy, and to be able to ensure that we can maintain an independent defence force that makes its own decisions based on its own priorities. By linking the future safety and security of our nation so closely and so strongly with that of another stronger nation and by basically relying on the US maintaining its role as the sole global hyperpower, we are in effect weakening our own sovereignty and our own ability to make independent decisions on defence and foreign policy issues. The document itself makes it quite clear that it is the intent of the Australian government, in various circumstances, to expand the number of times Australia operates as part of a coalition of forces in areas far from our own region. In effect, that is diverting a lot of defence resources towards, in part, supporting the foreign policy and military policy priorities of another nation—in this case, the US.

The Democrats disagree with the notion contained in the update that what is described as US primacy means there is ‘less likely to be a need for ADF operations in defence of Australia’. We must remember that our first priority and our first responsibility has to be the defence of Australia and simply relying on powerful friends is not enough. If the war on terrorism has taught us anything, it is be aware of threats you did not see coming and, therefore, threats you are
not prepared for. We should not lose our focus on defence self-reliance whilst trying to keep up with the US’s actions all over the world.

The white paper includes dozens of favourable mentions of the United States, but the United Nations is only mentioned once in relation to East Timor peacekeeping. It reflects the ongoing reality that this government is willing, even eager, to play a military-combat role that is politically outside United Nations multilateral efforts and geographically far beyond our own Asia-Pacific region. Inevitably, this has to come at some cost to our focus on our own region. The fact is that our military and our security resources are limited, and we make choices as to how and where they are deployed. Every time, as we are doing now, we divert resources into actions in support of international coalitions, which are potentially outside the oversight of the United Nations and far away from our own region, we are diverting resources away from the security needs in our own region.

Given that the update itself continues to acknowledge the strong priority of security issues in our own region amongst our neighbours, the fact that we would divert such a significant amount of money to actions elsewhere than in our own region is a great concern to the Democrats. Every time, as we are doing now, we divert resources into actions in support of international coalitions, which are potentially outside the oversight of the United Nations and far away from our own region, we are diverting resources away from the security needs in our own region.

The language of the paper is also somewhat potentially misleading. The Democrats are getting more concerned about the mixed messages and logical leaps that are being used by this government to justify some of its defence positions. The continual use of the September 2001 tragedy to justify actions that have nothing to do with it is a growing trend and one that I think needs to be highlighted. It tries to make the natural emotional response to that terrible event part of the justification for doing something to which it is not at all linked. The report makes a number of mentions of the September 2001 event in contexts that have absolutely nothing to do with it. There is the example on page 15 under ‘The Threat of Weapons of Mass Destruction’. That whole chapter on weapons of mass destruction has nothing to do with what happened at the World Trade Centre. Page 17 talks about the events of 2001 and other things that ‘have reinforced the resolve of the US to push ahead with establishing an effective missile defence system’. How a missile defence system would ever protect you against what happened at the World Trade Centre is beyond me. To try to use that tragedy to justify a completely unrelated action is a complete misuse of that tragedy. It really needs to stop being misused in that way. I think it is an insult to the many thousands of families who were affected and continue to be affected by the losses in that area.

This diversion of priorities and resources to examining the possibility of a missile defence shield goes against most of the priorities identified in here, including terrorism and regional stability. When you have to weigh up choices, when resources, as we all know and are constantly reminded, are limited and particularly when the overall amount of resources is not adequate to fund other social needs here in Australia, then you need to question the wisdom of potentially utilising such massive expenditure on this particular activity of missile defences. In addition to the major concern that the Democrats have, and that many people have used in arguing against the missile defence system whenever it has been examined, which is whenever it has been floated, is that it is likely to lead to an increase in the level and amount of armaments around the globe. The last thing we want is for the arms race to start.

In recent years around the globe we have slipped off the pace on global disarmament, and there is the real concern about the current policy of the United States in that they are looking at a further increase in their
military power and further development of weapons of mass destruction. We have had a continual refusal to rule out the use of nuclear weapons in the potential conflict in Iraq, and concerns are being raised about the potential use of chemical weapons. As a country—and the thing that is totally absent in this paper—there is a need for Australia to continue to work multilaterally to get greater progress on global disarmament. That is not here at all; what is here links us more and more, militarily as well as in a diplomatic sense, with a country that is basing its approach on further expansion of its military power and military might. It goes against the whole aim and purpose of global disarmament.

If you are looking at the priority which is expressed here quite rightly—the danger of weapons of mass destruction—then surely global disarmament is the key aspect in the long term in trying to reduce the threat from weapons of mass destruction. You reduce the number of weapons; you do not increase the number of weapons and fuel increases elsewhere. That is a real logical flaw in this approach and that the government, via this update, appears to be going further down that path is a significant concern. Whilst Minister Hill has described the proposal of hosting US missiles on Australian soil as part of the missile defence aspect, he simply called it hypothetical. ‘Hypothetical’ is usually government code for, ‘We are not ready to announce it yet.’ Certainly the Prime Minister has admitted that missiles and laser weapons could be placed on Australian soil if we ever joined a national missile defence system. This is, in effect, moving us back towards the days of a mutually assured destruction policy except that, instead of a stand-off between two superpowers, it will be with unidentified rogue nations and the threat of terrorists. We are already significantly more militarily powerful than terrorists, but that is not where that threat comes from.

That need to focus more in our own region cooperatively, to tackle risks from terrorists in our own region is something that we need to give greater priority to more than is mentioned in this particular document. The departing French Ambassador to Australia, Mr Pierre Viaux, indicated his concerns that a national missile defence shield could spark a new arms race in our own region.

Senator Sandy Macdonald interjecting—

Senator BARTLETT—We probably will have French nuclear testing back here if we do that. It will suggest to France the prospect of renewing their testing in our region. It will interesting to hear the coalition’s concerns about nuclear weapons development—I am sure they have not mentioned that to the United States. The Chinese embassy has also said that they believe that US development of such missiles would undermine the global strategic balance and would lead to a new round of the arms race. If you have a country that is moving towards being the second most powerful nation—and moving more and more in that direction—saying that this approach will lead to a new round of the arms race, then I think you have to take them seriously. They are closer to our region, and it is clearly not in Australia’s interests to be seen to be supporting a policy that enhances the prospect of increased weapons development and increasing the arms race.

Looking at the threats in our own region, which the paper highlights a few times as being important, the more you look at the issues that need to be addressed, the more clear it becomes that the paper does not give sufficient priority to them. The paper states that the prospect of a conventional military attack on Australian territory has diminished because of US primacy—and the implication is that, for the near term, there is less likely to be a need for ADF operations in the defence of Australia. It then moves straight on to say that South-East Asia and the South Pacific face major challenges due to political weakness and other matters and that, if this continues, there will be increased calls on the ADF operations in our immediate neighbourhood. Let us remember that, for all this paper is calling for prioritising and enhancing military links with the United States, the United States is very unlikely to be offering us any assistance in operations in our immediate neighbourhood. We need only think back to the situation in East Timor and the very limited amount of assistance we got there from the United States. It is very un-
likely they would intervene or support us in any of the sorts of activities that our defence forces need to be focusing on. So the priority of the long-term security of Australia is one thing that we will need to do on our own. That is something that needs to be highlighted because it is not emphasised in this aspect of the paper.

The paper has in effect highlighted the issues in our own region but it also talks about the fact that Australia’s military resources will continue to be tied up in the so-called Pacific solution. The fact that we are using resources on an issue that is not a threat to the security of Australia highlights again the government’s distorted priorities in terms of our own region. The paper does make the statement about Indonesia’s territorial integrity remaining in Australia’s national interests. That is a phrase that is used frequently and I guess it depends how you apply it, but it should not be used as an excuse to turn a blind eye to human rights abuses in our region and in parts of Indonesia such as West Papua. Just a paragraph further on, the government talks about considering limited cooperation with the Indonesian military forces. That is something we should not be doing if it links us to forces that are complicit in human rights abuses. There is any amount of evidence that aspects of the military, and certainly still Kopassus, are involved in ongoing persecutions in West Papua. The government has to tread what I admit is a fine line. But it has to ensure that, as part of working cooperatively with other countries in our region, we do not use those relationships as a reason for turning a blind eye to human rights abuses in any of those nations—it is certainly not just Indonesia we could point the finger at there. I acknowledge it is a delicate thing to do, but it nonetheless must be factored into our relationships with those countries.

Cooperation with intelligence organisations, police and immigration law authorities in all these countries in our neighbourhood is important. In many ways it is another reason why we need to put more resources into our own region to assist those countries in developing their capacities in those areas, in their systems of governance and the professionalism of their forces, and in handling issues of corruption as well. The fact that our overseas aid budget—and I do not think that word is mentioned at all in this document—is seen as completely separate from our security and stability issues in our region is very unfortunate. That link needs to be made. It needs to be recognised that security is not just about investing lots of money in larger weapons. It also has to be about looking to invest in peace, in regional stability and prosperity and in effective community developments and governance in countries in our own region. In many cases that is much cheaper than going down the military road. We really need to look at increasing our investment in peaceful stability in our own region. That link, that acknowledgment, has not been made; it has never been made. We have the ongoing disgrace of a continuing decline in the overall percentage of GDP committed to overseas aid and development. That decline has been progressing for well over a decade, through the previous Labor government and continuing under the Howard Liberal government. That is an absolute disgrace, but it is also an action that is not in Australia’s interests.

Peacekeeping activities are a key part of what Australian forces need to be involved in in our own region. Diverting any resources to global adventurism, diverting any of our resources in a way that limits our ability to operate as an independent country, with independent defence and foreign affairs policy priorities, is not in Australia’s interests. Compromising our ability to build workable multilateral relationships or individual relationships with a range of countries by over-emphasising the US relationship—(Time expired)

Senator SANDY MACDONALD (New South Wales) (4.34 p.m.)—That contribution by Senator Bartlett is probably one of the most vacuous rambles I have heard in this place for a long time. I noticed when I came in here that the public gallery was nearly full and there were six members of the press gallery here, and he certainly sent them packing. Australia’s National Security: A Defence Update 2003, which was launched last week, is an update of Australia’s strate-
gic priorities from a military perspective. It looks at the major changes in Australia’s security outlook that have occurred over the last two years. It notes the government’s response to these changes to date and identifies the ongoing task for the ADF in addressing this changed security environment, both from an international and a regional point of view.

Defence planning is all about long-term planning, so the real force behind this strategic update is the rise in asymmetrical threats, emanating from terrorist organisations or rogue states, to Australia, our region and the international community. In 2003 we in Australia face substantial challenges. We have the geographical arc of instability, we have Iraq and our involvement in the war against terror, we have the developments in North Korea and, of course, we have the aftermath of the Bali tragedy. I will start with North Korea, then say something about our regional environment, then Iraq and finish with Bali.

I speak about North Korea first because North Korea tested further missiles last week and they have ramped up their nuclear program. These appear to be a blatant aid extortion against the United States specifically, but also against the West generally, at a time when the United States is preoccupied elsewhere. North Korea are not to be underestimated. They have a 1.2 million people army—and I guess we have all seen how they march. The South Korean capital, Seoul, and most of the US forces are in artillery range of the North Korean guns. They have a sophisticated missile system, a capacity to deliver weapons a long distance from North Korea and, most worryingly, they have had no exposure to the West whatsoever—probably less exposure to the West than East Germany had had before the fall of the Berlin Wall. They have a pathological dislike of the United States and of Japan and they probably already target Japan.

This crisis has a number of very strategic implications for Australia. Apart from the fact that it may force South Korea and Japan to ramp up their own nuclear programs, 60 per cent of our trade goes to North Asia—to Japan, South Korea, China or Taiwan. So, apart from anything else, the hip pocket implications for Australia of this crisis in North Asia are very, very relevant.

I move now to our arc of instability. Australia’s geographic position is difficult. We have some natural advantages in terms of the defence of the mainland. It is nice to have that moat around the northern part of Australia. But even before East Timor in September 1998, before September 11 and before Bali on 12 October last year, we had increasing regional instability. Our most important geographic neighbour is Indonesia. It has nearly 300 million people—more Muslims in fact than the whole of the Middle East. If only 0.01 per cent of those are fanatics that is 250,000 fundamentalist Muslims right on our doorstep. It has great challenges over its democratic future and its ability to hold itself together as a state, with some 13,000 islands. We have very strong political and personal relationships with Indonesia. This day there are some 18,000 Indonesian students studying in Australia. The alumni arrangements in Indonesia are very strong. We have very strong personal and political relationships, and we have to build on those and help them where we can. A silver lining of the Bali bombing is the very strong commitment to cooperation that the Indonesian police and the AFP now have, and some ongoing long-term good things can come out of that disaster. Also, we are seeing the possible collapse of nation states in the Pacific rim. The difficulties in PNG and Bougainville are well known, as are those in the Solomons, Nauru and other smaller states. Even some larger states like Fiji have real problems. For them—and with them—we share a responsibility to secure our region.

Australian defence planners have never relied on one specific threat. Over time we have moved from what I think was referred to in a generic sense as Fortress Australia towards defending our air-sea gap with South and South-East Asia. I mentioned our unique advantage to Australia to have that air-sea gap. In the past we have relied on technological edge. We have done so for all sorts of reasons, but because of our population we cannot have a large-standing ADF. We have
had very good special forces. We have developed things like over-the-horizon radar. We have a comparatively large range of surface ships and submarines. We have the F111 long-range strike capability. We have said that we are committed to AEW&C and air warfare destroyers.

Despite these changes, our defence priorities have gone and go further. They are to contribute to the safety of our region, of which our action in East Timor was an example; to contribute to international coalitions, of which our commitments to Afghanistan and the MIF, the multilateral interception force, in the Persian Gulf are examples; and to support peacekeeping. I understand we have about 16 peacekeeping commitments around the globe at this time. That is where the strategic review comes in. It is a response to new priorities, a response to global terror, a response to weapons of mass destruction by rogue states and even by non-states, and a response to the continuing deterioration of our neighbourhood.

I move now to Iraq and weapons of mass destruction, which raise three challenges for us. The first is how to deal with rogue states that have weapons of mass destruction and have used them—we do not have to go through the fact that Saddam Hussein has used them on his own people and in his war with Iran. Secondly, what if these weapons of mass destruction happen to fall into the hands of terrorists? I do not think there is any doubt that if al-Qaeda were lucky enough to get suitable material they would use it. They would certainly like to use it in a dirty bomb in one of the world’s major cities. Thirdly, sanctions as a means of bringing Iraq and others to heel have failed, despite recent French arguments that containment works. It is now 12 years since Saddam Hussein agreed to disarm after the Gulf War. It is 17 months since September 11. It is six months since President Bush went to the United Nations and made the position of the United States very clear. It is over four months since resolution 1441. This is not a game. Despite what Senator Bartlett said, none of us should underestimate the impact of September 11 on the United States’ psyche. It burnt them to the very core and that is not going to change.

This is not a catch-me-if-you-can. Disarmament is not about process; it is about substance. The US are a very vital and important ally to Australia and because of the importance of the alliance we support them. Nobody wants war, particularly without UN support, but no-one can tolerate the possibility of UN inaction. It is a question for all of us: what future can there be for the UN if it fails in its purpose, which is to provide collective international responsibility in respect of international crises? That is the very key to and cornerstone of why the UN is there and is in a position to act.

I might just cut to the chase. For what it is worth, what I think will happen with Iraq is that there will be another UN resolution in one form or another, and I think there is probably an 80 per cent chance of US military action. The outcome depends on a number of unknowns. It depends on whether the Iraqi military fight and it depends on whether Saddam Hussein stays. Win the US will, but winning the peace will be much more problematic, especially if the military action takes some time.

Australia has always reserved its right to participate in any action in the Middle East. Australia committed to predeploy for two reasons. Firstly, it was to increase diplomatic pressure on Saddam Hussein. Saddam Hussein has never and would never have responded to UN pressure without the US commitment. That is why the French so-called containment process is so sanctimonious. In practice, the recent containment has only been carried out by the US, and to a lesser extent by the UK, with no help from the French, who now say it is the answer. This is not the same as the containment which worked between the former Soviet Union and the US in the Cold War. That worked simply because of mutually assured destruction. Why should the US be expected to continue to expend energy to contain Saddam when Iraq should simply comply? That is an easy option for both Saddam Hussein and the apologists around the world. Secondly, we predeployed to give our troops the best chance to integrate and acclimatise if military action becomes necessary.
I turn now to Bali, because it showed that terrorism is not just an international threat to the West; it is also regional. It showed that Islamic networks operate in South-East Asia and, whilst we are not certain that Australia was a target, clearly we were part of a suitably soft Western target. The change from the previous terrorist threat—which was basically political, whether it was an embassy siege or a hijacking, a black October, or a red September or whatever, and, even to a lesser extent, with regard to the groups behind the Lockerbie bombing—is this: these groups wished to negotiate. They had a bargaining position. Governments could ‘bargain’ with them. Also, security forces became extremely effective in tackling embassy sieges and hijackings. They remained a threat but they were substantially curtailed.

This threat is different. Today, we are faced with terrorists who do not want to negotiate. For one reason or another, they want to kill us. So the so-called war on terrorism is not a war at all. It is a grinding of intelligence—human, signal and satellite—to prevent these terrorist groups from operating effectively. Our intelligence services must turn every stone, and our security services have been given resources as part of this strategic review to do just that. Improvements like the better identifying of terrorist crimes and better investigative powers, which passed through this Senate, and better coordination—which comes in real terms from the investigation; for argument’s sake, with the Indonesians after the Bali bombing—have moved in the right direction. But a sobering example of why our intelligence services need all the resources that they can possibly have is that it is believed that there were 33 Australians who were trained by al-Qaeda or by the Taliban. Of those, we know where about half of them are, and that is not excluding the two who have been captured in Afghanistan and Pakistan.

It is a real threat, but I would like to reassure the Australian people that we have outstanding ADF people and security people, who are ASIO, ASIS, DSD and the AFP. I entirely support the Prime Minister’s call to be alert but not alarmed. Our government takes our security extremely seriously. I am not so sure about our political opponents. That is not to refer to—I certainly do not impugn the patriotism of the ALP. But I have no respect at all for others in the political debate. I think that Senator Bartlett’s vacuous performance was unbelievable. I am sure that the public gallery—unfortunately, this debate is not being broadcast—would acknowledge what a vacuous display it was.

Senator BROWN (Tasmania) (4.50 p.m.)—The white paper entitled Australia’s National Security: A Defence Update 2003, in the second part of its introduction, says:

What is already clear is that while the Defence White Paper—the last defence white paper, that is—focused on the development of capabilities for the Defence of Australia and its National Interests, two matters—terrorism and the spread of Weapons of Mass Destruction, including to terrorists—have emerged to new prominence and create renewed strategic uncertainty. In addition, some adverse trends in our immediate neighbourhood have continued.

The Defence Update is based on looking at those important matters. What it does not do is look at why those matters have risen to greater prominence. We have to do that. Otherwise, the response will simply be one of meeting terrorism and weapons of mass destruction with a defence build-up which involves weaponry and armed personnel trying to offset the use of those weapons. It would be much wiser for us to try to offset the deployment of such technologies and to get at the reasons that we have such a divided world in 2003 where people feel the need to employ them.

We have to go beyond the terrorists themselves—the people that the speaker before me, Senator Sandy Macdonald, was talking about—if we want to do that. Weapons of mass destruction are not something that are being manufactured from a technology embedded somewhere in the Middle East. They are coming from our own societies—the ones we back. They are coming from the United States, Russia, China, Japan and Italy, and from wealthy countries in particular.

Senator Abetz—You don’t mention France and Germany.
Senator BROWN—I do not mention lots of other countries, Sweden being another one—countries which you would expect better of and which have huge armaments manufacturing and therefore research and development establishments. The question is why. It is not just a matter of defence. It is because this world has become one in which armaments manufacturing has become a lucrative source of making money by the wealthy against the interests of the poor. It is immoral. It is bankrupt. It is unethical. We, as a middle order nation which does not have significant armaments manufacturing and does not have a research and development establishment aimed at producing armaments, are in a very strong position to lead a debate about this research and development and manufacturing of armaments—which are aimed at killing and maiming people. That debate is so badly needed.

The debate about Iraq is a case in point. Saddam Hussein is a monster, but he was given much of the technology for things such as the gas and biological weaponry that he has by corporations in the United States and elsewhere—as well as getting nuclear technology from Russia. It did not come from within Iraq; it came from outside, and it came because it made money. The despicable way in which he has used some of that technology on his own people is the responsibility not just of his armed forces, which have abused that technology, but of those laboratories back in the United States, in France or wherever else they came from outside Iraq. The question is: are we simply going to be part of a world which continues to have a technological race to produce more and more abhorrent, sophisticated and undetectable but lethal means of killing each other, maiming each other and destroying lives on a massive scale—destroying previously unthinkable numbers of people with minimum outlay and with a swiftness and severity that was previously unthinkable? Who is debating that? Where is that in this paper? What have we heard about that from George W. Bush, Tony Blair or Prime Minister John W. Howard?

Until we do get a debate which goes to the manufacturing of this destructive weaponry, we are not getting a debate which is fully legitimate. Until we get a debate which looks at the reasons for the divisions on our planet between people—divisions which give rise, amongst other things, to a small number of people taking some of that technology into their own hands for retribution—we are missing the cause of the spread of weapons of mass destruction and terrorism on our planet. How can we have a debate on a matter like this which affects intimately the security of this nation and call it legitimate if we are not asking why it is that we have such enormous wealth in our country but cannot even share it with East Timor? Indeed, we want to cut the East Timor gap fossil fuel deposits, which are worth $30 billion or upwards, in a way which advantages us against our East Timorese neighbour. A simple thing like that shows how far from moral is the basis we have in discussing the rise of terrorism and the spread of weapons of mass destruction in the world.

Then we get to the point where you say that this paper flags that the Prime Minister has gone a lot further in recent days by flagging the possibility of Australia being involved in a missile defence system—so-called Star Wars—costing up to $1,000 billion for the United States. Give a comparative slice of that to Australia—make it a 10th or a 20th, if you will—and see what an extraordinary outlay is being talked about here, tens of billions of dollars, if the Prime Minister wants to carry through with this poorly thought-out, illogical, Reaganesque line of thinking. But wouldn’t we be much better off if we took a fraction of that trillion dollars and put it into a Marshall Plan for the Middle East, for the Central Asian countries, for South-East Asia and for North Asia, where terrorism is rearing its ugly head at the moment?

Wouldn’t it be better if the trucks rolling off the ships or out of the planes onto the desert sands were bringing the modern technology and equipment to give societies which are poor in this world some of the advantages we rich countries have? A tiny fraction of the money that is currently being mooted for Star Wars would ensure that every child in the world went to school, would ensure that the billion people currently malnourished were fed, would ensure
that everybody had shelter, would ensure that they were all clothed, would ensure that they had opportunity for jobs, and would ensure that they were maximally protected against AIDS and the ravages of other diseases. If Australia were to pursue a world which came to grips with implementing such a global, humanitarian view, we would have far less need in the coming decades and through this century to be concentrating on how we build rockets or where we are going to deploy Australian defence personnel in conflict situations which should never have arisen.

So the Greens say: where in this paper is the analysis of the root causes of the problems that have been flagged? And where is the discussion about the answers, which are patently obvious, to those problems? They are there to be had.

As a result of a combination of factors including greater stability in major power relations and increased US strategic dominance, the threat of direct military attack on Australia is less than it was in 2000. Paradoxically, however,—

and I am not quite sure what this statement is supposed to mean in the context of the previous statement—

in some other important ways, certainty and predictability have decreased because the strategic advantage offered by our geography does not protect Australia against rogue states armed with WMD—

weapons of mass destruction—and long-range ballistic missiles. Nor does it protect Australia from the scourge of terrorism.

Throughout this paper the two things that seem to be foremost and uppermost in any mention are al-Qaeda and North Korea. The circumstances that have been occurring in North Korea in respect of the potential for the use of nuclear weapons are not just a worry for the US and Australia, they are a worry for the world, and even countries like China would be working to ensure that there is not going to be an outbreak of nuclear war on the part of North Korea. The whole purpose of the United Nations and NATO has been one of cooperation. That cooperation ought to continue, contrary to what this paper—which seems to be, more than anything else, a justification for the government’s positioning of Australia and Australian defence forces in respect of Iraq—says. On page 13, where you get to ‘Australia’s response’ to the changes in the strategic environment, it says:

But a weaker or equivocal response to this threat—

this is the threat that really goes to Iraq—

would not serve Australia well, or decrease our vulnerability. And this would not reduce the prospect of US and other foreign interests being targeted in Australia, with the inevitable loss of Australian lives, or of Australians abroad being incidental victims of terrorism.

We know that terrorism is a major problem, and increasingly so, but, with regard to the response in terms of Iraq, I cannot agree with the statement that a ‘weaker or equivocal response to this threat’ would not serve Australia well.
The document, near its end, says that the government will make these judgments in Australia’s national interests. I think we ought to do that very carefully. I am not quite sure what view the Prime Minister has about our capacity in a military sense but, if you look at what is happening in Europe and at the views that have been taken by European governments—and by some other governments around the world—you will see that they do not seem to share the same national interests pursuant as the current Australian government. While it is important that we focus on the defence of this country, it is important that we focus on it from the point of view of ensuring that our defence capability is sufficient to protect this country. But I do not think that it goes to the point of us, as has been said by the defence minister, embarking upon or seeking to implement a nuclear Star Wars type defence system. I do not think that is in Australia’s interests. You do not see too many other countries rushing to the fore to do the same thing, and they are countries that one would have thought would probably be in a worse position than Australia with regard to the possibility of a nuclear attack.

This update is somewhat disappointing in its content and it highlights to some degree the difficulty that the government has had in convincing the Australian public that its handling of the Iraq situation is correct. There is no question that dealing with ‘rogue states’—I say that for want of a better description—should be through the United Nations. There is no question that that ought to be the process that should be employed. Iraq and the issues around Iraq have shown that if you do not do it through that process then you will end up creating a more uncertain world environment. That has become evident because UN member nations, particularly those on the Security Council, are arguing with one another about an approach on which there should be no argument. If there is a problem with a particular rogue state, then it ought come down to the point that there be no argument: the action necessary to fix the problem should be set out and everybody would be agreeing with that. But that is not the case and I think that is a worrying trend.

I think it is a little unfortunate that what looks like a very expensive document does not even seem to contain much of an update with regard to the defence forces of this country or the defence of this country. I hope that the government gives some serious consideration to exactly what it might be proposing to do, because it is going to be very important from this country’s point of view that we do not put ourselves in a position where we can be brought into conflict or be put in threat of conflict unnecessarily. I hope that the minister and the Prime Minister give due consideration to the proposals that they will consider in the future.

Question agreed to.

SOUTH AUSTRALIA: NATIONAL RADIOACTIVE WASTE REPOSITORY

Return to Order

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.09 p.m.)—by leave—On behalf of the Minister for Defence, Senator the Hon. Robert Hill, I say that on 5 February the Senate required all documents relating to records and communications between the Department of Defence and the Department of Education, Science and Training concerning the government’s consideration of a national radioactive waste repository in South Australia. The Department of Defence has consulted closely with the Department of Education, Science and Training concerning the government’s consideration of a national radioactive waste repository in South Australia. The Department of Defence has consulted closely with the Department of Education, Science and Training about the location of a national repository. Defence has also worked closely with Environment Australia, which oversaw the preparation of the environmental impact statement. I am advised that the documents in question are all in the form of written interdepartmental advice or communication. Traditionally, governments have regarded such advice as confidential and declined to publish them. Minister McGauran and Senator Hill do not intend to depart from that practice. The final EIS was published on 23 January. The minister shall be responding to Minister Kemp during the 30-day comment period, which is expected to commence next week.
DOCUMENTS
Tabling
The ACTING DEPUTY PRESIDENT (Senator McLucas) (5.10 p.m.)—Pursuant to standing order 166, I present three reports of the Auditor-General, a government response to a committee report and a return to order relating to departmental and agency contracts, which were presented to temporary chairs of committees since the Senate last sat. In accordance with the terms of the standing order, the publication of the documents was authorised. I also present various responses to resolutions of the Senate as listed at item 12 (e) on today’s Order of Business. In accordance with the usual practice and with the concurrence of the Senate I ask that the government response be incorporated in Hansard.

The list read as follows—

Government response to a parliamentary committee report presented since the Senate last sat:
Joint Standing Committee on Migration—Report entitled Not the Hilton—Immigration detention centres: Inspection report (presented to temporary chair of committees, Senator Ferguson, on 27 February 2003)

Reports of the Auditor-General presented since the Senate last sat:
Report no. 28 of 2002-03—Performance Audit—Northern Territory Land Councils and the Aboriginals Benefit Account (presented to temporary chair of committees, Senator Cherry, on 7 February 2003)
Report no. 30 of 2002-03—Performance Audit—Defence ordnance safety and suitability for service: Department of Defence (presented to temporary chair of committees, Senator Ferguson, on 27 February 2003)

Statement of compliance with the continuing order of the Senate of 20 June 2001, as amended on 27 September 2001, relating to lists of contracts was presented since the Senate last sat:
Public Sector Superannuation Scheme Board (PSS Board) (presented to temporary chair of committees, Senator Ferguson, on 18 February 2003)
Commonwealth Superannuation Scheme Board (CSS Board) (presented to temporary chair of committees, Senator Ferguson, on 18 February 2003)

Return to order presented since the Senate last sat:
Health–Pharmaceutical Benefits Scheme: Inter-departmental committee (IDC) (presented to the Deputy President on 27 February 2003)

Responses to Senate resolutions from the:
South Australian Minister for Energy (the Hon. Patrick Conlon) to a resolution of the Senate of 9 December 2002 concerning photovoltaic energy
Minister for Immigration and Multicultural and Indigenous Affairs (the Hon. Philip Ruddock MP) to a resolution of the Senate of 11 December 2002 concerning East Timorese asylum seekers in the Northern Territory
Premier of Western Australia, Chief Minister of the Northern Territory, Premier of South Australia and the Premier of Queensland to a resolution of the Senate of 11 December 2002 concerning the protection of unsupervised children
Acting Chief Executive (Chris Oliver), Film Finance Corporation Australia Limited to a resolution of the Senate of 10 February 2003 concerning David Gulpilil for his work in The Tracker

Leave granted.

The government response read as follows—

Government response to the recommendations from the Joint Standing Committee on Migration’s report:
“Not the Hilton—Immigration Detention Centres: Inspection Report” September 2000

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<tr>
<th>Reference</th>
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<tbody>
<tr>
<td>Recommendation 1 (Port Hedland) Paragraph No: 3.29 Page 21</td>
<td>The Committee recommends that the centre be screened to minimise photographic intrusion.</td>
<td>After the Committee’s visit in November 1999, shade cloth was installed on the fences in order to prevent photographs being taken at ground level outside the fence. A palisade external fence with a weldmesh internal fence, completed in December 2001, has minimised the risk of photographic intrusion.</td>
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<td>Recommendation 2 (Curtin) Paragraph No: 4.38 Page 28</td>
<td>The Committee recommends that the ratio of showers and toilets to detainees be increased.</td>
<td>In December 1999 the number of showers and toilets available to detainees was significantly increased; from 46 showers and 46 toilets to 78 showers and 76 toilets. The Curtin IRPC was closed in September 2002. Contingency capacity for up to 800 will be mothballed.</td>
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<tr>
<td>Recommendation 3 (Curtin) Paragraph No: 4.39 Page 28</td>
<td>The Committee recommends that ACM endeavour to maintain staffing continuity by re-engaging staff to maximise the use of their skills and knowledge.</td>
<td>This issue was the subject of a number of discussions between senior DIMIA officers and Australasian Correctional Management (ACM) personnel. In addition to re-engaging staff where possible, to maximise the use of their skills and knowledge, administrative mechanisms were put in place to ensure that procedures and local arrangements were documented for new staff and they were given appropriate briefing on current issues.</td>
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<tr>
<td>Recommendation 4 (Curtin) Paragraph No: 4.40 Page 29</td>
<td>The Committee recommends that the expansion of on-site medical facilities be given priority.</td>
<td>A second pre-fabricated building fully set up as a doctor’s surgery was installed in the first quarter of 2000, and further space made available in the clinic block following the move of welfare services into a separate building. In late 2001 work was completed on the installation of a much larger facility. That facility included consultation and counselling facilities, a medical isolation facility, an overnight observation area and a multipurpose area for visiting health professionals.</td>
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<tr>
<td>Recommendation 5 (Curtin) Paragraph No: 4.41 Page 29</td>
<td>The Committee recommends that internal fencing be erected for security reasons.</td>
<td>In April and May 2000 the compound was divided into four large and two smaller sections using internal fencing.</td>
</tr>
<tr>
<td>Recommendation 6 (Woomera) Paragraph No: 5.45 Page 38</td>
<td>The Committee recommends that the expansion of on-site medical facilities be given priority.</td>
<td>The former military nurses quarters have been modified to create a medical facility capable of servicing the majority of the medical needs which would arise in the IRPC when operating at capacity. This facility is now operational and includes four ward rooms which can also be used as observation rooms for those at risk of self harm.</td>
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<tr>
<td>Recommendation 7 (Perth) Paragraph No: 6.26 Page 45</td>
<td>The Committee recommends that the IDC pursue acquisition of the adjoining areas in its current building to: Expand the interviewing capacity to expedite processing of detainees; and provide more space for accommodation.</td>
<td>Renovation and expansion of the Perth IDC using additional space acquired within the building was completed in January 2002, providing an increase in capacity from 42 to 64. There is now a separate accommodation area for up to 22 people, comprising six accommodation rooms, dining and recreation rooms, with access to a second exercise yard. A new observation room has access to natural light, air-conditioning and ablutions. Ablutions for disabled detainees have also been installed.</td>
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<tr>
<td>Recommendation 8 (Perth) Paragraph No: 6.27 Page 45</td>
<td>The Committee recommends that the centre be used only for short-term detention.</td>
<td>Procedures to transfer long-term detainees at the Perth IDC to other immigration detention facilities where possible have been in place for some time. Perth IDC detainees’ circumstances are regularly reviewed with a view to relocating them to other immigration detention accommodation. Since the recent expansion of Perth IDC, families and women can be accommodated separately from the rest of the population, depending on the mix of detainees in the centre at the time. Where separation cannot be achieved, arrangements are made to transfer families and female detainees to a more appropriate detention facility, including motels that have been designated for this purpose. Some adult male detainees choose to remain at the Perth IDC.</td>
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<tr>
<td>Recommendation 9 (Perth) Paragraph No: 6.28 Page 45</td>
<td>The Committee recommends that the provision of toilet and ablution facilities be increased.</td>
<td>The renovation and expansion of capacity at the Perth IDC (response to recommendation 7 above refers) has increased toilet and ablution facilities at the Centre. This increase includes the addition of 2 toilets, 2 hand basins and 3 showers.</td>
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<td>Recommendation 10 (Perth) Paragraph No: 6.29 Page 46</td>
<td>The Committee recommends that, in relation to tranquillisers and antidepressant medication, DIMA ensure that: detainees provide informed consent; and clear documentation of such treatments is kept for each individual.</td>
<td>This is consistent with normal practice. Prescribed medicines such as antidepressants or tranquillisers are not imposed upon detainees. If there are serious concerns with regard to depression and it is considered that medication will improve the health of the individual, however, appropriately qualified staff will counsel and encourage the individual to take medication. Whenever a detainee is assessed by medical staff at the Centre, an entry is recorded into the detainee’s medical file. Where treatment is initiated, this is also noted. When the centre doctor prescribes medication, they detail this on a medication sheet. Medical staff record each time medication is administered.</td>
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<tr>
<td>Recommendation 11 (Perth) Paragraph No: 6.30 Page 46</td>
<td>The Committee recommends that the practice of providing massage to detainees on a regular basis is discontinued, and that massage is only provided when recommended by a doctor for substantial medical reasons.</td>
<td>This form of therapy was provided infrequently. At Perth, it was provided on two occasions in April 2000. Centre medical staff provided the service. This practice has now ceased.</td>
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<tr>
<td>Recommendation 12 (Villawood) Paragraph No: 7.31 Page 52</td>
<td>The Committee recommends that DIMA proceed with the redevelopment of Villawood, taking account of: the security issues increasingly associated with detention sites in urban areas; and the need for flexibility to deal with potential changes in the numbers and mix of suspected unlawful non-citizens arriving in Australia.</td>
<td>A strategic evaluation of detention centres in late 1999, in response to the significant increase in unauthorised boat arrivals, determined that the existing facility at Stage 2 Villawood should be retained and renovated with a view to increasing capacity and ensuring the longer term viability of the site. The completion of an expansion project has increased capacity to around 750, with up to 200 beds in Stage 3, (with security similar to Stage 1), around 400 in Stage 2, and up to 150 in Stage 1. This has provided increased flexibility to deal with potential changes in the numbers and mix of detainees. Upgrading of lighting at stages 2 and 3 was completed in June 2002. Work has commenced on a project to replace Stage 1.</td>
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<tr>
<td>Recommendation 13 (Maribyrnong) Paragraph No: 8.25 Page 57</td>
<td>The Committee recommends that the necessary security upgrading be undertaken as a matter of priority, both to improve security and permit fuller use of the centre’s grounds.</td>
<td>The construction of a medium level security perimeter at the Maribyrnong IDC reached practical completion in December 2001.</td>
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<tr>
<td>Recommendation 14 (Broome) Paragraph No: 9.31 Page 65</td>
<td>The Committee recommends that consideration be given by AFMA of a clear physical separation of the family’s and detainees’ on-land areas.</td>
<td>Modifications to restrict access for detainees to the private family area and to isolate the potentially dangerous excavation have been completed.</td>
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<tr>
<td>Recommendation 15 (Broome) Paragraph No: 9.32 Page 65</td>
<td>The Committee recommends that the obvious safety risks of incomplete structures be addressed immediately.</td>
<td>Safety risks in some parts of the site have been addressed by restricting detainee access.</td>
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<td>Recommendation 16 (Broome) Paragraph No: 9.33 Page 65</td>
<td>The Committee recommends that DIMA and AFMA monitor the operation of the Willie Creek facility more closely.</td>
<td>The facility is monitored on an ongoing basis by officers of Fisheries Western Australia who are funded by AFMA. These officers report to AFMA in Canberra on issues and matters requiring attention. Since 1999, AFMA has assumed more direct control of the contract with payment of accounts now being made directly by AFMA in Canberra, once service claims have been checked and signed-off by the local fisheries officers. AFMA’s Canberra staff have also undertaken more frequent visits to Broome to check on standards and to endeavour to improve the responsiveness of the caretaker to AFMA requirements. AFMA is continuing to require the contractor to make improvements and will seek to address this issue further in future contracts within the limits of available funding. DIMIA is not involved in monitoring the facility as it is not a party to the contract for the management of the facility.</td>
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<tr>
<td>Recommendation 17 (Broome) Paragraph No: 9.34 Page 66</td>
<td>The Committee recommends that AFMA examine the desirability of a new facility at Broome.</td>
<td>The Government is reviewing its funding and strategic approach for fisheries detention in both Darwin and Broome in the light of the Ombudsman’s report and this Committee’s report. AFFA, AFMA and DIMIA are currently considering the most appropriate detention options to recommend to the Government.</td>
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<tr>
<td>Recommendation 18 (Darwin) Paragraph No: 10.21 Page 70</td>
<td>The Committee recommends investigation of the relative costs and benefits of centralising detention facilities currently at Darwin and Willie Creek, bearing in mind the necessary role of the RAN in apprehension and escort duties.</td>
<td>In 2001, AFFA commissioned a review of current and alternative arrangements for dealing with illegal foreign fishers operating off northern Australia. The Fisheries Resources Research Fund funded the review. The report of the review provides an assessment of the current arrangements for apprehending and detaining illegal Indonesian fishers operating in the northern Australian Fishing Zone (AFZ), an examination of the options for maximising deterrence and a summary benefit analysis of the four main detention options currently under consideration. The report expressed a preference for centralised detention arrangements in Darwin, and AFFA and AFMA see this as a viable option. The logistics of the option are currently being examined. AFFA, AFMA and DIMIA are currently considering the most appropriate options to recommend to the Government.</td>
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<tr>
<td>Recommendation 19 (Christmas Island) Paragraph No: 11.47 Page 80</td>
<td>The Committee recommends that the current practice of removing unauthorised arrivals to mainland detention centres be continued.</td>
<td>This recommendation has been overtaken by legislation which excised Christmas Island and certain other Australian territories from the migration zone, and the subsequent agreements between the Australian Government and the Governments of Papua New Guinea and Nauru to process unauthorised arrivals in those countries.</td>
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<tr>
<td>Recommendation 20 (Christmas Island) Paragraph No: 11.48 Page 80</td>
<td>The Committee recommends that the plans for the proposed recreational complex be drafted with sufficient flexibility in its construction to permit short-term housing of unauthorised arrivals.</td>
<td>The Government met the cost ($204,000) of the construction of new ablutions facilities at the sports hall at Flying Fish Cove, completed in July 2001. A temporary reception centre with capacity to accommodate around 300 was constructed using demountable buildings in late 2001 and commenced operations on 12 November 2001. On 12 March 2002 the Government announced the construction of a purpose designed and built IRPC on Christmas Island. At the same time the Government announced that the funding for the dual purpose sports facility announced in September 2001 would be used for dedicated sports facilities for the Christmas Island Community.</td>
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<tr>
<td>Reference</td>
<td>Recommendation</td>
<td>Response</td>
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<tr>
<td>Recommendation 21</td>
<td>The Committee recommends that DIMA, in consultation with the department of Regional Services, Territories and Local Government, provide stock of equipment such as washable stretcher beds and non-perishables for use in the temporary detention of suspected unlawful non-citizens.</td>
<td>A Request for Expressions of Interest for the provision of non-perishable goods was published on 27 October 2000 and a successful tenderer has since been contracted.</td>
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<td>Recommendation 22</td>
<td>The Committee recommends that arrangements with State medical authorities to cover emergency medical arrangements be finalised.</td>
<td>The Department of Transport and Regional Services (DOTARS) is currently negotiating a Service Delivery Arrangement with the Health Department of WA (HDWA) that may include an increased State role in the management and provision of health services for Indian Ocean Territories residents. Assuming a satisfactory outcome of these negotiations, resources required to cater for emergency medical arrangements would be accessed through HDWA. DIMIA will need to negotiate arrangements for on-Island medical services for detainees through the existing Christmas Island medical facility with DOTARS. For unauthorised arrivals requiring medical care that is beyond the resources of the Christmas Island medical facility, DIMIA will need to make arrangements for evacuation and treatment with the appropriate authorities.</td>
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<td>Recommendation 23</td>
<td>The Committee recommends that DIMA examine the costs and benefits of deactivating, but retaining, structures and infrastructure at the current temporary detention centres.</td>
<td>In Budget 2000, the Government announced a long term strategy for the provision of detention facilities. The strategy involves the establishment of new facilities, and the upgrading of existing detention centres. On 23 August 2001, The Government announced the establishment of contingency facilities near Port Augusta, SA (Baxter IRPC), at HMAS Coonawarra in Darwin and at Singleton Army Base, NSW. On 12 March 2002 the Government announced the construction of a permanent purpose designed and built IRPC on Christmas Island for future contingencies. On 11th April 2002 the Government announced the outcome of a review of the long term strategy for detention facilities for unauthorised boat arrivals. This included the mothballing of Curtin IRPC with capacity for up to 800 maintained for contingency purposes; the scaling down of Woomera IRPC to 800 with the capacity for a further 400 to be maintained for contingency purposes; and the commissioning in mid 2002 of the Baxter IRPC (near Port Augusta) with capacity for up to 1200.</td>
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<tr>
<td>Recommendation 24</td>
<td>The Committee recommends that it continue to inspect and monitor detention facilities.</td>
<td>Supported. Timing and itinerary for visits for these purposes should be decided in consultation with the Minister.</td>
</tr>
<tr>
<td>Recommendation 25</td>
<td>The Committee recommends that, in future, in addition to inspection visits, arrangements also be made to meet with representatives of the detainees.</td>
<td>Supported. Timing and itinerary for visits for these purposes should be decided in consultation with the Minister.</td>
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</tbody>
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Auditor-General’s Reports
Report No. 28 of 2002-03

Senator CROSSIN (Northern Territory)
(5.11 p.m.)—by leave—I move:

That the Senate take note of the document.

I seek to provide the Senate with some comments about the report at this point in time. I think it is important to note this report from the Australian National Audit Office, particularly in relation to the activities of the current federal government and the work it is intending to do regarding the Aboriginal Land Rights (Northern Territory) Act. There have, of course, been successive attempts by this government since it came into power in 1996 to undermine the workings of the act and of the land councils which have been established under the act, and the purposes and operations for which they seek to exist.

We saw that when John Reeves QC was commissioned to undertake a review of the land rights act in the Northern Territory. Once that report was conducted and tabled, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs conducted a review into the review that John Reeves QC had done in relation to the act.

In 2001, the minister for Aboriginal affairs in this country decided that the Audit Office would undertake a review of what was happening with the land councils in the Northern Territory and the operations of the Aboriginal Benefit Account. We have actually seen a successive chipping away at, and an undermining of, the confidence that people have in the land rights act and in the operations of these councils in the Northern Territory.

At the outset, I would like to say that four land councils operate in the Northern Territory under the auspices of the Aboriginal Land Rights (Northern Territory) Act: the Tiwi Land Council, the Anindilyakwa Land Council—based on Groote Eylandt—the Northern Land Council and the Central Land Council. The Aboriginals Benefit Account, which this performance audit was also conducted into, is actually an account that is derived under the act and is set up for the purposes of receiving statutory royalties on minerals that are produced on Aboriginal reserves. The payments out of the Aboriginals Benefit Account are as follows: 40 per cent is for the administration of the land councils, 30 per cent is distributed by the land councils to Aboriginal organisations in areas affected by mining, and the remainder is applied at the discretion of the Minister for Immigration and Multicultural and Indigenous Affairs.

There have been many comments about the operation of the land rights act over the last year or so from some of my colleagues in this place or in the House of Representatives, and in the latter particularly from Mr David Tollner. The comments, though, go to a large degree of inaccuracy and bias about the operation of the act and the operation of the land councils. When this report from the Audit Office was first published, in the House of Representatives on 10 February Mr Tollner said that it showed there had been a lack of systemic performance assessment supported by suitable performance information. He also said that the Audit Office was unable to assess whether the land councils were fulfilling their functions and delivering their services in an effective and efficient way.

I suppose that when you seek to embark on a process of undermining the land rights act, and when any comments you might make in relation to that act are incorrect, of course you will be selective in quoting what the audit report actually found. The conclusion, on page 110 of the report, says:

... the ANAO concluded that the Land Councils had adequate procedures in place to assist in compliance with relevant legislation and had generally identified the needs of traditional owners. We can all report and quote selectively when such documents are produced by the Australian National Audit Office.

Although there were a number of recommendations handed down in this report, all except one, which I think sought further clarification from the Tiwi Land Council, have been accepted by the land councils concerned. A guarantee has been made by the land councils that they will take the recommendations on board to the extent that they can with existing resources. This is not an
audit report that has derived controversy to the extent that some of my colleagues from the government would suggest it has. There have been criticisms of the Audit Office in the way it conducted this audit. I notice in reading this report that, in fact, only nine communities were visited, yet all of the land councils in the Northern Territory represent stakeholders—Indigenous people and traditional owners—well in excess of only nine communities.

The report also suggests that a measure of the performance of the land councils is performance-based outcomes and outputs. The land councils, quite rightly, criticise that. While not objecting that it is one measure of productivity and efficiency in their organisation, it is not the only measure. It seems that this report wants to see outputs and outcomes as a significant way in which to assess how well the land councils are doing. I agree with the land councils that it is restrictive to simply base the success of their operations and the strength of what they do on the very limited way in which you would measure outcomes. In fact, their operation should be measured in a much broader perspective.

There has been no massive disagreement about the outcome of this report in the sense that the land councils have categorically rejected the recommendations—they have not done that. However, it seems to me that some of my colleagues would want you to believe otherwise. I notice that Mr Tollner went on to suggest that the land rights act has hindered economic development in the Northern Territory. Of course, this is not correct. An interview given by the CEO of the Land Council, Mr Norman Fry, following the tabling of this report categorically showed that this is not the case. There have been many criticisms that the Northern Territory government does not want to take over the administration of the Northern Territory land rights act and that is correct; it does not. It is a Commonwealth act. The act is currently under review in a cooperative and bipartisan manner between the land councils and the Northern Territory government, the process of which I understand this federal minister is happy to sit by and watch, to see what changes and recommendations are discussed and agreed to by the Northern Territory government and the land councils. I am sure that before this government’s term is up we will see changes to the land rights act. Let us hope it is done in a spirit of cooperation and agreement between the land councils and the Aboriginal people, and the traditional owners that they represent.

Let me remind this chamber, and perhaps my colleagues on the government side, of the first and major recommendation of the House of Representatives report into the Reeves review, which was a review of the land rights act. That first major recommendation from the House of Representatives committee report, which was a unanimous report, as I understand it, as no government members dissented, was that there should be no changes to the land rights act unless there is agreement and consent with the Aboriginal people concerned—not just consultation, but actual consent; that they understand, agree and sign off on any changes. I remind this government of that recommendation. Mind you, that House of Representatives report has never been responded to by this government. One hopes that, with the current spirit of discussion regarding the land rights act and its changes, the underlying intent of that agreement and consent occurs before changes take place. This is an important report but, of course, the land councils need the release of the funds from the ABA account from the minister in order to improve and make the recommendations from this report. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**East Timor: Asylum Seekers**

*Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.22 p.m.)—by leave—I move:*

That the Senate take note of the document.

This was a significant motion which, from memory, I co-sponsored with Senator Crossin and some other senators. It specifically asked for assistance for the many East Timorese or people of East Timorese origin—many of whom have been in Australia for over 10 years now—who are seeking to remain here and who are concerned about being required to return to East Timor. The
minister’s response to what is an important consideration of the Senate is extremely disappointing. It really just sets out the facts as we already know them and, in doing so, it highlights the procedure that these people will have to go through. It also highlights one of the concerns that the resolution was aimed at trying to address. It is fairly clear that virtually all, if not every single one, of these people will no longer meet the criteria of refugee. What they do meet is the criteria of people who are in a unique set of circumstances and who deserve assistance and recognition of that unique set of circumstances from the Australian government.

They are people who have strong community support. Almost all have been productive members of the Australian community. There was a piece in the Age at the weekend or possibly today that highlighted the human side of this. For example, one family had been here for over 10 years. The guy had set up his own business, had a mortgage on his house and was paying off a couple of cars. There were two children, one of whom was three months old when he came into the country and the other was born here. It will be immensely traumatising if they have to tear up roots and discard a life they have spent 10 years building to go back to nothing in East Timor.

It needs to be remembered that the situation these people are in is not their fault. It is the fault of the government who refused to process their applications for refugee status when they were put in; who tried to suggest that they were all Portuguese citizens and therefore should go and live in Portugal, and that they did not have the right to seek asylum in Australia as a consequence; and who delayed that process for a long period of time. That suggestion of the government was ruled invalid in one particular test case and then the government just sat on things for another few years—until now. That was unconscionable action over that period of time. That is the total reason why these people are in that situation. They should not be required to go back to countries where, for example, their children do not speak the language and of which they have no experience at all. Many people are halfway through education courses. Others, such as those I have mentioned, are in business and have built up businesses of their own.

These people are clearly in a unique set of circumstances. The easiest and simplest way to deal with them would be for the minister to recognise that they are a special case—that this is a unique set of circumstances, self-contained and of a limited number, that will not be repeated—and to create a special visa category for them. That has been done before, including by this minister, in a number of cases involving people from a number of countries who have been in this country for a prolonged period of time. To deal with those unique circumstances, the minister created a special visa for people who fell into that category. If anything, the case of these East Timorese people is even more compelling, particularly if you look at the historical debt that Australia owes them and at the fact that government policy meant that they were not able to have their asylum claims recognised at the time, presumably because this government felt it would be embarrassing for the Indonesian government.

The minister says they can get their claims assessed now, they can go to the Refugee Review Tribunal and then he has ministerial discretion. One of the absurdities of that ministerial discretion is that he is not allowed to use it until people go through those processes. So even though all of them know that they are probably not going to meet the specific criteria of refugee, they still have to get the determination from the immigration department. They still have to lodge a claim with the Refugee Review Tribunal which they know will be unsuccessful—and which will also cost them a $1,000 fee, I might add, if they are unsuccessful. Then, and only then, can they apply to the minister to exercise his discretion. The minister’s response clearly outlines that he has no duty to exercise it if he does not wish to.

These people are putting their fate in the hands of one person who has no legal obligation, as his response makes clear, to even consider whether to use his power. There is no scope for appeal and no ability to ascertain whether or not he has followed the guidelines or is applying the guidelines that
are there for the exercise of that power. Those guidelines are meant to be for exceptional cases where it may be in the public interest to substitute a favourable decision. The minister’s response kindly contains a copy of the guidelines. They make it clear that there are meant to be unique or exceptional circumstances. It is quite clear that these are unique and exceptional circumstances. It is quite clear that there are significant humanitarian reasons why there should be a special case for this group of people, yet we are making them all go through this long, drawn-out process of getting an immigration department rejection. There are still many who have not yet had a decision. They then have to go through the Refugee Review Tribunal, have a $1,000 fee charged against them and hope that the minister will exercise his discretion on an individual case-by-case basis. If the minister says no, they will have that $1,000 fee hanging over their heads. Either they will have to pay it or, if they leave the country, the government will not pursue the debt but they cannot return to Australia until they have paid it. It is basically a $1,000 fee to access ministerial discretion.

This highlights the major flaw that is built into the Migration Act in these sorts of situations. All the minister’s response to the Senate resolution has done is put a spotlight on how flawed that process is—how completely and totally the ability for action is in the minister’s lap and nobody else’s and how completely and totally the East Timorese people are left with no legal rights at all. They are totally at the mercy of the minister and the decision he makes. They have no ability to seek any sort of legal review of that decision, when he makes it. Indeed, they have no ability to force him to make a decision at all or even to make him read their request for ministerial discretion, although I am sure that the minister would do that. In the case of this minister, I would say that much for him.

As was indicated in the resolution, we even have support from state and territory governments. The Northern Territory government has quite clearly indicated its support for these people to be allowed to stay and contribute to a community like Darwin. The government’s response is baffling: this is not even a situation where the government would lose any votes. I think they would get a lot of public support for acting favourably in this case. It is a very unfortunate response from the minister. From the Democrats’ point of view, it is a very inadequate response and, unfortunately, it is a real tragedy for the 1,500 or 1,600 people who are affected by this situation and who are not getting the sort of assistance that they should.

Senator CROSSIN (Northern Territory) (5.33 p.m.)—I also take note of the response from the Minister for Immigration and Multicultural and Indigenous Affairs in relation to the plight of East Timorese asylum seekers, particularly those who are based in the Northern Territory. I understand that the
number of people is still around 80. I concur with Senator Bartlett that this is a very disappointing response and, as a factual response, it tells us nothing more than what we already know. Those of us who have been involved with these people, working with these people and the associated groups who assist them, know full well the facts that are outlined in this letter. But what we were hoping to see, and what we have not seen, was some sort of compassion from this minister and this government for these people. I believe that Minister Ruddock feels very uncomfortable about this situation and about the fact that he has people inside his government holding his hands when it comes to signing off on these people. I believe that, if Minister Ruddock were given the opportunity and the free mind and will to do something about this, he would. So my comments go to those people around him who are preventing him from exercising this sort of compassion.

In the last fortnight, we have seen the results of the first couple of refugee tribunal decisions that have come down. Last week, we saw the first five of those decisions in the Northern Territory. All five of those people have had their reviews rejected by the tribunal and, therefore, they are now on the path of having to pay $1,000 and to appeal directly to the minister, as he has outlined the process in this response. What goes hand-in-hand with that is the fact that, once they get the decision from the review tribunal that their appeal is unsuccessful, they also lose any benefits that are being paid to them by this government.

Some 50 East Timorese people in the Northern Territory receive ASAS funding, under the Asylum Seekers Assistance Scheme, which is administered through the Red Cross. We know that 22 of those 50 people are children. Some 15 of them are aged over 50. So that leaves us with 13 people in the gap. I understand that some of those 13 are attending university. Some are married and have children, and their wives or partners and their children make up part of the 50. Some spend their days volunteering in community based organisations in Darwin. So these are people who are too young and are going to school or who are too old to do that but where they can, by and large, they are putting back into the community. Some of the 13, I understand, are too sick or too traumatised to do that.

These people have integrated into our community. They live in public housing. They live with people. They are not in detention centres. When this funding and assistance from the Commonwealth ceases, as it will, either this week or next week, how on earth are these people going to eat, day after day? How are they going to provide for themselves and their children. I understand that there are two main family groups in this group of 50 people. How are they going to afford to go to a doctor, to buy medicines, to get to a chemist and to feed their kids, unless something is done?

This government would say, ‘Why would we extend any funding to these people because we don’t do it for other asylum seekers?’ My response is this: these people have been here for well over a decade. These people came here as a result of the Dili massacre. They have integrated into the community as much as they possibly can despite the fact that they have suffered trauma and torture. Their lives will never be the same.

In 1999 we opened our hearts and our hands and assisted these people. I believe we now owe them some sort of support, compassion and a humanitarian approach to look after them for the rest of their lives. They have been part of our community and, by and large, probably see themselves as more Australian than East Timorese these days. They have been integrated into our community. Not only do they now need to rely on this government to feed themselves day after day; they also now need this country to pick them up and cradle them and say, ‘We will help you get on with your life. You have gone through enough trauma and torture. You have spent 10 years in limbo waiting for some government to do something about your future. Don’t worry about it now. Close the book on that chapter in your life and we will help you move on.’

But no. We have an opportunity under this federal government to do just that and they open up another book that is probably more
horrific than the pages of the chapter of the book that they have experienced and travelled along for the past 10 years. They do not know whether they will be sent back to East Timor. They do not know whether their appeal to the minister will be successful. Out of the five families who had a decision last week, I would bet the most of them are wondering where tomorrow’s dinner is going to come from. As of next week they will have to rely on the Red Cross or St Vincent de Paul or a large section of the Northern Territory community who are fundraising to either help them pay for the thousand dollars or put food on their table.

This is a very tragic and inhumane case. These East Timorese are crying out for our assistance. With one stroke of a pen this government could give them a special humanitarian visa. We are talking about 1,500 or 1,600 people in this country, a very small number of people in a community like Darwin. It is possible. The minister has the power to do what he would like to do regardless of the act. He could create a special visa if he wanted to. He could increase funding to the Red Cross for the next couple of weeks or months while these people continue along the path of appeal so that they can be guaranteed the kind of existence they have had over the past 10 years for the next couple of months while the last couple of chapters of this saga are being played out.

I appeal to the people who sit in cabinet with Minister Ruddock to have a look at the plight of these people. Try to have some empathy with these people and think about what it will be like in the next couple of weeks and months as they embark on this process. The Northern Territory News carried a story last Friday of a 55-year-old woman and a 69-year-old man who are part of the 80 or so East Timorese people in the Northern Territory. These two people are sick and elderly. Yet there is not one ounce of compassion shown to these people. Why on earth would you want to send them back to East Timor at this stage of their life? They would probably go back to nobody, back to nothing, with no home or no business—if that is what they were doing prior to arriving post the Dili massacre. There is absolutely no sense in this government turning its back on these people and totally ignoring them as they have over the past months since this situation came to a head.

We have had the Northern Territory Chief Minister, Clare Martin, and the Leader of the Opposition, Denis Burke, in the Northern Territory parliament move motions of support for these people. We have had rally after rally and a public outpouring of support for these people—and another rally is planned in a couple of weeks time. Nobody in the Darwin community is saying, ‘We don’t want these people.’ There are people questioning why they are getting financial assistance from the government. But gradually, as we explain to these East Timorese, they came here with nothing—that they had been either shot at or shot and that they had fled for their lives many years ago—they understand why we are trying to provide them with some sort of support.

Senator Bartlett is right. A stroke of a pen by this government would win them an enormous amount of credibility. What are they frightened of? Are they afraid that they will let down the shutters on their whole asylum seeker policy and facade, that there will be a little chink in their armour and suddenly they will be seen to be soft on people immigrating to this country and soft on asylum seekers? I say otherwise. I challenge the Prime Minister and Minister Ruddock—and I strongly believe Minister Ruddock personally wants to do something about this and is being held back—to show some compassion, to turn the Australian community around in your stance on asylum seekers, to assist these 1,500 or so people to stay in this country. It is what they want. It is what they deserve. This country ought to show some empathy for the plight of these people and to recognise the trauma, the torture, the pain and the suffering that they have gone through over the last decade. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
the provisions of the Parliament Act 1974, I present a proposal by the Joint House Department for works within the Parliamentary Zone, together with supporting documentation, relating to the installation of temporary vehicle barriers and permanent CCTV cameras.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.43 p.m.)**—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Joint House Department for capital works within the Parliamentary Zone, being the installation of temporary vehicle barriers and permanent CCTV cameras.

**Proposal for Works**

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.45 p.m.)**—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to additional works at Reconciliation Place, namely, the design and content of the sixth sliver. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

**Senator IAN CAMPBELL**—I give notice that, on Thursday, 6 March 2003, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being additional works at Reconciliation Place, namely, the design and content of the sixth sliver.

### RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

**Report of Environment, Communications, Information Technology and the Arts Legislation Committee**

**Supplementary Submission**

**Senator FERRIS (South Australia) (5.45 p.m.)**—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present a supplementary submission to the report of the Environment, Communications, Information Technology and the Arts Legislation Committee on the Renewable Energy (Electricity) Amendment Bill 2002, which was presented to the Senate on 2 December 2002.

### BUDGET

**Community Affairs Legislation Committee**

**Additional Information**

**Senator FERRIS (South Australia) (5.45 p.m.)**—On behalf of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I present additional information received by the committee relating to hearings on the budget estimates for 2002-03.

**Economics Legislation Committee**

**Additional Information**

**Senator FERRIS (South Australia) (5.45 p.m.)**—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee relating to hearings on the budget and additional estimates for the period 2000-03.

### COMMITTEES

**Public Accounts and Audit Committee**

**Report**

**Senator WATSON (Tasmania) (5.46 p.m.)**—On behalf of the Joint Committee of Public Accounts and Audit, I present the 393rd report of the committee on the review of Auditor-General’s reports, 2001-02: fourth quarter. I seek leave to move a motion in relation to that report.

Leave granted.

**Senator WATSON**—I move:

That the Senate take note of the report.

I will briefly discuss issues in each of the selected reports in turn. In its examination of Audit Report No. 40, the committee considered ways in which the ABC aligns its strategic directions with its charter requirements for programs broadcast on radio, television and online, and assures itself and the parliament about the achievement of its charter obligations. The ABC admits to deficiencies in its data collection. The committee consid-
ers that enhancement of data collection and analysis would assist the ABC in targeting the youth audience much more effectively, particularly youth in regional and rural Australia, and that a more focused data collection in rural and regional Australia would also assist the ABC in planning to meet its charter. The committee also concluded that the performance reporting of the ABC needs to be improved to enhance the ABC’s accountability to parliament and to ensure fulfilment of its charter obligations.

The second report selected, Audit Report No. 51, Research Project Management, was concerned with CSIRO. The report focused on CSIRO’s research activities that were either formally designated as projects or managed as projects and on relevant supporting administrative and information systems. The committee was concerned about the apparent lack of project management expertise throughout the CSIRO. The committee notes that many of the differences in management practices between projects are cultural differences within the various divisions of the CSIRO. A key challenge for that organisation is to ensure that the project management across the organisation improves in a systematic and structured way. The committee considers that CSIRO needs to pay attention to establishing and implementing consistent practices across the organisation, in order to facilitate consistent and coherent project management.

The third report reviewed was Audit Report No. 57, Unlawful Entry into Australian Territory. The report audit found shortcomings with DIMIA’s risk management, guidance documents, objectives, performance accountability and information management. The committee is aware that DIMIA was subjected to a great deal of pressure due to the recent increase in the level of unauthorised arrivals and acknowledges its highly effective and successful response. Notwithstanding that praise, the committee’s impression is that DIMIA has been somewhat slower than other agencies in adopting some of the newer approaches to management in terms of risk management, governance, planning and linking of operational plans to strategic plans. To achieve organisational objectives and better outcomes, the committee considers that DIMIA needs to pay far greater attention to framework issues and not focus solely on the implementation of policy and response to business pressures. The committee has recommended that DIMIA make better use of its information sources, evaluate the effectiveness of its current operations and coordinate the sharing of information with other agencies.

I now turn to the fourth audit report the committee reviewed in this quarter, Audit Report No. 63, Management of the DASFLEET Tied Contract. This report followed on from an earlier audit report tabled in 1999 concerning the sale of the DASFLEET. The committee had commenced a review of this earlier report but had resolved to temporarily suspend its review until arbitration relating to the sale was complete. The report looked at the effectiveness of Finance’s management of the Commonwealth’s exposure under the DASFLEET tied contract and reviewed the action taken by the Department of Finance and Administration in response to the recommendation of the earlier Audit Report No. 25, DASFLEET Sale, 1998-99, to assess the Commonwealth’s exposure under the tied contract.

Serious issues emerged almost immediately the contract was entered into. A major problem was that OASITO did not evaluate the information it received from its adviser before passing it to the minister. In the end, the Commonwealth bore all the risk for the vehicles leased under the tied contract. Because of the nature of this contract, it was almost impossible for DOFA to adequately fulfil its monitoring role. The audit noted that the arbitration and the dispute settlement completed by DOFA with Macquarie Fleet resulted in a substantial reduction of the Commonwealth’s exposure to possible payments to Macquarie Fleet. For example, the exposure fell from around $100 million, originally claimed by Macquarie Fleet, to around $50 million. The committee considers that the government’s objective was to sell the DASFLEET business as well as the risk of that business. However, the Commonwealth bore the full risk for the vehicles
leased under the tied contract. The Commonwealth’s perception early in the sale was that the majority of the risk was being borne by Macquarie Fleet. Evidence uncovered during the audit makes it clear that Macquarie Bank viewed the arrangement from the beginning as a risk free investment. In short, Macquarie Bank had a very good understanding of the contract while the Office of Asset Sales and Information Technology Outsourcing did not.

The committee considers that the evaluation of the competing bids by OASITO was flawed, and that the advice from the business adviser was not reviewed. The Commonwealth ended up with a poorly constructed and complex contract and a total misunderstanding of the nature of the arrangement it was entering into. This resulted in substantial costs to the Commonwealth in connection with the DASFLEET transaction, which were not envisaged at the start of the sale process.

The committee acknowledges that DOFA’s efforts in the settlement process reduced the Commonwealth’s potential exposure by a very significant amount, and that was great. However, the committee has recommended that DOFA improve its record management practices and that, in future, its requests for legal opinions are in writing.

The committee has some specific concerns about the following aspects of the DASFLEET transaction: that OASITO did not evaluate Barings’ advice before passing it to the minister; that it did not accept that it stood in a reporting line between advisers and the minister; that it did not adequately pursue negotiations with the second ranked bidder; that it also failed to realise that a capital adequacy requirement of 10 per cent indicated that the risk of the transaction would lie with the Commonwealth; that the Commonwealth did indeed effectively bear all the risk for the vehicles leased under the tied contract and that this was not the original intention of the sale; that the Commonwealth ended up with a finance lease when its expressed intention was to have an operating lease; that the Commonwealth did not understand the nature of the contract which it entered into; and that the Commonwealth incurred substantial costs in connection with the DASFLEET sale that were not envisaged at the start of the sale process.

In conclusion, I would like to express the committee’s appreciation to those people who contributed to the inquiry by preparing submissions and giving evidence at this public hearing. I also wish to thank the members of the sectional committee involved for their time and dedication in conducting this inquiry. I also thank the secretariat staff: the then secretary to the committee, Dr Margot Kerley; research staff Ms Allyson Essex, Ms Jennifer Hughson and Ms Mary Kate Jurcevic; and administrative staffer Ms Maria Pappas. I commend the report to the Senate.

Question agreed to.

AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT BILL 2002
CORPORATIONS AMENDMENT (REPAYMENT OF DIRECTORS’ BONUSES) BILL 2002
SNOWY HYDRO CORPORATISATION AMENDMENT BILL 2002
SEX DISCRIMINATION AMENDMENT (PREGNANCY AND WORK) BILL 2002
WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2002 [No. 2]
CUSTOMS LEGISLATION AMENDMENT BILL (No. 2) 2002
AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2002

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.56 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned I shall move a motion to have the bills listed separately on the Notice Paper. I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.57 p.m.)—I table a revised explanatory memorandum relating to the Sex Discrimination Amendment (Pregnancy and Work) Bill 2002 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT BILL 2002

Since 1995, the Commonwealth, State and Territory Governments have operated a national umbrella to provide for the registration of agricultural and veterinary chemicals. The National Registration Scheme for Agricultural and Veterinary Chemicals (or NRS) has been established under Commonwealth legislation, and is underpinned by an administrative partnership with my state and territory agricultural counterparts.

The NRS has achieved remarkable gains in understanding the hazard and risks of agricultural and veterinary chemicals and influencing their management and use within the community, especially through rigorous scientific decision-making and better use of labels as a platform for safe and effective use.

As the NRS has developed, it has become apparent that a number of improvements could be made to the scheme to make it more efficient and effective. As the regulatory, governmental, community and industry stakeholders have become more confident in, and proficient with, the scheme, they have made, and continue to make, proposals for reform in terms of:

- the evaluation and management of the hazards and risks associated with the use of agricultural and veterinary chemicals; and
- the administrative processes through which applicants seek to have their chemical products evaluated, approved or registered prior to access to the market.

The Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002 encompasses a number of reforms to the legislation under which the national scheme has been established, that is; the Agricultural and Veterinary Chemists (Administration) Act 1992; the Agricultural and Veterinary Chemicals Code Act 1994 and the Agricultural and Veterinary Chemical Products (Collection of Levy Act) 1994).

Key aspects of the Bill include:

- the introduction of a new low regulatory option for the authorisation of chemicals in certain circumstances in line with the recommendation of the National Competition Policy Review undertaken on the agricultural and veterinary chemicals legislation;
- further elaboration of how the approval of labels for containers of chemical products is to be made;
- new processes to make amendment to labels for containers of chemical products easier;
- the expansion of the ‘deemed permits’ mechanism providing a stronger regulatory framework to safely utilise stockpiles of chemicals that become unregistered; and
- several other minor amendments in terms of the administrative mechanisms for processing applications for approval of active constituents, registration of chemical products and approval of labels for containers.

The Howard Government has a well-established history of increasing efficiency and effectiveness in regulatory systems, while ensuring that appropriate standards and regulatory practice have been, and continue to be, maintained.

In terms of this scheme, that is, the regulation of agricultural and veterinary chemicals, Australia’s traditionally rigorous and scientifically credible processes and standards, which ensure the health and safety of the community, the environment and our trade, continue to be maintained.

I believe that these reforms to the national scheme will facilitate a more efficient, more effective and responsive regime for the registration of agricultural and veterinary chemicals. They reduce unnecessary red tape, promote innovation and access to safe chemicals to those that need them, reduce business and regulatory costs, and generally reduce the administrative burden without compromising the health and safety standards we expect of the national registration scheme.
All State and Territory Governments have provided their agreement to the package of reforms provided in this Bill. They have done so because the reforms make good sense for public health and safety; good sense for the environment; and good sense for small and large businesses.

CORPORATIONS AMENDMENT (REPAYMENT OF DIRECTORS’ BONUSES) BILL 2002

Outline
This is a bill to amend the Corporations Act 2001 to permit liquidators to reclaim unreasonable payments made to the directors of insolvent companies.

The object of the bill is to assist in the restoration of funds, assets and other property to companies in liquidation for the benefit of employees and other creditors, where unreasonable payments have been made to directors in the lead-up to liquidation.

Background
In the wake of the collapse of One.Tel, the Government announced it intended to pursue an amendment to the Corporations Act to enable the recovery of bonuses paid to the directors of companies that later collapse. In this bill, the Government delivers on that commitment.

The Corporations Act already contains a range of measures, known as the voidable transaction provisions, that allow a liquidator access to moneys paid out by a company. The provisions permit the reversal of certain transactions entered into by an insolvent company in the lead-up to a liquidation. The Bankruptcy Act provides trustees with similar powers in relation to personal insolvency.

In certain limited circumstances, liquidators can attack payments made while a company is still solvent. This bill adds to these circumstances, by explicitly extending them to include unreasonable payments made to directors of companies.

The amendments cover transactions made to, on behalf of, or for the benefit of a director or close associate of a director. To be caught, the transaction must have been unreasonable, and entered into during the 4 years leading up to a company’s liquidation, regardless of its solvency at the time the transaction occurred.

Provisions of the Bill
The main provision inserted by the bill is new section 588FDA, entitled “Unreasonable director-related transactions”.

Subsection 588FDA(1) outlines the kinds of company transactions caught by the bill. It targets transactions that a reasonable person in the company’s circumstances would not have entered into.

The reasonableness of the transaction is determined with regard to a number of factors. They include the respective costs and benefits of the transaction to the company, and the benefits received by the recipient.

The meaning of ‘transactions’ is broadly described to prevent avoidance. It includes a payment made by the company, as well as conveyances, transfers and other dispositions of property. It also includes the issue of securities, including options. Further, incurring an obligation to enter into any these transfers in the future would be a “transaction” for the purposes of the bill.

The focus of the bill is transactions entered into by the company with its directors, and accordingly the recipients covered by it include directors of the company.

The bill covers two further categories of person. It includes company transactions with close associates of a director. A ‘close associate’ is defined under the bill to mean a relative or de facto spouse of a director, as well as the relative of a director’s spouse or de facto spouse.

It will also apply to transactions entered into with third parties, where they are made on behalf of, or for the benefit of, either a director or close associate. This will prevent people avoiding the new provisions through restructuring or redirecting transactions.

Subsection 588FDA(2) provides that the reasonableness of entering into the transaction is determined at the time the company actually enters into the transaction, regardless of its reasonableness at the time the company incurred the obligation to enter the transaction. This enables liquidators to recover payments where the true magnitude of the unreasonableness involved only becomes apparent when the company actually makes the payment, even if it appeared reasonable at the time the company agreed to make the payment.

Under subsection 588FDA(3), a transaction may be caught by the new provision regardless of whether a creditor of the company is a party to the transaction, and even if the payment was made pursuant to a court order. This mirrors existing provisions in Part 5.7B in relation to non-commercial transactions entered into by an insolvent company (existing subsection 588FB(2)).

For the avoidance of constitutional doubt, the amendments will apply to unreasonable director-related transactions entered into on or after
The bill provides that an unreasonable director-related transaction is voidable where it was entered into or given effect to within 4 years of the relation-back day. That day is usually the date of filing of an application to wind up the company, and is the usual point in time for measuring the reach of voidable transactions.

The Corporations Act already provides that the court may make a range of orders in relation to unreasonable director-related transactions. This bill makes it clear that the court may make these orders in relation to the unreasonable portion of the total transaction, taking into account the reasonable value (if any) that is attributable to it.

Approval of MINCO

In accordance with the Corporations Agreement, I can advise that the Government has consulted with the Ministerial Council for Corporations in relation to the bill. The Council provided the necessary approval for the text of the bill, as required under the Agreement for amendments on this kind.

Conclusion

This bill makes amendments that will provide a valuable addition to the existing range of powers available to the liquidators of insolvent companies. It permits the restoration of funds and property to a company for the benefit of employees and other creditors.

It also gives a strong statutory expression of the Government’s intention that directors do not receive unreasonable remuneration particularly when creditors, employees and shareholders are at risk. Directors are in a better position than most to know the true state of affairs of the company in the short to medium term, and should not profit from this knowledge at the expense of employee and ordinary creditors.

SNOWY HYDRO CORPORATISATION AMENDMENT BILL 2002

The purpose of the Snowy Hydro Corporatisation Amendment Bill 2002 is to amend the Snowy Hydro Corporatisation Act 1997.

The Snowy Mountains Hydro-electric Authority was corporatised on 28 June 2002. The Commonwealth, New South Wales and Victorian governments are shareholders in the new company Snowy Hydro Limited.

To allow corporatisation of the Snowy Mountains Hydro-electric Authority to proceed on 28 June 2002, the Commonwealth undertook, with the agreement of the New South Wales and Victorian governments, to introduce this bill to exempt certain transactions specified under the Snowy Hydro Corporatisation Act 1997 from the Goods and Services Tax (GST).

The original intent conveyed in the Snowy Hydro Corporisation Act 1997 was that all corporatisation transactions should be exempt from tax. This intent was overruled when A New Tax System (Goods and Services Tax) Act 1999 came into force. The amending legislation will ensure that the original intent is restored.

In accordance with A New Tax System (Commonwealth-State Financial Arrangements) Act 1999 and the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, the unanimous agreement of all State and Territory Treasurers is required before the amendment can be passed. The New South Wales and Victorian Treasurers have consulted and gained unanimous approval from their State and Territory colleagues on this amendment.

The proposed legislation will not affect the application of GST to any transactions and transfers other than those specifically required under the Snowy Hydro Corporatisation Act 1997. This amendment is solely for one-off transactions required under the Snowy Hydro Corporatisation Act 1997 and no significant or unforeseen ramifications for GST revenue are expected from the amendment.

SEX DISCRIMINATION AMENDMENT (PREGNANCY AND WORK) BILL 2002

The Sex Discrimination Amendment (Pregnancy and Work) Bill 2002 is the same in substance as the Sex Discrimination Amendment Bill (No.2) 2001, which the Attorney-General introduced into the House of Representatives on 27 September 2001.

With the calling of the election, that bill lapsed when the Parliament was prorogued.

This bill will clarify a number of provisions of the Sex Discrimination Act 1984 that protect pregnant, potentially pregnant and breastfeeding women from discrimination.

In doing so, the bill addresses important concerns raised by the Human Rights and Equal Opportunity Commission in its report Pregnant and Productive: It’s a Right not a Privilege to Work While Pregnant.

The Report resulted from the inquiry that the Attorney-General requested the Commission to undertake into the rights and responsibilities of em-
ployers and employees in relation to pregnancy and work issues.
This was the first ever national inquiry into this important area of anti-discrimination law.
In November 2000, the Government announced its acceptance of the majority of the recommendations made in the Report.
Three of these recommendations were directed at addressing confusion about those provisions of the Act that concern: the asking of questions about pregnancy or potential pregnancy; the use of pregnancy-related medical information; and whether breastfeeding is a ground of sex discrimination.
The amendments to the Act put forward in this bill will assist in eliminating this confusion. They will not only help to prevent discrimination against employees, but also greatly assist employers to manage their human resources and to ensure that they comply with their legal obligations.
The amendments to s.27 of the Act will make it clear that, where it is unlawful for women to be discriminated against because of their pregnancy or potential pregnancy, it is also unlawful to request information about pregnancy or potential pregnancy — questions that would not be asked of male applicants.
For example, because it is unlawful to refuse to employ a woman because she is pregnant, it is accordingly unlawful to ask a woman in a job interview whether she is pregnant.
It is important to clarify that such questions are unlawful, as they marginalise women, and may be detrimental to their performance in job interviews and their likelihood of success.
Equally as important, the clarification ensures that employers will better understand their obligations and avoid unintentionally breaching the Act.
The bill also clarifies s.27(2) of the Act, which permits requests for medical information about pregnancy or potential pregnancy, as an exception to the general prohibition in s.27.
The Report identified that without clarification the current provision may wrongly imply that it is not unlawful to discriminate in relation to medical examinations of pregnant employees during recruitment.
The addition of a note at the end of s.27(2) clarifies that information about pregnancy or potential pregnancy may be sought only for legitimate reasons, such as for occupational health and safety purposes.
It may not be used by an employer to discriminate unlawfully against a woman in contravention of other provisions of the Act.
The Report also noted that there is some confusion over whether discrimination on the ground of breastfeeding is covered by the Act.
As the Government stated in its response to the Report, it considers that discrimination on the grounds of breastfeeding is already prohibited by the Act.
However, the Government recognises the value of a clarificatory amendment.
The amendment to the definition of ‘sex discrimination’ in s.5 of the Act makes it clear that breastfeeding is a characteristic that pertains generally to women, and removes any doubt that discrimination against a woman on the basis that she is breastfeeding amounts to unlawful sex discrimination.
In making these amendments, the bill does not expand the operation of the Act, but greatly improves, simplifies and clarifies important provisions of the Act that provide protection from unlawful discrimination for pregnant, potentially pregnant and breastfeeding women.
These amendments will clarify the operation of the Act in these important areas for women, employers and others in the community.
Once again, practical and concrete steps are being taken by this Government to remove sex-based workplace discrimination and to improve the lives of working women while assisting employers to understand laws that impact upon their business in important ways.
The bill was prepared in consultation with the Commission as well as with the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions.
The bill will have little, if any, financial impact.
It must be remembered, of course, that legislation is only part of the answer in preventing unlawful discrimination.
An important aspect of eliminating discrimination rests with employers and employees themselves, who must work cooperatively to find the best solution for their individual workplaces.
Communication and consultation can go a long way to ensuring that non-discriminatory arrangements are developed between employers and em-
ployees that accommodate the particular needs of a business or employee.

Another important aspect of eliminating discrimination is education and increasing awareness of the rights and responsibilities of employers and employees in relation to pregnancy and work issues.

In addition to these amendments, the Government released a booklet in April 2002 to raise awareness about rights and responsibilities concerning pregnancy and potential pregnancy issues in the workplace.

The booklet, entitled “Working your way through pregnancy” provides information about a number of pregnancy and work issues, including harassment, anti-discrimination and workplace relations laws and access to parental leave.

The Government is strongly committed to raising the awareness and improving the understanding of employers and employees about pregnancy and work issues.

This is fundamental to achieving cultural change and lasting improvements in equal opportunity for women in employment and other areas of public life.

The bill, together with the other Government initiatives to assist pregnant, potentially pregnant and breastfeeding women and their employers, are significant steps toward attaining this goal.

WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2002 [No. 2]

Freedom of association is a cornerstone of the Government’s vision for more productive and more prosperous workplaces. On coming to office, the Government amended the Workplace Relations Act 1996 better to reflect this principle, with broad legislative recognition of the freedom to join or not to join an industrial association.

This fundamental freedom is violated by recent union attempts to impose so-called ‘bargaining agent’s fees’. These require non-union members to pay for union negotiations at their workplace, even though these negotiations may take no account of their concerns. In many cases the fee demanded has been set at $500 per year, well above the level of annual union dues. This suggests that many compulsory fee demands are being made with premeditated coercive intent.

Clauses purporting to require payment of compulsory union fees by non-unionists have already been included in hundreds of federal certified agreements.

Compulsory fees for an unrequested service do not constitute ‘user pays’. User pays involves an exchange that is freely entered into by willing and properly informed parties. The Government believes that industrial associations should be subject to the same standards as ordinary businesses, which are prevented by fair trading legislation from providing unrequested services and then demanding payment for those services.

The content and intent of this bill should be familiar. It is the same as the bill that was laid aside on 18 September 2002 after the House of Representatives rejected Senate amendments that would have undermined the intent of the bill to protect individual employees from the imposition of compulsory union fees.

The Senate amendments would have allowed a majority vote to impose a compulsory bargaining services fee on all employees, irrespective of whether the individual employees affected had sought the bargaining services. The amendments removed from the bill important protections for employees who choose not to pay a fee, as well as the capacity to have compulsory bargaining service fee clauses removed from agreements.

The Government is reintroducing this bill to honour the commitment it made before the 2001 election to ban compulsory union levies.

The bill will amend the certified agreement and freedom of association provisions in the Workplace Relations Act 1996. The amendments address clauses in certified agreements that purport to require payment of bargaining services fees. They also address conduct designed to compel people to pay such fees.

In late 2001, a Full Bench of the Australian Industrial Relations Commission found that bargaining fee clauses in certified agreements do not contradict the strict letter of the freedom of association provisions of the Workplace Relations Act 1996, despite their acknowledged coercive intent. This has exhausted the legal avenues to have clauses removed from certified agreements.

There has been ongoing uncertainty in relation to the legal status of bargaining fee clauses, including whether such clauses can be included in agreements. In August 2002, the Commission held that it was unable to certify nine agreements containing a bargaining fee clause because that clause did not pertain to the employment relationship; that decision is under appeal.

The Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] addresses this uncertainty. The bill provides that bargaining fee clauses in certified agreements are void, and will give the Commission the power
to remove such clauses on application by the Employment Advocate, or a party to the agreement. The bill will prevent the Commission certifying an agreement containing a clause requiring the payment of a fee for bargaining services.

To ensure that it is clear that bargaining fee clauses in certified agreements do not provide a basis on which unions can legally compel non-members to pay such fees and to ensure that there are appropriate protections for individual employees who choose not to pay a bargaining fee, the bill will amend the Workplace Relations Act 1996 to:

- prohibit employers and others from engaging in discriminatory conduct against people who refuse to pay a bargaining fee;
- prohibit an industrial association from encouraging or inciting others to take discriminatory action against people who refuse to pay a bargaining fee;
- prohibit an industrial association from taking, or threatening to take, action with intent to coerce people to pay a bargaining fee; and
- prohibit an industrial association from demanding a bargaining fee.

There is also a need to prevent unions or employers from using other methods to create an impression that employees are legally obliged to pay compulsory union fees. Hence the bill will prohibit the making of false or misleading representations about a person’s liability to pay a compulsory union fee.

The bill will not prevent people making voluntary contributions, provided there is no coercion or misrepresentative conduct. The bill will prevent demands for coercive, non-consensual fees that are contrary to rights to freedom of association.

Bargaining fees are not a legitimate way for trade unions to arrest the dramatic and sustained fall in their membership.

Australian laws recognise an important statutory role for registered organisations, and confer upon them significant rights and obligations. But that legal standing cannot be at the expense of the right of individual employers and employees to freedom of association and to protection from coercive or discriminatory conduct.

CUSTOMS LEGISLATION AMENDMENT BILL (No. 2) 2002

This Bill, the Customs Legislation Amendment Bill (No. 2) 2002 contains amendments to the Customs Act 1901 and the Passenger Movement Charge Collection Act 1978.

The purpose of the Bill is to make amendments to the anti-dumping and countervailing provisions of the Customs Act, an amendment to exempt Air Security Officers from the Passenger Movement Charge and minor and technical amendments to International Trade Modernisation elements of Customs legislation.

The proposed anti-dumping and countervailing amendments have three major purposes. The first is to provide greater clarity and certainty in respect to the treatment of ‘economies in transition’.

The second will amend the provisions governing the processing of final duty assessment applications and calculation of refunds of dumping duties.

The third purpose will be to make amendments to more accurately reflect the provisions of the World Trade Organisation anti dumping agreement.

Economies in transition are those that are moving from being centrally planned to a free market model.

While in transition, such economies are subject to provisions which enable Customs to enquire into the existence of price control in the market for those goods that are the subject of a dumping application.

Since the introduction of the “price control” concept in 1999, it has become apparent that there is uncertainty as to whether this includes both direct and indirect forms of government control over prices.

To overcome the uncertainty it is proposed to replace the term “price control” with “price influence” as this more accurately reflects the Australian Government’s intention, as set out in ministerial guidelines issued in December 2000.

In considering whether a price influence situation exists, regard is given to whether the government of the exporting country has influenced the domestic price of goods which are the subject of an anti-dumping application.

The degree of government influence must be found to be significant. Examples of significant price influence include situations where the government supplies inputs at below normal cost to domestic manufacturers or producers; or through the operation of State-owned enterprises and has thereby influenced the market price of goods to such a significant degree that normal market forces no longer can be considered to apply to the goods under consideration.
The Bill will also introduce a clear requirement that exporters are to cooperate by providing the information necessary to assist in determining the presence or absence of price influence.

Without the information from exporters, it is very difficult for the authorities to determine that price influence does not exist. Therefore, it will be made clear within the Customs Act that an appropriate response from the exporter to the questionnaire is an essential element of a price influence assessment.

If an exporter either fails to provide the necessary information or provides less than adequate information then a recommendation will be made to the Minister that a price influence situation be found to exist.

The amendments to the duty assessment scheme are to provide greater certainty and a more effective means of administering the scheme by inserting into the Customs Act discrete steps that will apply in screening duty assessment applications and in processing duty assessment applications after lodgement.

Under the current assessment scheme, applicants are able to submit information that is inaccurate or which has very little probative value in support of their applications for assessment of duty.

In the absence of an express power to reject duty assessment applications that contain deficient information, Customs must proceed to consider these applications and make a determination based on the deficient information.

This means that the assessment of duty may not be accurate.

The new scheme will also allow Customs to reject or terminate duty assessment applications at several stages before or during the consideration of the applications.

The amendments are intended to complement the evidentiary requirements of the new scheme.

The amendments will require applicants to provide sufficient evidence to establish the correctness of their claims.

The amendments are also intended to address the recent decision of the Federal Court in Amcor Packaging v. Chief Executive Officer of Customs where the court found that there was a distinction between when an application for duty assessment was ‘made’ and when it was ‘lodged’.

The amendments seek to remove this distinction by using the term ‘lodged’ consistently throughout Division 4 of Part XVB of the Customs Act.

The amendments also give effect to Article 9.3.3 of the World Trade Organisation Agreement on the Implementation of Article VI of General Agreement on Tariffs and Trade by reflecting the evidentiary requirements set out in that Article that apply to duty assessment applications which involve constructed export price.

Technical amendments of a minor nature will be made to the provisions on cumulation, accelerated review and continuation of dumping measures to bring Australia’s legislation into conformity with the World Trade Organisation agreement.

Finally amendments will be made to clarify that the reinvestigation of a case following a recommendation by the Trade Measures Review Officer is not to be treated as a de novo investigation.

The Bill contains an amendment to the Passenger Movement Charge Collection Act to exempt Air Security Officers who travel on an international flight for the purpose of enhancing the security of the aircraft from paying the Passenger Movement Charge.

The final set of amendments in this Bill contains amendments to the Customs Act to address minor omissions related to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001.

AGRICULTURE FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2002


The amendments to the Australian Wine and Brandy Corporation Act 1980 include provisions to correct the Register of Protected Names, to add a general power to regulate matters agreed to under prescribed wine trading agreements and to lengthen the period of time in which a prosecution for export breaches may be brought.

In 1993, extensive provisions for a Register of Protected Names were added to the Act along with other amendments designed to implement the outcomes of negotiations on an Australia/EU bilateral Wine Agreement. The function of the Register is chiefly there to record protected wine names and terms, both Australian and those of other wine producing countries. However, no provisions were included at that time which allowed amendment of registered names if an error occurred in making the entry or indeed if entries became obsolete. The proposed amendments will rectify this.
Apart from the Australia/EU Wine Agreement, Australia is pursuing other agreements in relation to wine. As a member of the New World Wine Producers’ Forum Australia signed, in December 2001, a mutual acceptance agreement on wine-making practices and is currently working with this group on a further treaty on wine labelling. As a result of its strong focus to improve wine trading arrangements it is likely that Australia, in the future, may need to modify some of its domestic wine laws to enact commitments made with other wine producing countries. The inclusion of a new power into Section 8, and the addition of a regulatory power under Section 46(1) will put in place the legislative framework to allow this to occur.

The final matter is that of the prosecution of export breaches under the Act. The Act sets no prescribed time limit which means that section 15B of the Crimes Act 1914 operates, which only prescribes a one-year time period in which to bring a prosecution. This time frame is not suitable for exports. The process of export operations can be quite lengthy and a breach may not be evident until well after the commencement period has expired and especially so in the case of wine which can handle a lengthy storage period prior to being opened. Thus the evidence can be available for a considerable period of time, much longer than the year period allowed for the bringing of a prosecution. The proposed amendment therefore extends this period to 7 years, which is consistent with current record keeping obligations under the Act. Section 39U of the Act requires wine manufacturers to keep records for seven years for each wine they make.

The purpose of the amendment to the Export Control Act 1982 (the Act) is to express a contrary intention for the purposes of section 49A of the Acts Interpretation Act 1901. The amendment will enable the orders made under the Act to apply, adopt or incorporate with or without modification the Codex Alimentarius issued by the Codex Alimentarius Commission of the Food and Agricultural Organization of the United Nations and the World Health Organization or the Food Standards Code published under the Food Standards Australia New Zealand Act 1991 (the standards) as in force at a particular time or as in force from time to time.

Currently, where orders apply these standards, the references to the standards in the orders must be interpreted as references to the standards in force at the time the orders were made. If the standards change after the orders are made, the orders must be remade to incorporate the changed standards. This amendment will ensure that such references can be read as references to the current versions of the standards and will avoid the necessity of amending the orders whenever the standards change.

The amendments to the National Residue Survey Administration Act 1992 (the Act) clarify the activities that can be carried out under the Act for which payments can be made out of the National Residue Survey Reserve and brings the Act into line with other Commonwealth legislation on the protection of personal information.

Previously, the National Residue Survey has only monitored and reported on the level of contaminants in raw food products, animal feeds and fibre products that have been produced in Australia, or produced from animals or plants produced in Australia.

The amendments to Section 8 of the Act will allow the National Residue Survey to test all inputs to the production of Australia’s raw food, feed and fibre products, including soil, water and imported animal feeds. This will ensure that Australia maintains its high reputation as a supplier of a clean green product on its domestic and international markets.

The amendments to section 11 of the Act dealing with the release of National Residue Survey information brings the Act into line with other Commonwealth legislation that contains personal information. This will ensure that any personal information released to a relevant authority or appropriate person for the purpose of monitoring or regulation of residues and contaminants is used for that specified purpose only.

The purpose of the amendments to the Quarantine Act 1908 (the Act) is to make the Act compliant with the Criminal Code 1995 (the Code). A key feature of the Code is the emphasis on the structuring of offences to provide clarity and certainty in relation to the scope and effect of each offence, and to give consistency as to how criminal offences are to be interpreted by the courts. The Attorney-General’s Department has identified that several offence provisions in the Act require revision to make them fully compliant with the Code. The amendments will:

- update section 5 of the Act dealing with Interpretation by removing references to provisions that have been repealed in the Crimes Act 1914 and substituting equivalent sections of the Code;
- restructure and redraft certain offences to clarify the fault elements that are to apply for the relevant offences; and whether provisos in offence provisions, indicated by words such as “unless” or “except”, are
elements of the offence or a defence to the offence.
The proposed amendment to the Dairy Industry Legislation Amendment Act 2002 is to correct a misdescribed amendment.
Debate (on motion by Senator Webber) adjourned.
Ordered that the bills be listed on the Notice Paper as separate orders of the day.
NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (No. 2) 2002
NEW BUSINESS TAX SYSTEM (VENTURE CAPITAL DEFICIT TAX) BILL 2002
First Reading
Bills received from the House of Representatives.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.58 p.m.)—I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.
Question agreed to.
Bills read a first time.
Second Reading
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.58 p.m.)—I move:
That these bills be now read a second time.
I seek leave to have the second reading speeches incorporated in Hansard.
Leave granted.
The speeches read as follows—
NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (No. 2) 2002
This bill reflects a continuation of the Government’s initiatives to reform business taxation by amending the income tax law and other laws to give effect to the following measures.
Consolidation Regime
The consolidation regime, which commenced on 1 July 2002 is an important and innovative reform that allows wholly-owned corporate groups to be treated as single entities for income tax purposes. The consolidation regime is the product of extensive, ongoing and regular consultation with industry and business sector representatives.
This is the fourth and final tranche of the consolidation regime. The majority of the rules for the regime were contained in three earlier tranches of legislation: New Business Tax System (Consolidation) Act (No 1) 2002; New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 and New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002.
The Consolidation regime will promote efficiency of business restructuring, improve the integrity of the Australian tax system and reduce ongoing income tax compliance costs for those wholly-owned groups that choose to consolidate.
The measures contained in this bill deal with discrete and specialist areas of the tax law and their interaction with the consolidation regime. These discrete and specialised areas include the taxation of life insurance companies, take account of the special structure of multiple entry consolidated groups and consolidated groups owned through interposed foreign entities and the interaction of the consolidation regime and the general value shifting regime.
Consequential amendments and technical corrections are also made in relation to the existing consolidation provisions to ensure those provisions operate as intended.
Simplified Imputation System
This bill will insert further components of the simplified imputation system. These rules will complement the core rules for the simplified imputation system. The rules relate to venture capital franking, the transfer of membership status and machinery provisions, including those associated with franking returns, assessments and amendments.
The simplified imputation system is another of the Government’s business tax reform initiatives and gives companies more flexibility in franking dividends and reduces their compliance costs.
In addition, the bill will make a number of consequential amendments to the Income Tax Assessment Act 1936 that are required because of the simplified imputation rules.
The measures contained in this bill apply from 1 July 2002, the commencement date of the consolidation regime and simplified imputation system.
Full details of the measures in the bill are contained in the explanatory memorandum.
I commend this bill.
NEW BUSINESS TAX SYSTEM (VENTURE CAPITAL DEFICIT TAX) BILL 2002
This bill forms part of the package of bills that will give effect to the Government’s reform of business taxation in respect of the imputation system.

The purpose of the New Business Tax System (Venture Capital Deficit Tax) Bill 2002 is to ensure that venture capital deficit tax continues to apply under the new simplified imputation system.

Full details of the measure in this bill are contained in the explanatory memorandum.

I commend this bill.

Debate (on motion by Senator Webber) adjourned.

MIGRATION LEGISLATION AMENDMENT (CONTRIBUTORY PARENTS MIGRATION SCHEME) BILL 2002
MIGRATION (VISA APPLICATION) CHARGE AMENDMENT BILL 2002
First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.59 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.59 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

MIGRATION LEGISLATION AMENDMENT (CONTRIBUTORY PARENTS MIGRATION SCHEME) BILL 2002
This bill and the Migration (Visa Application) Charge Amendment Bill 2002, which I shall be introducing shortly, implement a new package of measures for parents who want to join their families in Australia.

These bills implement the Government’s election commitment to increase parent migration.

There is currently a pipeline of 22,200 parents waiting to migrate to Australia.

The measures I am introducing will reduce this significantly by adding a further 4,000 places per annum to the 500 places per annum already available for parents.

During my extensive consultations on parent migration I have emphasised the need to find an acceptable balance between the costs and the benefits of parent migration.

On the one hand, we all understand the strong desire of migrant families to have their parents live with them in Australia.

On the other hand, we are all aware of the potential burden on our health and welfare systems from the entry of more older people.

As our population gets older the Government must exercise responsibility in relation to our public health system and other programs paid for by the taxpayer.

A recent report by the Australian Government Actuary shows that parent migrants represent a very substantial cost in terms of public health and welfare programs.

There are higher costs for this category of migration because many of the parents are over the age of 55.

Although there are high costs associated with parent migration there are also substantial social and economic benefits.

Families with young children can benefit from the presence of grandparents.

Australia’s cultural life is enriched by the migration of parents and grandparents.

Research shows that parents bring economic assets with them. They also contribute to the economy through consumption of goods and services and payment of various taxes.

In recognition of the benefits, the Government is seeking a fairer contribution rather than a full recovery of the estimated costs of parent migrants.

My community consultations showed that many people are willing to make a fairer contribution to the costs associated with the migration to Australia of their parents.

This bill introduces a new parent migration visa category that allows parent migrants and their sponsors to do just that.
The key features of the new visa category are:

• applicants will be able to pay a one-off health charge of $25,000 per adult for a permanent visa;
• there will be an extended assurance of support period of 10 years instead of the current 2 years;
• there will be an increased assurance of support bond of $10,000 for the main applicant and $4,000 for other adult dependants;
• there will also be the option of applying for a temporary visa which will require a payment of $15,000 per adult applicant:
  • these people can then two years later, apply for a permanent visa by paying the remaining $10,000 per adult applicant health charge and the assurance of support bond;
  • those on the temporary visas will have access to Medicare and work rights; and
  • criteria that applicants meet at the temporary visa stage such as health, balance of family, sponsorship, will not have to be completely reassessed.

Those in the existing parent pipeline who wish to transfer to the new category will not be charged again for lodgment of the application.

As part of the package, the existing parent categories will remain open for new applications and we will double the number of places for existing parent visa categories from 500 to 1,000 places per year.

This will mean an increase in the opportunity for migration for those parent sponsors who cannot afford the costs of the new categories.

The measures will see the contribution of parent migrants to their combined lifetime health and welfare costs increase from 0.5% to 12%.

Through these measures we have found a balance which:

• allows more parent migration;
• acknowledges the costs and benefits of parent migration;
• sets a fair contribution level for parents and their sponsors;
• increases opportunities for those unable to pay higher charges; and
• ensures a fairer deal for the Australian taxpayer.

This is an important initiative—and one that is intended to maximise the number of parents who can migrate to Australia.

I thank Senator Bartlett, as leader of the Australian Democrats, for his constructive contribution to the development of this package.

I commend the bill to the chamber.

MIGRATION (VISA APPLICATION) CHARGE AMENDMENT BILL 2002

This bill complements the Migration Legislation Amendment (Contributory Parents Migration Scheme) Bill 2002, which I have just introduced.

The amendments in this bill will ensure that the visa application charge for the proposed new contributory parent visas does not go beyond the visa application charge limit specified in the Migration (Visa Application) Charge Act 1997.

The amendments will increase the visa application charge limit, in relation to the new contributory parent visa classes, to $26,745 per applicant. This amount will be indexed, in order to account for increases in health costs over time.

This index is to be compiled by the Australian Government Actuary based largely on health expenditure data provided by the Australian Institute of Health and Welfare.

The amendments do not change the visa application charge limit for any other type of visa.

These amendments are contained in a separate bill because they could be construed as imposing a tax, and the constitution requires that such bills deal with no other matters.

I commend the bill to the chamber.

Debate (on motion by Senator Webber) adjourned.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives returning the following bill without amendment:

Broadcasting Legislation Amendment Bill (No. 3) 2002 [2003]

INSPECTOR-GENERAL OF TAXATION BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Inspector-General of Taxation Bill 2002, acquainting the Senate that the House has disagreed to the amendments made by the Senate and desiring the reconsideration of the amendments.
Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

COMMITTEES
Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee
Membership
Message received from the House of Representatives notifying the Senate of the appointment of Mrs Hull to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund in place of Mr Cobb.

WORKPLACE RELATIONS
AMENDMENT (FAIR DISMISSAL) BILL 2002 [No. 2]
In Committee
Consideration resumed.

Senator SHERRY (Tasmania) (6.01 p.m.)—Just prior to question time the spokesperson for the Australian Democrats, Senator Murray, made some very pertinent observations via a number of incisive questions put to the Parliamentary Secretary to the Minister for Revenue and Assistant Treasurer, Senator Ian Campbell. I will get to the answers, or non-answers, and place on record that I get very concerned when a parliamentary secretary for the Liberal government uses words like efficiency, a dynamic economy, globalisation, flexibility, reducing disincentives and cutting red tape in the context of the issue we are considering here, which fundamentally is to remove the right of many employees in this country to have their day in front of an independent tribunal to argue that their dismissal was unfair. That is what this bill is all about.

I get concerned at the sorts of defences mounted by Senator Campbell because words like efficiency, dynamic economy and reducing incentives are buzzwords or cover words about a piece of legislation that is intended to take away the right of many employees in this country to be able to argue before an independent tribunal that their dismissal was unfair. That is what this bill is all about.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Is leave granted?

Senator Murray—No. I would be grateful if they were dealt with one by one.

Leave not granted.

Senator SHERRY (Tasmania) (6.06 p.m.)—I will move amendment (1) first of all. I do not want to hold up the Senate unduly. As I have said, we have debated this legislation in some form or other on seven previous occasions.

The TEMPORARY CHAIRMAN—Senator Sherry, I am sorry to interrupt you but amendment (1) is consequential on your amendment (2). I wonder if Senator Murray would agree to you moving at least the two
amendments on that sheet, (2) and (1), together.

Senator Murray—Yes, I would.

Leave granted.

The TEMPORARY CHAIRMAN—Senator Sherry, you can speak to both of those amendments.

Senator SHERRY—I move:

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

1A Subsection 42(3)
Omit “A party”, substitute “Subject to subsection (3A), a party”.

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

1B After subsection 42(3)
Insert:

(3A) The Commission must not grant leave under subsection (3) to a counsel, solicitor or agent acting for a fee or reward in a conciliation under Subdivision B of Division 3 of Part VIA of this Act unless it is satisfied that it would assist the just and expeditious resolution of the proceeding, having regard to:

(a) the complexity of the proceeding; and
(b) the capacity of another party to the proceeding to secure representation; and
(c) the likely cost of such representation; and
(d) any other matter the Commission considers relevant.

(3B) A party may not be represented by an agent in a proceeding under Subdivision B of Division 3 of Part VIA of this Act unless:

(a) the agent is a registered industrial agent within the meaning of section 42A of this Act; or
(b) the agent is not a registered industrial agent within the meaning of section 42A of this Act but is a member, officer or employee of an organisation registered under this Act; or
(c) the agent is not a registered industrial agent within the meaning of section 42A of this Act but the Commission is satisfied that the agent is not acting for reward.

Amendments (1) and (2) moved by the Labor opposition will improve the operation of our unfair dismissal system for both employers and employees, and the amendments contain a number of measures which would help lower costs and simplify procedures in the operation of the federal system. Labor are taking a positive approach. We are not taking a blind approach or totally refusing to deal with the issues; we are taking a positive approach to improving some areas which Labor has identified as causing some problems and concern.

The amendments that Labor are moving will demonstrate that the government is wrong when it claims that the only way to improve the system is to shut the independent commission’s doors to small business employers and employees and usher them into the common law courts, because that avenue does remain. There are improvements to be made which do not strip small business employees of their job security or take away the right to a fair go all around. If the Liberal government were serious about improving the operation of the unfair dismissal system it would support the Labor opposition’s amendments.

We did hear a constant assertion—and it is an assertion without evidence—from the parliamentary secretary, Senator Campbell, as indeed we have heard from many speakers in the Liberal government, that 50,000 jobs would be created if this bill was passed. I put forward the simple challenge to Senator Campbell and others: provide the evidence for your claim; provide some detailed statistical and scientific analysis that the passing of this legislation would result in 50,000 jobs being created—from an independent source, not the H.R. Nicholls Society, which even Senator Campbell and his colleagues on the Liberal government side of the chamber would struggle to argue is an independent authority on these matters.

The TEMPORARY CHAIRMAN—The Senate can assume that it is not Senator George Campbell you speak of, Senator Sherry?
Senator SHERRY—Of course. I refer to Senator Ian Campbell. I should say of course the Liberal-National government. I am not sure where Senator McGauran is fitting into that little picture at the moment, but that is an issue for another day.

Senator Ian Campbell—Very comfortably.

Senator SHERRY—As long as he is No. 2 on the joint Senate ticket in Victoria. But I am provoked by Senator Ian Campbell. Let us get back to industrial relations.

The TEMPORARY CHAIRMAN—Yes, do not let Senator Campbell provoke you, Senator Sherry.

Senator SHERRY—The amendments would do two things. Firstly, they would require the commission specifically to consider, according to a number of criteria, the appropriateness of allowing paid representation in a conciliation conference. The criteria the independent commission would be required to consider are the complexity of the proceeding, the capacity of another party to the proceedings to secure representation, the likely cost of such representation and any other matter that the commission considers relevant. Such other factors might include the presence of a question of law and the capacity of the party to represent him or her adequately. A concern of both employers and employees has been the legal costs of working through an unfair dismissal claim. In many cases these costs could be significantly reduced if the independent commission felt it could conciliate a matter more quickly with direct access to the parties. This amendment would empower the commission to hold a conciliation conference in the presence of the parties alone where it considers that would facilitate a just and expeditious settlement.

Secondly, these amendments would require paid industrial agents other than officers, employees or members of organisations registered under the act to be registered with the commission before they could appear in an unfair dismissal proceeding. This measure would address the concern addressed by both employers and employees with the professional conduct of certain paid agents working in the unfair dismissal system. To obtain registration, agents would have to meet prescribed conditions, including qualifications and experience, and comply with a code of conduct. Those found to be acting unprofessionally or unethically could be removed from the register. This is a principle that is adopted in many other areas from migration agents through to financial planners—with varying degrees of success, I have to say. But at least it will be an improvement on what we have at the present time.

South Australia and Western Australia have for some years required such agents to be registered and to comply with a code of professional conduct. Queensland is closely considering such a measure and there is a lively debate about such a proposal in New South Wales. It is time for a similar safeguard to be put in place at the federal level. My comments go to amendments (1), (2) and (3). For the sake of being succinct in the committee debate in the Senate I have addressed those three amendments. I am aware that Senator Murray requested that amendments (1) and (2) be put separately from (3).

Senator MURRAY (Western Australia) (6.13 p.m.)—The reason I took the route I did is that I intend to be consistent with my and my party’s previous attitude on these amendments. You might recall, Senator Sherry, we supported 3A of amendment (2) but not 3B. Of course, amendment (3) qualifies 3B really. That is what I was seeking to do. I have always taken the view that the purpose of this bill is that it is solely a technical bill to allow a double dissolution trigger to be in place. I expect the government will reject whatever we do for whatever reasons if it does not suit their game, if I may say so. The question I put to Senator Sherry is this: do you wish to split 3B off amendment (2) so that it is considered in conjunction with amendment (3), or do you wish to retain your amendments as they are? If you do that I will vote against all three—amendments (1) and (2) and (3). If you split 3B off amendment (2) I would vote for amendment (1) and the first part of amendment (2) and against the second part of amendment (2) and amendment (3).

Senator SHERRY (Tasmania) (6.15 p.m.)—Would I have to withdraw existing
amendment (2) and then move it in two parts?

The TEMPORARY CHAIRMAN—Those questions will be put as separate items.

Senator SHERRY—Thank you for meeting that request. Senator Murray has indicated the way in which he is going to vote. We do appreciate, Senator Murray, as you do, that this is an attempt to contrive a double dissolution trigger. Should such a trigger be used, it is the first such piece of legislation with which the Senate has been presented, so there is a very serious issue and theme underlying the Liberal government’s eighth attempt to present this legislation before the Senate. As I indicated earlier, we believe that it is appropriate to approach this legislation reasonably and positively by moving amendments that can improve current circumstances. Labor is not being negative in rejecting the bill out of hand without taking the positive approach of moving what it sees as important improvements to the current unfair dismissal provisions, with respect to small business, covered by the federal legislation. But I do understand the reasons that Senator Murray has outlined and will obviously put the amendments to the vote. I respect and understand Senator Murray’s reasons for his consistent approach on the amendments that I have moved.

The TEMPORARY CHAIRMAN—The question is that amendment (1) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the insertion of schedule 3A be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the insertion of schedule 3B be agreed to.

Question negatived.

Senator SHERRY (Tasmania) (6.18 p.m.)—I move opposition amendment (3) on sheet 2811:

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

1C After section 42

Insert:

42A Register of industrial agents

(1) In this Act:

registered industrial agent means a person who is registered as an industrial agent in the register of industrial agents referred to in subsection (2).

(2) The Industrial Registrar must create and maintain a register of industrial agents in accordance with the regulations.

(3) The regulations must prescribe:

(a) the manner in which the Industrial Registrar must create and maintain the register of industrial agents;

(b) the conditions, including qualifications and experience, an applicant must meet for registration;

(c) a code of conduct with which registered industrial agents must comply;

(d) the manner in which the Industrial Registrar may remove or suspend a person from the register of industrial agents.

I have already spoken to this amendment.

Question negatived.

Senator SHERRY (Tasmania) (6.18 p.m.)—I move opposition amendment (4) on sheet 2811:

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

1D At the end of section 98

Add:

(2) The regulations may prescribe an indicative time frame for the progress and resolution of a proceeding under Subdivision B of Division 3 of Part VIA of this Act.

This amendment would enable the minister to establish an indicative time frame for the resolution of unfair dismissal proceedings. While the commission has reported that the average time for the settlement of a matter is 53 days, there are instances where proceedings have continued for years. A notable example is the infamous Rio Tinto case, where 108 coalminers who had been dismissed by Rio Tinto filed unfair dismissal applications in 1998. Only 11 test cases were ever heard in July 2001. These cases were successful but Rio Tinto then appealed. Before the appeal was resolved, Rio Tinto finally made a
settlement offer which was accepted. If the settlement had not taken place, all 108 cases would have been outstanding for almost five years after they commenced. I think I am right in saying that lawyers played a prominent part in this case. It would surprise me if they did not. They did. You get these lawyers in, these mates of the Liberal-National Party on the other side—

Senator Ian Campbell—You have a few lawyers on your side too.

Senator Sherry—Certainly not as many as on your side, Senator Campbell. I look across that front bench and there is lawyer, lawyer, lawyer. They are everywhere! Such protracted litigation is in no-one’s interests, other than the lawyers of course. Employees want to get on with their lives and employers want to get on with their businesses. These amendments contemplate that the minister would consult with the commission to establish a realistic and indicative time frame to keep matters moving and to avoid such delay.

Question negatived.

Senator Sherry (Tasmania) (6.20 p.m.)—I move opposition amendment (5) on sheet 2811:

(5) Schedule 1, page 3 (before line 4), before item 1, insert:

1E After section 170CA

Insert:

170CAA Minister to publish information to assist employers and employees

(1) The Minister, in consultation with the relevant Minister of each State and Territory, must publish information, which may include practical examples, to assist employers and employees to comply with this Part.

(2) After publishing information under subsection (1), the Minister must promote the publication in workplaces and make it readily available free of charge.

This amendment would require the minister for workplace relations, in consultation with state and territory governments, to develop an information package which includes practical examples to assist employers and employees with recruitment and termination procedures. The minister would be required to make the package available free of charge and disseminate it as widely as possible in the community. The need for such a measure was highlighted by an astonishing survey conducted this year by the peak accountancy body, CPA Australia, which revealed that 27 per cent of small business operators were worried that an employer cannot dismiss a person even if they are stealing from them, and 30 per cent thought that employers always lost unfair dismissal cases. It is clear that this is simply not the case. It is clear also that the Liberal government’s misinformation campaign is causing widespread confusion about unfair dismissal. It is time for the Liberal government to promote an understanding of what fairness requires in termination of employment.

Senator Ian Campbell (Western Australia—Parliamentary Secretary to the Treasurer) (6.22 p.m.)—The government acknowledge the intent of the proposal, which is a good intent. However, we will not support the amendment. This is dealing with the information package, I think. Is that right, Senator Sherry?

Senator Sherry—Yes.

Senator Ian Campbell—Firstly, the Department of Employment and Workplace Relations already publishes information to assist both employees and employers in this area and intends continuing that and, in some places, upgrading it. As I understand the amendment, it would in fact require the federal minister to consult with his state colleagues about the content of the publication. I think any practically minded person—and I know Senator Sherry is one of those—would accept, regardless of the political persuasion of the state governments from time to time—and I know at the moment they happen to be all Labor—that this process of trying to reach an agreement on such a politically sensitive area as the contents of an information package about unfair dismissal would be extremely difficult and could last even longer than the Rio Tinto unfair dismissal case, and therefore the information may never get to the people who need it. On behalf of the government, I genuinely think there is good intention here, but, practically speaking, to require this in the law and to require consul-
tation with state ministers and agreement on the content is unlikely to achieve the result. As I have said, the department is already doing it.

Question agreed to.

Senator SHERRY (Tasmania) (6.24 p.m.)—I move opposition amendment (6) on sheet 2811:

(6) Schedule 1, item 1, page 3 (lines 4 to 6), omit the item, substitute:

1 After subsection 170CE(1)

Insert:

(1A) The Commission must not accept an application seeking relief on the ground that the termination was harsh, unjust or unreasonable if the applicant seeks only financial compensation, unless the applicant satisfies the Commission that exceptional circumstances exist for not seeking a restoration of the employment relationship.

(1B) Before rejecting an application under subsection (1A), the Commission must give the applicant a reasonable opportunity to be heard. The party named as respondent need not be present at any such hearing.

Note: Reasonable opportunity includes providing such assistance to the applicant as may be necessary to overcome any language difficulties that may confront the applicant.

This amendment would restore the emphasis on reinstatement rather than simply financial compensation as the primary remedy for unfair dismissal. This reflects the policy behind unfair dismissal laws: that of promoting job security. It is proposed that the independent Industrial Relations Commission not accept an application if it seeks only financial compensation, unless exceptional circumstances exist for not seeking restoration of the employment relationship. Such circumstances might include, for example, where the applicant had been subject to victimisation in the work force. An applicant would be given an opportunity to persuade the commission that the application should be accepted.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.25 p.m.)—The government agrees with the opposition that reinstatement should in fact be the primary remedy, and the act already makes reinstatement the primary remedy. The government, however, believes that the way the amendment proposes to upgrade that fails to recognise the reality, particularly in small business, that reinstatement may not be an appropriate remedy because the employment relationship may well have broken down in such a way that it was not able to be put back together again. I think it is fair to say that, in small businesses, often employers and employees are working closely together, often in the same room or sharing the same counter—or even in the same coolroom, Senator Murray—and that, where the relationship has broken down irreconcilably, forcing a reinstatement may not be in the best interests of anybody. So we think the act at the moment strikes the right balance and we seek to maintain that.

Senator MURRAY (Western Australia) (6.26 p.m.)—Last time we debated this amendment we accepted some of the reasons from the minister at the table but recognised that the intent was right. I should draw the attention of the chamber to the latest statistics which I have from the department. At a recent hearing, I asked the officer at the table, ‘Is reinstatement a lost cause?’ The figures for the years since 1996 reveal that only 0.2 per cent of all applications eventually go to reinstatement. I thought, ‘Let’s break that down; let’s deal with only those applications which actually go to conciliation.’ All the rest have been discontinued or settled and so on. The figure jumps up to only two per cent. If you accept the general judgment that half of all application cases are decided in favour of the employer anyway, you could double the figure again: it is still only four per cent. So it is awfully low.

What I asked the department to put their heads around—and, if you were interested, you could see this on the record—is whether they should develop some kind of incentive scheme to encourage reinstatement. I am just not sure, given the answers I got from the officers, that we actually have any clear idea as to why reinstatement does not work, when it is a clear objective of the government and the act, and the opposition and the unions...
and everybody else support it. It just does not happen. I think, as yet, the legislative description the opposition has arrived at will not cure the disease, so I am going to retain a situation of caution and vote against it at this stage. But I remain sympathetic.

Question negatived.

Senator SHERRY (Tasmania) (6.28 p.m.)—I seek leave to move opposition amendments (7) and (8) together.

Leave granted.

Senator SHERRY—I was somewhat distracted by an article in the clips with a very youthful-looking photo of Senator McGauran.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator McGauran always looks youthful!

Senator SHERRY—I will read the ins and outs of the National Party’s troubles in Victoria later. I move opposition amendments (7) and (8) on sheet 2811:

(7) Schedule 1, page 3 (after line 6), after item 1, insert:

1F Subsection 170CE(3)

Repeal the subsection, substitute:

(3) If:

(a) an employee’s employment has been terminated by the employer; or

(b) more than one employee’s employment has been terminated by the employer at the same time or for related reasons; and

a trade union’s rules entitle it to represent the industrial interests of the employee or employees the union may, on behalf of the employee or employees, apply to the Commission for relief:

(c) on the ground that the termination was harsh, unjust or unreasonable; or

(d) on the ground of an alleged contravention of section 170CK, 170CL, 170CM or 170CN; or

(e) on a ground or on any combination of grounds in paragraph (b), and the ground in paragraph (a).

(8) Schedule 1, item 2, page 3 (lines 7 to 27), omit the item, substitute:

2 Subsection 170CE(6)

Omit “. (3)”.

These amendments would enable a registered organisation to bring an application for unfair dismissal on behalf of a number of employees whose employment was terminated at the same time or for related reasons. This replicates a sensible mechanism available in the New South Wales unfair dismissal system. Currently each applicant must bring an individual application. This results in unnecessary procedural complexity if there are a large number of employees.

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

Senator SHERRY—Before the break I was explaining the Labor Party’s rationale for amendments (7) and (8), which we are dealing with concurrently. These amendments would enable a registered organisation to bring an application for unfair dismissal on behalf of a number of employees whose employment was terminated at the same time or for related reasons. This replicates a sensible mechanism available in the New South Wales unfair dismissal system. Currently each applicant must bring an individual application, resulting in unnecessary procedural complexity if there are a large number of employees whose circumstances are virtually the same. These amendments will simplify the procedure and lower the costs in such a case. Amendment (8) is consequential on amendment (7).

Question agreed to.

Senator SHERRY (Tasmania) (7.31 p.m.)—I move opposition amendment (9) on sheet 2811:

(9) Schedule 1, item 3, page 3 (line 28) to page 4 (line 28), omit the item, substitute:

3 After subsection 170CF(1)

Insert:

(1A) The Commission may, on the application of a party or of its own motion, conduct a conciliation conference by telephone or other electronic medium, subject to such conditions as it considers appropriate.

(1B) In determining whether to conduct a conciliation conference by telephone or
other electronic medium, the Commission must consider:

(a) whether it is impractical or inconvenient for a party to attend a conciliation conference in person for reasons including cost, distance, physical or other disability, the nature of the relationship between the parties, or the nature of the party's business or employment commitments; and

(b) whether the party applying to appear by telephone or other electronic medium has made reasonable attempts to obtain the consent of all other parties to the matter; and

(c) any other matter the Commission considers relevant.

This amendment would encourage the commission to consider using electronic means of communication, such as telephone or video conferencing, for conciliation proceedings where it is impractical or inconvenient for a party to attend the commission in person for reasons including cost, distance, physical or other disability, the nature of the relationship between the parties or the nature of the party's business or employment commitments. Before an application is made to appear by telephone or video, a party should seek the consent of the other parties. The measure is based on a practical note issued by the New South Wales Industrial Relations Commission. It would benefit, for example, small business employers who would find it difficult to be away from their businesses to attend the commission or employers and employees who live in regional and rural Australia and who must travel to a capital city to attend the commission. It should be noted that this provision would not apply to arbitrations in which the credit of witnesses may be an issue for the commission to determine. In such proceedings it is appropriate that the commission have the opportunity of observing the demeanour of witnesses in person.

Question negatived.

Senator SHERRY (Tasmania) (7.33 p.m.)—The opposition opposes items 4, 5 and 6 in schedule 1 in the following terms:

(10) Schedule 1, item 4, page 4 (lines 29 to 33), TO BE OPPOSED.

(11) Schedule 1, item 5, page 4 (line 34) to page 5 (line 3), TO BE OPPOSED.

(12) Schedule 1, item 6, page 5 (lines 4 to 8), TO BE OPPOSED.

These amendments remove the Liberal government's unfair provisions which would exclude small business employers and employees from the jurisdiction of the commission and abandon them to the law of the jungle, common law. This really is the crux of the issue. Labor does not accept that 30 to 40 per cent of employees who work for small business should be removed from the jurisdiction of the independent industrial jurisdiction—the independent umpire—and be prevented from putting a case in respect of unfair dismissal. This matter has been considered on seven previous occasions.

Labor takes a strong stand on ensuring that all Australian employees will have access to a state or federal independent commission to determine whether they have been unfairly dismissed. They will have the opportunity to present a case where employers—and it is only a small number of employers—may have dealt with them unfairly. They should have the opportunity to put that case and an argument in front of the independent commission. These amendments will remove the unjust provisions proposed by the Liberal government. They will ensure security and protection for all Australian workers and prevent this government from removing that protection from approximately 30 to 40 per cent of employees who work for small business covered by the federal industrial jurisdiction.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that items 4, 5 and 6 stand as printed.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (7.36 p.m.)—I move:

That this bill be now read a third time.
I simply make the point in respect of a range of amendments that have been passed by the Senate that the government does not agree with them; they undermine in many respects the key reform elements that the government is trying to put into law by way of this amending bill, the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]. I would very briefly say that both Senator Murray and Senator Sherry tried to imply during the committee stage debate that this was some sort of game and some sort of political stunt and that the government’s motivation is a trigger under section 57 of the Constitution. The government’s objective is to reform the law in a way that will encourage employment—that is our only objective. That is why we have been so committed to this reform of unfair dismissal laws for so long. It is something that Liberals hold as a key part of our economic platform and have done so for many years.

We certainly went to the 1998 election and the last federal election with this particular bill as a core part of our platform, and we were re-elected with it. I do not think anyone could say that this is not an absolutely core Liberal Party commitment and, dare I say in the absence of my good friend the Victorian National Party senator and deputy whip, Julian McGauran, a core National Party commitment as well. I do not think anyone would say that this is something that the Liberal Party and the coalition government have not been entirely upfront about. It is obviously a fundamental disagreement between the Labor Party and the Liberal Party—or the coalition. We do not want to have to play a game. We are not interested in games; we are interested in getting the bill passed. That is the absolute desire of all members on this side of the chamber and I think I can say that with total conviction. It is rare to be able to say that in a party that is—

Senator Abetz interjecting—

Senator IAN CAMPBELL—Both Senator Abetz and I agree on that. In fact, all the senators who are not able to join us here tonight but who are studying the debate, glued to their monitors in their suites and working furiously at correspondence and other things, agree that this is an important measure and that we would far prefer to have it passed. We do not want section 57 to come into play; we want this law. That is our preference. I think it is unfair to say that we are here for a game. It might suit Senator Murray to say that we are not really serious about this and that we are just trying to create a trigger. It might relieve the moral dilemma that I hope he finds himself in, but that is not the case. I speak for myself, and I am sure I can speak for Senator Abetz, when I say that this is something that we are committed to because we believe it will be good for Australia and it will be good for the people I referred to earlier in the day—the most disadvantaged in our society who suffer the most as a consequence of the way the law is at the moment.

Senator Sherry had a go at me for using words such as ‘efficiency’, ‘effectiveness’ and ‘a growing economy’. We believe that a whole suite of economic reforms were needed and continue to be needed to make the Australian economy as productive as it can be and to ensure that the wealth of that production is shared equitably amongst all Australians. Employment growth is a crucial part of that. The one great thing you can do for someone who is looking for work—to empower them, to make them part of the community, to enable them to build their own self-esteem—is to allow them to have a job and to give them a chance. That is what we are asking for. Setting aside the debate about whether you get 50,000 jobs or 10,000 jobs or even one job, let us just say, ‘Give it a go. Give these people a chance.’ That is all we are saying. We are not interested in political games at all. We are not interested in having a section 57. We want this law passed and we are dedicated to that. We will be supporting the third reading, even though we do not like the way the bill is amended, so the government in the other place can at least consider the amendments that have been made by the Senate. I remain pessimistic about the outcome on the other side of the hallowed halls that divide our two chambers.
been able to amend in a positive way. The Labor Party has moved a number of amendments that streamline the process of the unfair dismissal procedures for employees in respect of small business. We are dealing with a piece of legislation that removes the fundamental right—which I would have thought was a core Liberal value—from small business employees to be able to argue that they have been unfairly dismissed. That is being stripped away from the small business employees of 30 to 40 per cent of employers in this country.

I would have thought that the legal right of employees to argue in front of an independent commission that they have been unfairly dismissed was a very important and core value that goes to the heart of Australia and Australia’s respect for a fair go. It is central to a fair go in this country that a worker who believes they have been wrongfully dismissed at least has the opportunity to argue that before the independent industrial tribunal. In respect of some small business employees, this Liberal government wants to remove the right of a worker to argue their case before that independent industrial commission.

Labor will not accept the removal of the basic security and protection from some Australian workers so that they would not be able to argue in front of an independent tribunal that they were wrongfully dismissed. Labor will not accept the removal of that right from some Australian workers. It is unfair, it is unAustralian, and it is not giving Australian workers a fair go. We have debated this matter on, I think, seven previous occasions. The Labor Party will not move on this issue. It is a matter of fundamental principle and a right for all Australian workers to be able to argue in front of an independent tribunal that they were unfairly dismissed. It is not a value on which there can be any compromise. Labor has successfully amended this piece of legislation to remove that attack on the fundamental right of Australians to have a fair go, to have some security in their employment and to have their day in front of the independent tribunal if they believe they were unfairly dealt with.

This matter will go back to the House of Representatives and I anticipate that we will receive a message from the House of Representatives rejecting the fair and fundamental protections and securities that Labor has moved in respect of this bill. I expect we will receive that message and from that will flow a series of consequences that the government can utilise. I have made Labor’s position clear in the Senate and we will not be compromising on that fundamental protection, fundamental security and fundamental right of all Australian workers to argue in front of an independent industrial commission that they were unfairly treated. It is something Labor will not be backing down from.

Senator MURRAY (Western Australia) (7.45 p.m.)—Within the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] there is, for the coalition, a very useful synergy between the coalition’s policy and its political goals. It is quite true, and I accept, that those people of the coalition’s persuasion want to get rid of unfair dismissal laws. Be they state or federal, small business, medium business or big business, they want to get rid of them altogether. That is an attitude that you come across from people of that persuasion. However, the coalition did go to the 1996 election saying that all employees in Australia would be covered by unfair dismissal laws and it did strike an agreement with the Democrats as to the terms of those laws. It is true that it went to subsequent elections with a different view.

The fact is that the decision to generate a double dissolution trigger using this mechanism was arrived at before the 1998 election. The government, or the cabinet of the day, looked for an issue that was very simple and clear-cut. They said, ‘What can we do that we know Labor and the Democrats will not agree to, which is a simple proposition and which, at the same time, has terrific propaganda value for our own constituency?’ I think that Senator Ian Campbell is right: the coalition has been absolutely consistent. So too have the Democrats and so too has Labor, and in that consistency there is, I think, some virtue. As we know in this chamber, senators are not universally virtuous about either their opinions or their policy plat-
forms, but there are things on which you can rely. This is one of those instances where people will take a consistent view that is in line with their own principles.

My second broad range of remarks relates to the idea that this is a game. I do not think I used the term ‘game’, but I would say to Senator Ian Campbell that any Australian-born person, or any person, like me, brought up in southern Africa and an immigrant here, knows that some of the most serious things in the world are games. There is not much that is more serious than the Kiwis being whacked right now in their defence of the cup, or an Aussie Rules final, or than our Western Australian cricket team getting beaten by New South Wales, or anything of that sort. So I would not diminish it by referring to it as a game. It is an important part of the coalition’s political and policy strategy. Having been involved with this matter very closely from the time of my negotiations on the matter with former Minister Reith in 1996 and onwards, I am quite certain as to its primary motivation, even though you are right in saying how important it is to your constituency as a policy issue.

The third area I wish to examine is that there is a logical inconsistency in what the government is attempting to do because, simultaneous with the introduction of a bill that seeks to exempt small business, as defined, from the federal jurisdiction of unfair dismissal law, is the introduction of a bill that seeks to extend coverage of the federal unfair dismissal law. That is an interesting issue in itself. Let me suggest what it might mean. If we look at Queensland, for the financial year 2001-02 there were 440 unfair dismissal applications under federal law, of which fewer than 30 per cent were related to small business. However, there were 1,728 applications under state law, totalling 2,168. The federal Queensland unfair dismissal applications made up about 20 per cent of the federal and state Queensland unfair dismissal applications combined. When the law to extend coverage is passed, if the Senate passes it, I expect that well over half of the Queensland state unfair dismissal applications will shift across to the federal jurisdiction. As a consequence, since the federal jurisdiction is mostly tighter—although we should note for the record that the threshold qualifying period is looser in Queensland at six months, not three months—I would expect there to be a net reduction because of the tighter laws and the wider coverage. There is a kind of inconsistency in the government having two bills with different objectives out and about at the same time. Of course, the first bill that we have before us is the exemption bill because the sooner you get a double dissolution trigger in your drawer the better from a political management point of view.

Let us return to the essential issue. There are millions of small business employees who fall under federal jurisdiction. There are a little over 2,000 federal unfair dismissal applications from employees of small business now; after two good bites of reform in 1996 and 2001. The issues which rightly aggravated small business, namely issues of procedures, costs and loose construction which enabled abuse of the system, have been thoroughly addressed and are still capable of being addressed some more. The problem for the government is that no-one, apart from those who are ideologically attached to that view, is convinced that getting rid of a little over 2,000 federal small business unfair dismissal applications will create 50,000-plus jobs. It just does not figure. No research, no survey, no evidence has ever confirmed that to, in particular, the Senate committee that is concerned with those matters and that has looked at that issue five or six times now.

The government has not persuaded us that there is a greater good to this than the mischief it will do to the individual human rights of employees who deserve this ultimate protection against rogue employers. That is it. Until you persuade us, you are not going to see a shift in the Senate. The day you can actually prove that the greater good was served by this, I think you might see a shift, but until then it is unlikely to occur. With those remarks, there is nothing more I can add. But if we ever do go to a double dissolution election, I will enjoy no end pounding the figures I have at my fingertips across the country, because the journos that I speak to just do not buy your story. Thank you.
Question agreed to.
Bill read a third time.

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

Second Reading
Debate resumed from 5 February, on motion by Senator Ellison:

That this bill be now read a second time.

Senator CONROY (Victoria) (7.55 p.m.)—I rise to speak on the Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2]. The bill proposes to amend section 87 of the Trade Practices Act 1974, enabling the ACCC to bring representative actions in respect of breaches of sections 45D and 45E of the Trade Practices Act. Senators will be aware of the content of this bill. It is the same bill that Labor set aside on 19 August 2002. Today’s debate of these provisions is the latest chapter in a battle that has a long and bloody history. The battle is based on the Liberal government’s numerous attempts to give the ACCC the power to interfere in industrial relations matters. In fact, this bill is the fifth occasion that the government has sought to enable the ACCC to bring representative actions for contraventions of sections 45D and 45E.

Labor’s view has always been that industrial relations matters are best resolved through specialist industrial courts, not through a competition regulator. Labor holds firmly to the position that, on matters other than industrial issues, it supports the provision for the ACCC to conduct representative actions under the act. This is particularly important where the costs of litigation and the associated legal complexity are beyond the ability of small businesses to seek legal redress. Therefore, Labor supports the ACCC undertaking representative action on behalf of small business for a breach of the Trade Practices Act under the areas where the ACCC currently has an enforcement power and which are properly matters of trade practices law. However, Labor opposes this bill on the principle that secondary boycotts need to be considered and managed only as matters of industrial relations law. The simple consequences of operating industrial relations matters through trade practices law would promote an aggressive and less conciliatory approach to the management of industrial disputation.

Analytical evidence supporting this bill is scarce. As Senator Murray has just been discussing, it is another ‘take us on faith’ type of approach from the government. This government is relying on a report by the Australian Law Reform Commission produced in May 1994, nearly 10 years ago. That report did not even consider the implications of the proposal from an industrial relations perspective. Furthermore, the recommendations, as I said, are now nearly 10 years old and refer to a completely different legal situation from that which exists today. More recently, in August 1999, the Joint Select Committee on the Retailing Sector reported on widening the powers of the ACCC to undertake representative actions. However, that report made no reference to small businesses being disadvantaged as a result of secondary boycotts.

It is bad enough that this bill attempts to subvert industrial relations law, but the government is attempting to do it under the guise of assisting small business. The deceptive title of this bill tries to suggest that its contents are focused on protecting small business. The deceptive title of this bill tries to suggest that its contents are focused on protecting small business. This allows the government to wax lyrical on small business and to disguise the true nature of this bill. In truth, the changes presented by this bill are not aimed at small business. The bill contains no definition of small business and does not limit the ACCC to a particular class of business in bringing representative actions. It is quite Orwellian in the way it has been designed. You give it a heading and you call it ‘small business protection’, then you do not actually talk about small business, define small business and confine the bill to small business. It is an Orwellian proposal. I am looking forward to seeing Senator Abetz, on behalf of the government, justify this outrageous piece of legislation.

Contrary to perceptions, the bill empowers the ACCC to bring representative actions on behalf of any person who has suffered loss arising from contravention of sections 45D and 45E. The ACCC already has the powers to assist businesses who have suffered loss as
a result of breaching 45D or 45E. The government is using small business as a protective shield while attempting to introduce regressive industrial laws, and the government should come clean that that is what it is doing. This government’s track record on small business, when you hold it up to scrutiny, is woeful. The year of 2002 was particularly gruelling for small businesses—bank branches closed, insurance premiums rocketed, bank fees increased, independent retailers were squeezed out of the market and the GST continues to frustrate. It might be over two years now since the GST was introduced, but small businesses continue to grapple with the associated accounting, reporting and cash flow issues.

Last week, the Yellow Pages business index for small and medium enterprises found that one of the most significant criticisms of the federal government by small business is that there is too much paperwork due to the GST. That is right, Minister Abetz. When you stand up here and start waving around the government’s manifesto, you should start listening to small businesses. Stop grandstanding on issues like this; start listening and working with small businesses. Another study by the Australian National Organisation found that the GST has a detrimental growth effect on 22 per cent of the businesses it reviewed, and the smaller the organisation the more devastating the effects. So do not come in here crying crocodile tears for small business. This government has done more to punish and put red tape onto small business than any previous government. The study found that one-third of organisations with 10 employees or fewer believed that the GST was bad for business. It is not only small businesses that are having difficulty with the GST. Tax experts declared war against the government and the ATO last year on behalf of their small business clients in particular. Accountants and other tax experts threatened to flood the returns by lodging them by post, not electronically, if their concerns were not addressed.

If the government really wanted to take some action on trade practices, it would join with Labor—and, I believe, the Democrats—in supporting reforms to introduce criminal sanctions for the most extreme abuses of market power. Instead, the Liberal government prefers to attack the ACCC and Allan Fels. The ACCC is there to ensure strong competition—to protect consumers and small businesses—and it should be supported in performing this function, not attacked and undermined by the Treasurer, the Prime Minister and other ministers. The government would like to nolble the ACCC in order to implement its big business agenda. That is what the Dawson report is about, and everybody knows it.

The government’s preoccupation with big business is not just theoretical. Last week’s Yellow Pages business index study revealed the most significant criticism of the federal government’s policies by small business. Senator Murray and Senator Abetz, can you guess what was small businesses’ single biggest criticism of the federal government’s policies? It was that the federal government is only concerned with big business. It comes as no surprise that they have seen through this government. They have seen through the rhetoric and the government’s purported support for small business. They know you are really about helping big business. This is what small businesses are saying; it is not what the Labor Party or Senator Murray is saying. They have seen through this government and through you, Senator Abetz.

The study also found that small business support for the federal government is at its lowest point in over 12 months—they have seen through you. Regulation of big business is anathema to the Howard government. Self-regulation is the government’s mantra. Unfortunately, self-regulation for big business has only detrimental effects on small business. Late payments to small businesses are a classic example. Late payments create a cash flow squeeze for small business. As a consequence, many small businesses are remitting their GST late and are being fined 11.28 per cent by the tax office. This is a widespread problem, Senator Abetz, and I hope you treat it more seriously now as opposed to when I have previously raised it in this chamber with you.

CPA Australia estimate that 83 per cent of businesses are not paid promptly in 51 per
cent of cases—with 10 per cent of small businesses having to wait 60 days for payment by big business. This amounts to around 120,000 businesses being squeezed by the lax attitude of big business. That is a huge slab of the small business community, Senator Abetz, and you should not just dismiss their concerns with a chuckle from the other side of the chamber.

To combat this, Labor will introduce a private member’s bill to give small business a statutory right to claim interest on the late payment of commercial debt by large corporations. The Howard government has so far refused to support this bill, saying that the problem of late payments is—and I think I am quoting you accurately, Senator Abetz, from the last time I raised this with you—‘esoteric’.

It is not esoteric to those 120,000 small businesses. I hope you will come on board. You have the chance today to stand up and say, ‘It’s time to put aside the politicking.’ That is the opportunity that this government has. They can say, ‘I’m putting aside the politicking. This late payments issue is a real problem for small business, and we’re going to join with the Labor Party, and hopefully the Democrats, in supporting this bill.’

Another private member’s bill introduced by Labor will ensure that insurance companies pass on to small businesses the savings resulting from the changes to public liability insurance arrangements. I know Senator Murray has a concern about this issue as well. We have been arguing with the government and, again, Senator Abetz, it is falling on deaf ears. I know it is not your direct responsibility; you are just in here doing the bidding of the Minister for Small Business and Tourism, Minister Hockey. But I have confidence in you that you can convince Minister Hockey. You can go to Minister Hockey and say, ‘Look, I think the Labor Party is onto something here. These are not a bad couple of proposals to help small business. How about you have a look at them?’

Say to him, ‘Just humour me.’ You are a smart bloke. You know that what I am saying is reflected in small business attitudes. I have confidence that you would be able to convince Minister Hockey, because he listens to you and he respects you. But the Howard government has consistently ignored its constitutional responsibility to protect small business.

Small business is also concerned about the availability of skilled staff, access to business skills, training and tenancy laws. These issues are being ignored by the Howard government, as its number one priority is looking after those at the top end of town. I know, Senator Abetz, that with your background, that is not your predilection. That is not something that comes naturally to you, like to Senator Barnett. He has real concern for small business. He comes from a small state, so he understands that in Tasmania most businesses are small businesses. I know that you have got small business at heart just like Senator Barnett. I know he is concerned about some of these issues too because we have been working together on some committees.

If the government were genuinely interested in helping small business, it would address the difficulties that small business encounters when dealing with big business. Why can’t you get on their side? Many small business owners would be surprised to learn that the Howard government actually has a minister for small business. They would be very surprised to see that it is still a position.

Recently—and this particular example is much to the shame of the minister—the Inside Canberra newsletter reported that Mr Hockey told a meeting of the Small Business Forum on 20 September 2002 that his department agreed not to put in a submission to the Dawson inquiry at the urging of many small business groups. So the minister goes to a meeting of small businesses and says, ‘You have asked me not to put in a submission to Dawson’—probably one of the most critical inquiries for small business this government has conducted. But in a Senate estimates committee, in response to my questions, Mr Hockey’s department admitted that not one small business group had contacted them to urge them not to respond to the Dawson inquiry. That is a little bit embarrassing, Senator Abetz.

Senator Abetz—you can talk about embarrassment!
Senator CONROY—Mr Hockey stands up in front of a group of small businesses and says, ‘You have asked me not to put in a submission on this. You have urged me not to in fact.’ Yet his own small business department in a Senate estimates hearing—and you were there on that day, Senator Abetz—coughed up. They actually told the truth. The truth was that nobody had contacted the minister’s office, the department, about—

Senator Abetz—They wouldn’t know.

Senator CONROY—I would hope the minister’s office would tell the minister’s department what was going on. But maybe the level of interest from the minister’s office was so small. There was not one business group. I want to be clear here, Senator Abetz, because I do not want you to be confused. He said that his department—that is, the department of small business—agreed not to put a submission into the Dawson inquiry at the urging of many small business groups. He verballed his department. So I asked the department, ‘Did you get contacted by small business? What did they say?’

It is just a small porky in overall terms, Senator Abetz, but it is important to small business. It is just a small issue to him but he is the minister and the small business community do care. The department were verballed and they had to admit the truth.

This bill is nothing more than a backdoor method to introduce certain industrial powers into the Trade Practices Act. Labor opposes this bill on the principle that secondary boycotts need to be considered and managed only as a matter of industrial relations law. The Howard government’s attempt to paint this bill as assisting small business is, frankly, deceitful. It does not go there at all. This bill really shows that the Liberal government long ago ran out of good policy ideas on how to improve small business. Maybe we need a new small business minister—maybe it should be you, Senator Abetz. It is certainly worth giving Senator Barnett a go. He knows and has the interests of small business at heart, and you know that because you know Senator Barnett well. He is a good man on these issues and you should listen to him a bit more.

The issues I have identified today are the real issues facing small business. This government is devoted to stunts and more stunts. It should be devoting resources to addressing these issues I have talked about today instead of trying to play silly wedge politics. Instead of trying to pretend that you are representing small business, how about convincing the minister to do that, Senator Abetz? That would be good and small business would be a big fan of yours if you did that. So Labor is opposed to this bill, and I thank the chamber for its time.

Senator MURRAY (Western Australia) (8.12 p.m.)—The Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2] is the same bill rejected by the Senate on 19 August 2002. The House of Representatives subsequently set the bill aside. An attempt was made to reintroduce the bill late last year and the Senate refused a cut-off exemption. A second failure by the Senate to pass the bill does have the potential to trigger a simultaneous dissolution of both houses under section 57 of the Australian Constitution. The last possible date for a double dissolution is 11 August 2004. So this is a bill which has some constitutional and political significance, and you have to test the proposition as to whether it is worthy of that.

The purpose of the bill is not to change the law, because those sections still apply. Those sections can be enforced by the ACCC under the correct processes at present. It is not going to diminish the provisions of the law in any way. What it does seek to do is to make the ability of business to take action under law easier and cheaper. The purpose of the bill is to permit the Australian Competition and Consumer Commission to bring representative actions under law easier and cheaper. The purpose of the bill is to permit the Australian Competition and Consumer Commission to bring representative actions on behalf of people damaged by conduct in breach of the sections 45D and 45E, the secondary boycott provisions of the Trade Practices Act.

We should note that there already exists restricted provisions to take representative action under the Federal Court of Australia Act. These two section 45 provisions are presently excluded from the provisions of section 87 of the TPA which allows the ACCC to bring representative actions in respect of contraventions of part IV of the
Trade Practices Act which governs these areas. The new power in the bill is not retrospective.

The Australian Law Reform Commission first recommended this kind of representative action in 1994. The Reid and Baird committees also supported this measure. So this is the government’s fifth attempt to introduce these concepts since 1998—a consistent approach from them. Section 45 is totemic for the Labor Party and the trade union movement and is the most politically sensitive provision in the Trade Practices Act. It has always provoked tensions with those on that side of the divide and that is odd because all political parties, except I think the hard Left Greens, actually support the secondary boycott provisions. The issue does appear to be largely symbolic for the coalition and for business because there does not seem to be a pressing public policy problem which needs to be met by the introduction of representative actions on this basis. The views of neither the Labor Party, nor the trade union movement, nor the coalition on this issue resonate much in the community at all, because if they did I would hear about it. When one side or the other is aggrieved, what happens when you hold the balance of power is that you do hear about it.

There are three pertinent elements with respect to this bill. Firstly, secondary boycotts are no longer that much of an issue, because no political party, apart from hard Left Greens, is going to do away with them. In fact, the Labor Party recommend that they put these provisions back into industrial law, but they would not do away with them. The Democrats, nor the coalition obviously, have any intention of doing away with them. Secondary boycotts are when one organisation that is in dispute with a second organisation acts to harm a third party. This is when unions engage in sympathy strikes—that is, when unions in one workplace are in dispute with their employer and unions in other workplaces also go out on strike in support. In this instance, a secondary employer is hurt by the sympathy strikes, despite being completely independent of the dispute. It has been quite clear that the Labor Party in government would retain secondary boycott controls—that is entirely correct and right.

This bill proposes to give small businesses and individuals greater access to the existing laws. But, as Senator Conroy pointed out, it is a misnomer, a misrepresentation. The bill does not limit itself to representing small business and individuals. Although it may be unlikely—the way the bill is constructed—the ACCC could in theory take action against unions on behalf of big business at public cost. Small business and individuals, unlike bigger business, often do not have the resources to take legal action and that is why in other laws—and the Democrats have supported those laws—there are the provisions for representative action to assist people. The bill seems highly unlikely to result in additional prosecutions, but it may act as a deterrent to excessive industrial action by some unions or some breakaway members of unions.

On the political front, voting against this bill is popular with unions and, supposedly, unpopular with small business, but I do not really know if they care that much. The bill could be seen as a symbolic assault on the power of unions and as part of a broader anti-union agenda. Those extremists who seek to paint unions as anticompetitive cartels and who see collective bargaining in economic terms as price fixing believe that employees and employee organisations should fall under competition law and not be excluded from its provisions as at present. The position of the Democrats is that, by and large, companies should not look to the public purse—for instance, the ACCC—to fund actions against unions, and we would be absolutely adamant that they should not do so where the issues are related to bargaining for wages and conditions. If you want to talk about competition issues, that is a different matter, and I will deal with that a little later in my remarks.

With Democrat support, the 1996 Workplace Relations Act transferred secondary boycotts out of the industrial relations legislation and moved them into the TPA. In theory, unions could be treated as anticompetitive cartels, as I outlined earlier, but the TPA quite correctly and quite rightly specifically
excludes bargaining in employment related matters from its purview. When we agreed with the government to move the provisions into law, the language and attitudes in this place became quite heated and there were all sorts of claims that the world would come to an end as a result of these actions of ours. It has not happened. Among the things we achieved were that harsh penalties cannot be extended to consumers or consumer groups, to particular products or to environmental boycotts. Boycotts about employment related disputes are exempted from the Trade Practices Act and courts must consider whether the dispute could be resolved by the IRC, and peaceful protesting is not to be regarded as boycott activity by the courts. I distinctly remember the hard Left Greens going on endlessly about how these provisions in the law were going to end protest as we know it. I must say that I have not noticed that. In fact, there have been no complaints that the secondary boycott provisions have stifled the activities of protest groups. I remember Senator Brown waving around lawyers' opinions to the effect that things would really go pear-shaped. I presume he is grateful that I was right and he was wrong because it has not happened.

The issue of small business being affected by secondary boycotts came to the fore in the waterfront dispute. That has been and gone. There was no evidence then that there was a widespread problem for small business in terms of these provisions. There is no evidence now that there is even a problem, never mind a widespread problem. I think the maximum number of cases being considered under these provisions overall is about four or five a year. Business surveys do not show it as being a source of complaint to business. The new legislation is not expected to result in an increase in the number of actions, but it is expected to act as a deterrent. The bill will put a small business on a par with larger businesses in terms of access to justice, and that is a virtue of the bill. Having the ACCC represent individuals and small businesses would overcome size and resource constraints, improving effective access to an existing law for the very few—numbering on one hand—who might be expected to take advantage of the law.

On the grounds of access to justice, there is attraction in the idea of a representative action power but, once again, there is no real identified need. We accept that the bill may result in some deterrent effect. Overall, we summarised the bill as being of low policy and high symbolic significance—it is what I would call a high totemic issue, to some extent, for elements of the Labor Party and the union movement. That view of mine and ours is confirmed by Bills Digest 60, which at page 11 says:

The dispute between the major parties is more concerned with this fundamental issue—of whether section 45 is a good IR policy—than the procedural matter of whether the scope of the ACCC’s capacity to bring representative actions should be extended.

So what have I tried to do with this bill? Firstly, I have put an amendment to make the representative action applicable only for small business and individuals. I do not see why large business should have access to these taxpayer funded activities. The definition of small business is always a problem. In tax law and other laws the definitions vary. In some laws it is as high as a $5 million asset base; in others it is the usual 20 people forming the business. I have chosen the ABS definition, which is if the business is or includes the manufacture of goods it is 100 people, otherwise it is 20 people.

The other way I have sought to amend the bill is to accept the bill’s proposition in the area of competition and competition alone, not at all in any area to do with workers and their rights to campaign for their wages and conditions. That is why, if you look—and you will attend to it later, I am sure—at my items 1 and 3 on sheet 2826, you will see that we have changed the government’s proposal to include in their proposition 45DA and nothing else. Section 45DA is the section which is headed ‘Secondary boycotts for the purpose of causing substantial lessening of competition’. What we are saying to you, Minister, and to the government is that if you want to focus on representative action in competition matters—not employee relations or employee negotiation matters—we are prepared to support you, but if you want to move anywhere into the field which has been
traditionally and rightly excluded from the purview of trade practices law then we will not. I think that is quite a fair proposition to come forward with. I will leave my remarks there for the moment.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (8.26 p.m.)—We are debating the Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2]. Along with this important issue for small business I would like to address section 46 and the Boral decision. I hope Senator Murray has the time to listen to this. This bill amends the Trade Practices Act to assist small business by allowing the ACCC to bring representative actions on behalf of people damaged by conduct in breach of secondary boycott. The Baird inquiry recommendation to allow the ACCC to bring representative actions on behalf of small business became law in 2000 so as to help small business immediately, but its application to secondary boycott was shaved off after Labor objected. A secondary boycott occurs when two people act in concert to prevent a further person from supplying or acquiring goods or services from an independent person—the target and fourth person—so as to cause substantial loss or damage to the targeted business. Small business can suffer under these circumstances. That is the bill that we are now addressing.

I would like to turn some of my remarks to last month’s High Court decision in its long-awaited judgment on section 46 in the Boral case. This decision clearly stated a new course on the important issue of predatory pricing and the misuse of market power where a company possesses substantial market power. Following the High Court Boral decision, section 46 is as good as dead and gone, not just for small business but for any business that wants to innovate and develop in a market where there is a large player with huge pockets to sell below cost. It leaves a situation where a large company can be more interested in dominating the market rather than building itself up by adopting new technology, through innovation, productivity gains and the like.

I note that big business and its lawyers are saying, following Friday’s reports of the Federal Court in the Qantas case, that section 46 is not dead and gone as alleged by small business, but a monopoly like Qantas was always under the scrutiny of section 46, as the High Court distinguished. The disappointing aspect of the Boral decision was that 30 per cent of the market was not held to be a substantial market share.

In the current climate it seems that, if a company cannot merge or acquire because of trade practices provisions, it can now just smash its competitor out of the market. Furthermore, with the large range of related business activities in concentrated vertically integrated businesses, it can send a signal to others in their industry: ‘Don’t take us on or you will also get the same treatment.’ Section 46 on predatory pricing was the important third arm of competition. For competition to be the important tool in the economy, an effective trade practices regime needs three important components: effective merger laws, effective laws against cartels on pricing, plus effective laws against predatory pricing and the misuse of market power by large corporations possessing substantial market power. Section 46 was specifically directed against large corporations using their substantial market power to eliminate or substantially damage a competitor, prevent the entry of a competitor into the market or prevent a competitor engaging in competitive conduct in that particular market.

What we need is a nation where we have vigorous competition so we can get products onto the market, with competitive bidding from buyers, from farmers, manufacturers, food processors and suppliers; not one that encourages sticking to the status quo where the person with market power knocks out the others; not one that deters innovation and development of new businesses with new technology; not one, as will now be the case, that encourages an approach of buying your competitor out rather than investing in new equipment, becoming more competitive and taking on your new competitor who has done just that by introducing better productivity, new technology and advances. What is the point of developing a new product if your
competitor knocks you out or if you have got no market because it is too small and is controlled by too few players? It is very serious for the future of business if the status quo company is allowed to dominate. What is the ultimate cost to this country?

Competition drives the economy, and without competition the economy stagnates. Any benefit to the consumer from lower prices as a result of predatory pricing is short lived. As the competition is driven out of business, prices may go lower for a short time, but when there is only one player left then the prices go up, so that argument that the staid market dominator uses for its own benefit is just flawed logic. Where does it ultimately get the consumer if there is no new, advanced product? Ultimately, in the environment of no new ideas or products coming onto the market, there is no incentive and it becomes even harder to get a new product on the market.

I campaigned heavily to have the mergers test changed in the early nineties to introduce more competition into the market. I am proud that it has resulted in restricting certain mergers, leading to greater competition. The loss of an effective section 46 remedy, without effective predatory pricing provisions for small business—all business, for that matter—leaves us without the critical balance of the third arm of competition. We have functioning restrictions on cartels. But it seems that, because we have good limitations on mergers and acquisitions, the only approach left if you cannot buy out your competitor or merge is to smash your competitor out of the market. The absence of a good predatory pricing regime makes this possible, even probable. The remedy we need post Boral is a provision that specifically mentions predatory pricing to restore the balance to pro competition. Sadly, following the Boral decision, section 46 is now a dead letter: it is open season on small business and it leaves business with its problems of predatory pricing and the use of excessive market power across many highly concentrated Australian markets.

The ACCC has been a very effective litigator over the years for increased competition, but on section 46 its record is mainly one of losses. This suggests the problem is not with the ACCC but with the act. Firstly, the Boral case took seven years to deal with behaviour from seven years ago. Delays and costs have seen 1995 behaviour being decided on in 2003. Any effect on the business in question is past. Because the small, more efficient block manufacturer survived does not take away the fact that, today, similar use of market power in other areas is similarly destroying other successful businesses. It does not remove the need for a working section 46. Importantly, too, the decision has come out after the Dawson review has been delivered. This reversal on a crucial arm of competition was not there to be considered by the eminent review investigating our entire competition laws.

The important and damaging practice of predatory pricing, of persistent pricing below cost to eliminate competitors, you would have thought would have been a signal to the courts of predatory behaviour, but the concept of market power has been lessened by this decision. It is unfortunate timing when, increasingly, business is more concentrated in our small Australian domestic market. Companies have huge flow-ons into other markets within an industry, whether it is building, retailing or the like. For example, I have been approached on matters where the reduced number of surviving building material manufacturers must also deal with a small number of suppliers of cement—their essential raw material—which are owned by their vertically integrated competitor.

The Boral case has definitely lowered the threshold of market power, allowing a signal to go out to competitors in other related markets where market power exists that says, ‘Don’t take us on because we’ve won this one and we’ll win another one.’ The old test of the ‘smoking gun’, the letter of intent to knock out the competitor, was a test many of us thought was too tough a standard in the first place. But here many smoking-gun letters existed. One even said:

We must knock out the competitor at any cost.

In fact, two other competitors were knocked out by below cost pricing. I understand one person lost his house and another one just closed down. The third one refused to lie
down and die, thanks to the sixfold productivity they gained from their new state-of-the-art technology, a new investor coming into play, a housing economy going gang busters and ACCC intervention that changed behaviour.

If we are to be world leaders we do not want industries where companies in the interest of investment costs sit on their old plant and equipment and defend their markets by predatory pricing. There are plenty of examples of that in countries where monopolies or near monopolies exist. We, as Australia, needing to play our role in the hard competitive world of international trade, cannot afford to let our industries fall into a lower level of complacency. It is far better for big players, challenged by the feisty competitor, to be forced to improve and compete, not to resort to selling below cost because they have deep pockets. It is better instead to seek out more productive processes, to look for better labelling and selling techniques, and to seek out innovation, research and development. No-one is done a favour by propping up the status quo because they have long pockets to see out their newer and more financially strapped competitor who is giving them a good competitive ride for their money in the marketplace.

With its small population, Australia, in the wake of mergers and acquisitions over recent years and with companies expanding into new bolt-on businesses, has an economy with great concentration— with oligopolies and duopolies in many important sectors. This has been a recurring focus of mine for 20 years in the Senate. In fact, today is the 20th anniversary of my being in the Senate.

Honourable senators—Hear, hear!

Senator BOSWELL—During this time we have had some significant wins for business. Business now has many more avenues under the Trade Practices Act, other legislation and codes of conduct than it previously had. I am pleased to say that the Howard-Anderson government has kept up with the times for small business. I mention this in the context of the implementation of unconscionable conduct following the Reid report; the benefits from changes to the Trade Practices Act, such as ACCC representative actions for small business; and the lifting of the threshold and the redefining of regional markets that followed on from the Baird report.

Where this large imbalance of market power exists—where big business in practical terms can act by selling below cost because it has such a substantial hold on a substantial market—the removal of section 46 remedies requires great attention because of the importance of small business to all Australia. Now they have one less remedy when struggling to operate in a business environment dominated by a small number of large players. Small business has always held out the hope that section 46 would deliver them some relief. In recent years the trend has been to imply purpose, as the Federal Court upheld in the Boral case decision. Now the High Court has reversed this.

Concentrated market power is a daily encounter for small business in many areas, from panel beaters and insurance companies to newsagents and publishers. For the Dawson review, for the first time small businesses got together very constructively as a coalition representing 18 small business areas all in a similar predicament in needing to deal with enormous market power compared to their relative lack of strength as individuals. In recent years this has been compounded as collective bargaining has been considered to contravene the Trade Practices Act. Newsagents, dairy farmers, rural doctors, cane suppliers to mills, and many others have all had to seek authorisations. As they all told the Dawson review, this process has cost their organisations hundreds of thousands of dollars, has taken years to go through the process and can be appealed—meaning the whole investigation process must start all over again, as happened recently with the dairy farmers. Small business, which by its nature is a collection of individual businesses, is increasingly finding itself up against the wall.

The other remedy available through unconscionable conduct in section 51, introduced by this government, is meant to deal with large businesses unfairly exercising their market power through unfair conduct. Unfortunately, it is difficult to operate under the present legislation. When legislation like
section 46 does not work, small businesses become discouraged, large businesses know they can get away with more than the intent of the law allows and a culture that reinforces small business is not there. As we all know, going to court is a costly business. That is why this government’s reforms following the Baird review, which I am pleased to have initiated, now allow the ACCC to bring representative action. This is important for small business. This bill completes the picture.

The Prime Minister, before the last election, promised the Dawson review. The Prime Minister stuck to his words and a most comprehensive and complete review has been carried out. I am pleased to say that it was the National Party that played a role with its coalition partners in emphasising the existing imbalance in market power between large and small business and the effect this will have on rural Australia. Rural and regional Australia does not have the diversity of a city economy. Small business is a great mainstay for local business and employment opportunities. John Anderson and I spoke time and time again about having these matters thoroughly examined. I am sure that the Dawson review has kept these important elements of the imbalance of power between small and big business and the effects in rural and regional Australia, within their terms of reference, to the forefront.

Importantly, the Dawson review was held in an environment where there was a different understanding of section 46 when under the current law the section was there as a protection for small business against the excesses of market power exercised by big business, and big business was conscious of these limitations and the restrictions based on previous court decisions. Now, after everyone’s submissions to the review, small business has been delivered an enormous and ground-shifting blow through the Boral decision. The removal of section 46 elevates the need for collective negotiations for small business, strengthened unconscionable conduct provisions and greater consideration being given to reinforcing a small business presence in the ACCC. As a consequence of the Boral decision, the plight of all businesses and the overriding need for a third component of competition on the misuse of market power need urgent attention. Business and competition has been left in a lesser position by the Boral decision in the current situation of increasing the concentration of market power. I commend the bill to the Senate.

Senator ABETZ (Tasmania—Special Minister of State) (8.45 p.m.)—I thank honourable senators for their contributions to the debate on the Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2] this evening. The debate got off to a pretty poor start and there was only a marginal improvement with the next speaker, but a real highlight was when Senator Boswell advised us that he has now completed 20 years service to the people of Queensland and Australia, and he has done that in the most diligent and faithful way. I think they have been very well served by Senator Boswell, who comes from a small business background and actually understands some of the issues involved.

Before I move on to the contributions of honourable senators, I quickly want to bring the Senate back to what this debate is all about. The first speaker in the debate this evening was most anxious to talk about everything but what this bill is about, because of the embarrassment it would occasion him and the Australian Labor Party if the small business community were to find out the exact reasons why Senator Conroy and his party oppose this piece of legislation—which is something that small business has been asking for, which they want and which makes good sense.

So what are we talking about? We are talking about an amendment to section 87 of the Trade Practices Act, which would allow the Australian Competition and Consumer Commission to bring representative actions in respect of contraventions of sections 45D and 45E of the Trade Practices Act. Section 45D of the act prohibits secondary boycotts undertaken for the purpose of causing substantial loss or damage. Section 45E prohibits certain contracts, arrangements or understandings with organisations of employees which affect the supply or acquisition of goods or services. At present, section 87 of
the act allows the ACCC to bring representative actions in respect of contraventions of all of part IV of the act, except for sections 45D and 45E. The proposed amendments will not give the ACCC new powers in a new area. Rather, they will make it easier for affected businesses to gain advantage of the secondary boycott provisions of the act. The government recognise that Australia’s one million small businesses lack the economic power of large corporations to take action when they experience unfair treatment. This is particularly so in relation to secondary boycotts. Without these amendments, small businesses will effectively be denied the full protection offered by the act and will continue to bear the costs incurred as a result of restrictive trading practices.

We as a government want to give the opportunity to small businesses to have their cases heard, by the ACCC being able to champion their cause by taking representative action. That is something that is allowed in this legislation—for representative actions to be undertaken by the ACCC—other than in this particular area of sections 45D and 45E. The Labor Party, because they are dominated by the trade union movement, are absolutely determined to fight this tooth and nail because they want the trade unions to have this unfettered power over small businesses.

I will now seek to address some of the comments that were made by honourable senators. Senator Conroy took the Senate back to Senate estimates for his contribution. I would have thought that, from his position, that was one of the most unwise things he could have done, given, as we all know, the substantial humiliation he received as a result of not even understanding the difference between a loss and a loan. But this is the man who comes into this chamber asserting that the Labor Party understand business practices and that they understand all things about small business. Take the tip: most small businesses do understand the difference between a loss and a loan. I respectively suggest that until such time as the deputy leader—and let us not forget that he is the deputy leader of the would-be alternative government in this place—can grasp the fundamental concept of the difference between a loss and a loan, he is hardly qualified to come into this place to hector us as a government about what small business really needs or wants. Senator Conroy has confirmed his incapacities for us yet again this evening. Any doubts that members of the Australian public may have had about the Labor Party being a wholly owned subsidiary of the trade union movement will have been removed this evening by their dogmatic stance on the previous bill and, of course, their dogmatic stance on this one.

It was suggested to us that if we were really listening to small business we would be doing something about the GST. I thought that the Labor Party had been through all this at the last federal election and had agreed that, as at 2001, they would turn over a new leaf, accept the will of the Australian people and accept that the GST is now here to stay. But the policy vacuum that the Australian Labor Party operate in allows the deputy leader to come out and make these sorts of claims about the GST, because there are no policy parameters within which he has to operate. I thought that that was one of the parameters they had set for themselves: that the GST was here to stay. It looks as though at the next federal election we will see rollback mark II. I look forward to it. I dare say that Senator Conroy and his colleagues do not. Because of the paucity of arguments available to him in this debate he had to grasp at a straw such as the GST.

We were then taken to the Yellow Pages small business survey. It is always very instructive and, yes, as a government, I accept we can always do better. In the area of small business we are very anxious to do so. But there is a telling point in the Yellow Pages survey. I would encourage them not only to ask, ‘What are the areas of government that concern you?’ but also to ask, ‘Why is it that small businesses—about 90 per cent of them—never vote for the Australian Labor Party?’ What the Yellow Pages survey ought to ask is: ‘What don’t you like about opposition policies?’ The first response from small business would be: ‘There are no real policies to judge other than that, if there is a dispute between small business and the trade
union movement, the Labor Party will always side with the trade union movement against the interests of small business. A lot of small business operators are people who struggle. They often are the recipients of back-up welfare support which their employees do not get, because the operators work so hard in trying to make their business run that they get family income supplement which sometimes their own work force do not need to rely on.

It is always interesting when somebody who, in his working life, has only been an adviser to a parliamentarian or worked as a trade union official seeks to hector people on this side such as Senator Boswell and me about what small business actually wants. Some of us actually have been in the marketplace. Some of us actually have employed people. Some of us actually have run businesses and know the difficulties associated with them. So for the Australian Labor Party to come in here pretending that they are the champions of small business is, quite frankly, a little bit rich.

I move to Senator Murray’s contribution. Unfortunately, on things to do with the trade union movement you cannot get a cigarette paper between the Labor Party and the Democrats these days. They are very closely aligned and that is why I think the small business community is saying that, whereas it used to think the Democrats might be an honest broker and champion the cause of small business, unfortunately they are not doing that anymore, as witnessed with the unfair dismissal legislation and now with the secondary boycotts legislation. I simply suggest to Senator Murray and this chamber that there is no benefit in having secondary boycott legislation but we will so muzzles it to ensure that it will not be for the benefit of small businesses, which need the most protection.’

Senator Murray has suggested that, because of the way this bill is drafted, it is so wide that it could be used for any business; it is not limited to small business only. To a certain extent that is right. There is no definition in what we have provided as to what a small business may or may not be. But what Senator Murray is really doing is casting an aspersion on the ACCC that it will not exercise its discretion in an appropriate way when it applies its public interest test. This legislation clothes the ACCC with a whole host of discretion. It can do all sorts of things within its power. It seems that the Democrats will trust the ACCC to exercise that discretion in absolutely every area other than where it is going to champion the cause of the biggest multinational at taxpayers’ expense. If Senator Murray honestly believes that—and I do not think he does—then he is saying that he has no confidence in those who run the ACCC for us. The hollowness of that suggestion is borne out by the fact that Senator Murray is willing to allow the ACCC to have the discretion in a whole host of other areas and accepts that those discretion and the application of the public interest test will be applied properly, appropriately and honourably; yet, for some reason that defies me, that it would not in this particular circumstance. We have another example of a political party grasping around for an excuse not to support this legislation, and the excuse, quite frankly, does not stack up.

We on this side of the chamber, the Liberal and National parties, unashamedly support small business. Small business is the engine room of economic growth and, more importantly, of jobs growth within this country. Some of us have seen what trade union boycotts can do. Some of us have worked on cases such as the Dollar Sweets case in Melbourne, a very celebrated case, and we can see what thuggery trade unions can apply to a small business. For the Australian Democrats and the Australian Labor Party to wash their hands of this situation is to be condemned. We on this side of the
chamber understand what the numbers are in this place. We accept that unfortunately this legislation will be voted down but we will not be deterred from championing the cause of the small business community and all the mums and dads involved and, might I add, the job security of all the mums and dads who gain their employment from those small businesses. Today has been a shameful day for the two political parties that I have just referred to for having voted down the fair dismissal legislation, and it now appears that they are willing to vote down the small business protection bill as well.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (9.01 p.m.)—I move Democrats’ amendment (2) on sheet 2826:

(2) Schedule 1, page 3 (after line 5), after item 1, insert:

1A After subsection 87(1A)
Insert:
(1AB) A representative application may not be made under this section unless that representative application is for a small business or an individual person.
(1AC) For the purpose of subsection (1AB):
small business means a business employing less than:
(a) if the business is or includes the manufacture of goods—100 people; or
(b) otherwise—20 people.

This amendment simply makes explicit what the minister indicated is likely to happen anyway—that is, that representative actions as intended by the bill can only be undertaken on behalf of a small business or an individual person. Small business is defined on the standard ABS statistical method. The government could come back with different definitions of small business, such as those which are in tax law, but I had to choose the one that mattered. The issue is very clear on the face of it and I do not think there is any need for me to detain you with any remarks about it.

Senator CONROY (Victoria) (9.02 p.m.)—Firstly, I indicate that on balance Labor would be inclined to support all of what I think are very worthwhile amendments by the Democrats. They certainly expose the fraud that this bill is in purporting to be about small businesses, so I thank Senator Murray for his diligence in this matter because he has actually come up with some very sensible amendments. The Labor Party would normally support such amendments but our caucus has determined that we are voting against the bill. We feel it is a little unkind to vote for them and then vote against the bill in this particular instance, Senator Murray, but if this government were serious about its intent to help small business—particularly, as Senator Boswell has quite accurately said, after the Boral case—it could come back with the sentiment that your amendments capture and I think they would get a very supportive hearing from everybody in the chamber. I want to congratulate you on these amendments but indicate that at this stage in this particular context Labor probably will not be supporting them. But if they were to come back in a separate context I think they would be very worth while for meaningful debate and consideration by this chamber, and I would hope the government would listen and understand that there would be quite a bit of support to help small business. So this is really calling the bluff of the government: are you really serious about helping small business or are you really on another grandstanding pursuit to try to pretend that you are helping small business? I indicate that we will not be supporting these amendments but that we would be happy to consider these issues down the track in another vehicle.

Senator ABETZ (Tasmania—Special Minister of State) (9.04 p.m.)—The government opposes the Democrat amendment. It seeks to introduce a new concept in terms of the Trade Practices Act because Senator Murray’s amendment is talking about not only secondary boycotts but all of the part IV provisions which deal with a range of anti-competitive conduct which includes mergers, misuse of market power, anticompetitive vertical arrangements, retail price maintenance and third line forcing. The effect would be to
restrict the ACCC’s ability to take representative action on behalf of any business that falls outside of Senator Murray’s definition for all of part IV.

Senator Conroy—it is a very clever amendment. It’s all about small businesses.

Senator ABETZ—Yes, it was a sneaky little attempt but we will not fall for it. We oppose the amendment.

Senator MURRAY (Western Australia) (9.06 p.m.)—I really cannot let that go. Minister, I am quite sure that you did not read the amendment because you would never have said such a silly thing if you had. You are too smart to have said what you have just said if you had read it. The amendment says:

A representative application may not be made under this section unless that representative application is for a small business or an individual person.

(1AC) For the purpose of subsection (1AB):

small business means a business employing less than ...

That comes after section 87(1A), which does not refer to the whole field that you just outlined.

Question negatived.

Senator MURRAY (Western Australia) (9.07 p.m.)—by leave—I move Democrat amendments (1) and (3):

(1) Schedule 1, item 1, page 3 (lines 4 and 5), omit the item, substitute:

1 Paragraph 87(1A)(b)

Omit “(other than section 45D or 45E)”, substitute “(other than section 45D, 45DB, 45DC, 45DD or 45E)”.

(3) Schedule 1, item 2, page 3 (lines 6 and 7), omit the item, substitute:

2 Paragraph 87(1B)(a)

Omit “(other than section 45D or 45E)”, substitute “(other than section 45D, 45DB, 45DC, 45DD or 45E)”.

I have done here what I spelt out in my speech in the second reading debate. I said then that the issue of sections 45D and 45E is—

The CHAIRMAN—Senator Murray, I understand the difficulty you are having—I am having it is well—with the conversation going on across the chamber. Senator Murray, please resume.

Senator MURRAY—My intent is to get the debate over as soon as possible, which I am sure the minister would like.

The CHAIRMAN—I understand that. It is my intent as well.

Senator MURRAY—I spelt this out in my speech during the second reading debate, so I do not really want to repeat it. The key problem with 45D and 45E is that they affect issues which are not competition related but which are related to the behaviour of employee organisations pursuing the issues of wages and conditions. However, 45DA specifically refers to the area of competition. We think the government would have a valid case if it focused on that area and we would support the change of the law that they envisage with respect to 45DA.

Senator ABETZ (Tasmania—Special Minister of State) (9.09 p.m.)—I remind the honourable senator that, when I was giving my summation, he and Senator Conroy were engaged in a deep conversation over there and I did not seek to adopt the fairly precious approach, with respect, that was adopted just then, but I do accept the standards of debate in this place that there should not be those sorts of discussions. I just invite Senator Murray to consider his own behaviour in relation to those matters.

Senator Murray—Mr Chairman, on a point of order: I think the standing orders require an unimpeded view of the chair. My objection was entirely to the fact that I was not able to see the chair whilst I was addressing the chair. At the time Senator Conroy and I were having a conversation, we were in fact in our seats and I could not see. That was the entire reason I stopped.

The CHAIRMAN—There is no point of order, but it was nice of you to want to see me.

Senator ABETZ—I will not continue the debate on that matter other than to ask people to view the layout of the chamber and how I standing on this side, may have impeded the view of the chair. I do not know, but I accept—
The CHAIRMAN—Senator Abetz, address your comments to the chair.

Senator ABETZ—I am, Mr Chairman. I am indicating that I do not know how that could possibly occur. In relation to the matter that we have just dealt with, I invite Senator Murray to look at Miller’s Annotated Trade Practices Act 2001, 22nd edition, by Russell V. Miller. If he does that, I do not think he would impugn my comments and my submission in relation to his previous amendment. I think I will rely on that as sufficient evidence for me as to the submission that I made to this place.

In relation to the other amendments moved by Senator Murray, we as a government oppose them. First of all, regarding the amendment dealing with paragraph 87(1A)(b), as I understand it, section 45DB deals with secondary boycotts in shipping and deals with movement of goods to and from Australia. It is interesting in this context that that could deal with supplies for our troops that may potentially be blockaded by the CFMEU. We, believe it or not, are not minded to support that amendment in relation to 45DC and 45DD. With respect, that is somewhat irrelevant because those sections do not deal with an offence. The ACCC could never take action, because the sections do not create offences, and the amendment would create unnecessary inconsistencies within the act. In relation to amendment (3), the entire purpose of the bill is to remove restrictions on the ACCC from taking representative action. Senator Murray’s amendment not only increases the number of restrictions but expands them as well. We oppose the amendments.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (9.14 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [9.19 p.m.]
NATIONAL HEALTH AMENDMENT (PHARMACEUTICAL BENEFITS—BUDGET MEASURES) BILL 2002 [No. 2]

Second Reading

Debate resumed from 5 December 2002, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CHRIS EVANS (Western Australia) (9.22 p.m.)—I rise tonight to speak in the second reading debate on the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. Senators would be aware that this is the second time that the Senate has debated the measures in this bill. Labor, the Democrats, the minor party and Independent senators defeated the bill the first time. Certainly, today Labor will be voting to reject the bill again. The government’s proposal to increase PBS copayments across the board by almost 30 per cent has nothing to do with health and everything to do with propping up the government’s budget bottom line. When the government first introduced this bill last year, it was intended to raise general patient copayments by 28 per cent, from $22.40 to $28.60 per prescription, and the safety net threshold payments from $686.40 to $874.90, effective from January 2003. This would have represented an extra $190 per year for the cost of essential medicines and an extra $6.20 per script for each of the 300,000 Australians who exceed the general safety net threshold. Similarly, the bill increased concessional copayments by 28 per cent, from $3.60 to $4.60, and the safety net threshold payments from $187.20 to $239.20, effective from January 2003. This would have cost $52 per year for up to one million cardholders and pensioners if Labor and the other senators had agreed to it.

Since the bill was introduced and rejected, PBS copayments have increased. On 1 January the concessional copayment rose by 10c to $3.70. By contrast, for the second consecutive year, the pensioner pharmaceutical allowance, introduced in 1990 to compensate pensioners for prescription copayments, will not rise. Between January 1996 and January 2003, the pharmaceutical allowance for couples has increased by only 20c. Over the same period, the PBS copayment has increased by $1. Since the election of the Howard government, the PBS copayment increases have outstripped the increase in the pharmaceutical allowance for couples by five times. Also, on 1 January this year, the general copayment rose by 70c to $23.10. The price increases contemplated in this bill are therefore now of the order of 24 per cent rather than the original 28 per cent. When Labor left office, pensioners were fully compensated for their pharmaceutical costs through the pensioner pharmaceutical allowance. If this bill passes, they will be $1.70 worse off each time they fill a prescription, or $88.40 per year worse off than they were in 1996.

Labor agrees that it is necessary to engage in a sensible public policy debate on the merits of growth in the PBS. Over the last decade, the cost of the PBS has grown annually, usually at a rate of between 10 and 14 per cent. But in the run-up to the last election, the Howard government made a number of bad decisions which contributed to a one-year blow-out in the cost of the PBS. In June 2001, former Minister Wooldridge listed Celebrex but ignored the recommendations of the Pharmaceutical Benefits Advisory Committee and did nothing to control the huge costs of listing it. The Pharmaceutical Benefits Advisory Committee recommended that Celebrex be priced at $1 a day. The government failed to follow through on a contract negotiated with pharmaceutical manufacturer Pfizer which would have seen the price halved once a certain number of scripts had been issued. This resulted in a blow-out of $140 million in the first nine months of listing, up from an estimated $40 million. A similar bad decision was made regarding the antinicotine drug Zyban. The government also listed this drug and ignored expert advice on the cost control measures.

The government would have us believe that an immediate copayment increase is the only way to ensure that the PBS remains sustainable, but copayment increases have nothing to do with this debate. They reflect the government’s priorities to bring about a surplus in the future by hitting the sickest in our country hardest. Last year’s budget con-
tained a number of measures that Labor supported: measures going to the use of generic drugs, stopping pharmaceutical fraud both on and by pharmacists, improving listing procedures for new medicines, providing better information to consumers and to doctors and increasing the focus on evidence based medicine. They were all sensible and potentially cost-saving reforms which Labor was happy to support. However, copayment increases will hurt those Australians who are least able to pay and those Australians who need the medicine the most. Fifty per cent of the $1.1 billion the government wants to save from this increase over four years will come from pensioners—half the saving from those people least able to afford it.

The increases are not based on best evidence, best medicine or best health outcomes. They are based on the coalition’s calculation of how to restore its budget to surplus without proper consideration of the issues of fairness. The government’s own calculations, revealed during Senate estimates last year, showed that, as a result of the government’s proposed 30 per cent increase in the cost of essential medicines, Australian pensioners and concession cardholders will go without almost five million prescriptions for their essential medicines. The same calculations show that Australian families, many of them under financial pressure, will also go without almost half a million prescriptions as a result of an increase from $22.40 to $28.60. These figures are prepared by the Department of Health and Ageing, and they show that in the first year of the price increases the government is banking on 2.8 per cent of pensioner and concession scripts and 1.4 per cent of general scripts going unfilled because people will not be able to afford them. Essential medicines keep people healthier for longer. If prescriptions go unfilled because Australians are unable to afford them, their health will suffer, leading to greater expenses and demand for more complex medical assistance down the track.

The true rationale for this bill, as I say, has nothing to do with health. Instead, it is about restoring the government’s budget bottom line. There are other more effective means by which the long-term viability of the PBS can be assured. These are means which, through proper planning, would put appropriate responsibility on the pharmaceutical industry and the medical profession rather than on those least able to bear the burden. In any case, to the extent that the prescribed medicines may not be purchased because of the price rise, there is likely to be a shifted burden of cost onto other areas of Commonwealth or state expenditure. Not least of these cost shifts will be greater hospitalisation down the track for those people who are unable to afford their prescriptions.

The government has been highly disingenuous in the way it told one story about the PBS before the election and another story after it. Before the election, the government assured the public that the high cost was a good thing because it reflected the fact that people were obtaining the medicines they needed. Afterwards, the government produced its Intergenerational Report to pretend that the proposed increase in copayments was necessary to ensure the long-term viability of the PBS. Labor supports reforms of the PBS that make it more cost-effective. However, increases in the copayment do not make the PBS cheaper overall, let alone more efficient.

Increasing the amount that consumers, rather than the government, pay does nothing to prevent inappropriate prescriptions by doctors or stockpiling by patients. These measures represent the government’s vain hope that somehow what are, in effect, deterrents to poor members of our community, against seeking medical products that they need, will lead to savings. The likelihood, of course, is that the opposite will occur. There will be greater costs incurred in these attempts to slug the poorest members of society. Some sick Australians on health concession cards will no doubt opt to struggle through a treatable infection without the assistance of modern medicine because they simply cannot afford a rise in the costs of medicines. It is a false economy to expect the consumer to pay a large proportion of the cost of a drug they genuinely need, particularly concessional patients.

The government’s measures are likely to lead, instead, to higher costs through in-
increased hospitalisation as fewer drugs are dispensed to the poor in our community. Families on lower incomes will be deterred from seeing doctors and getting prescriptions made up because of the cost. Inevitably, some proportion of the people will find within a week or two that their immune system is not able to shake off an infection without treatment. Meanwhile, this infection is likely to have been spread around the school or the office because the family cannot afford to have an adult member at home not working while caring for an increasingly sick child. This all leads to an extra strain on the PBS as the sickness is fanned. By the time the family has decided that the need to consult the doctor and receive pharmaceutical treatment cannot be ignored, the sick member will need more drugs and, it is likely, more expensive drugs to get better. The copayment increases will hit the sickest and the poorest hardest and will lead to poorer health outcomes. For these reasons Labor does not support the bill. We will continue to oppose this bill and we urge the Senate to defeat it.

Senator ALLISON (Victoria) (9.32 p.m.)—I rise to speak on the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2]. Democrats firmly reject the notion of asking the sick to bear the burden of government spending, particularly where government overspends relate to detention and expulsion of refugees, increased spending on war related activities and measures to curb individual freedoms in the name of security. The Australian Democrats rejected the first bill at second reading in the Senate in June and we intend to do so again. The policy of copayments to curb costs is simplistic and a lazy way of containing government costs into the future.

At the time the first bill was introduced, the government knew that the health department had estimated that at least half of the savings would come from concession holders—that is, people on low incomes and pensions, many of whom are very high users of medicines. We believe that imposing this extra cost on patients is totally unacceptable. It demonstrates that this government has focused on the bottom line at the expense of the fundamental tenet of a fair society—that all people in a wealthy nation, such as ours, should have affordable access to medical care and pharmaceuticals. Australia’s pharmaceutical scheme has been the envy of many nations around the world because of its cost-effectiveness criteria for the listing of drugs for PBS subsidy and the bulk purchasing done by the Commonwealth on our behalf. This has meant that as a nation we spend proportionately less of our wealth on medicines than comparable countries.

Having said this, I believe that there are three questions we, as a community, should be asking and that we should be involved in the decision making. Firstly, how much are we prepared as a nation to spend on health, including medicines? Secondly, if there is waste in the Pharmaceutical Benefits Scheme, can we address it or do we need to restructure the system? Thirdly, do we have the right balance of government resources in terms of how much we spend on pharmaceuticals, rather than directing our resources towards preventative and commonsense remedies?

Looking at the first question: what do we need to decide as a community is the proportion of our wealth that we are prepared to spend to maintain or increase our health status? It is true that we spend proportionately more on health now. According to the Australian Institute of Health and Welfare, health expenditure as a proportion of GDP almost doubled over the last four decades, from 4.3 per cent of GDP in 1960-61 to 8.4 per cent of GDP in 1997-98. At 2000-01, that figure was 8.5 per cent of GDP. In dollar terms at 1997-98 prices, health expenditure grew from $7.3 billion in 1960-61 to $47 billion in 1997-98. This was a real average annual increase of five per cent. Taking into account the increasing population, this means that health expenditure has increased in real terms by an average of 3.6 per cent per person per year.

In numerous international studies, Australia is measured as having a comparatively healthy population. We live longer, we have low infant mortality and our morbidity rates are lower than other nations. We have access
to high quality acute care and medical practitioners who are international experts. At the same time, our living standards have continued to increase as measured by GDP growth per capita. So, as a nation, we have more money to spend and we are spending more of it, proportionately, on health. Given the high priority we place on health, the Australian community may consider this is a perfectly sensible way to spend extra money. On the other hand, this so-called ‘small government’, which has the reputation of being the biggest spender of all Australian governments, would prefer to see as yet undisclosed numbers of millions of dollars spent on a war effort that clearly the Australian population does not want.

I note in passing that the government has already revised upwards its Defence budget for $108 million beyond that specified in last May’s budget. Did the government intend for sick Australians to pay for the war effort through the increased pharmaceutical copayment is a question, I think, we need to ask. Turning again to pharmaceuticals, by the government’s own reckoning, average year-on-year increases since the early 1960s have been consistently around 12 per cent per year in constant dollars—that is, despite all the scaremongering we have heard about cost blow-outs, the reality is that our Pharmaceutical Benefits Scheme has, from 1976-77 to 2001-02, never increased annually in constant dollars by more than 12 per cent.

In the last financial year, July 2001 to June 2002, the annual increase was only 8.8 per cent—hardly the unsustainable levels predicted by the Minister for Health and Ageing in May 2002. So what is the panic? The government’s rhetoric does not match the reality. Some simple research into the facts exposes their unsustainability argument as a sham and, until this government can explain to the community why having access to a universally affordable system of pharmaceuticals is a bad thing, the Australian Democrats will not support any measures to increase costs to consumers beyond the CPI.

However, there are certainly other areas that the government can target to improve the efficiency of the PBS. The key area that the Democrats believe the government should focus their attention on is the issue of inappropriate prescribing. Leakage occurs where a drug is listed and subsidised on the basis of its effect for specified illnesses but then gets prescribed much more widely. It is one of the key sources of inefficiency in the pharmaceutical system. This can occur through prescribing the Mercedes-Benz when a Holden would do, and overprescribing generally.

The reason for the unexpectedly high expenditure in 2000-01 was the listing of Celebrex. Doctors were prescribing this very expensive drug to every patient with muscle or joint pain. As Professor Stephen Duckett has stated, policy options to address this issue are best targeted at those with the most power and influence. Ordinary people seeking help from their doctor do not know the difference between getting Celebrex and other drugs—the doctor makes that decision. They in turn are influenced by the pharmaceutical industry, which persuade the government and others to list their product. They also influence the medical profession to prescribe the drug, and that means their brand. The other powerful body is of course the regulator, which accepts drugs for subsidies and regulates their use.

The Democrats believe that changes need to be made to the system to stop the waste that is occurring now. The government has to get serious about tackling this by encouraging manufacturers to embrace a self-regulatory code of conduct, changes to doctors’ software and offering doctors monetary incentives to change behaviour. These methods represent a softly-softly approach. This is in sharp contrast to the harsh treatment they were prepared to mete out to the consumers of medicines. If the government really believes that there is a sustainability problem, it could start by challenging both manufacturers and the medical profession.

A simple first start to the problem of leakage would be to ban the supply of drug samples from the pharmaceutical industries to doctors. A major study undertaken jointly by the University of Sydney and the Australian Institute of Health and Welfare clearly shows the relationship between the use of drug samples and the high Celebrex prescription...
rates in 2000-01. The BEACH data, as it is known, found that the most commonly provided sample pack provided by doctors in 2000-01 was Celebrex. Projecting the data nationally the report estimates some seven million patient consultations nationally would have resulted in a GP providing a Celebrex sample. Just think about the impact of this advertising by doctors for the Mercedes-Benz of non-steroidal anti-inflammatories. According to the report, this new drug was quickly substituted for older drugs for a range of conditions. Just imagine—patients after experiencing the Mercedes-Benz came back for more of the same. They would have said that Celebrex was great and the doctor, wanting to provide the best treatment for patients, would prescribe it—and the taxpayer ends up funding expensive drugs when maybe a Panadol would do. Significantly, the report said:

Although the merits of substituting coxibs has been questioned by some authorities—in other words, the National Prescribing Service 2001—the coxibs have clearly found some favour with GPs.

That is on page 108 of the General Practice Activity in Australia, series No. 8.

The most recent report of General Practice Activity in Australia, series No. 10, is even more explicit. It traces the introduction of a similar drug, Vioxx, in early 2001. It shows that although Vioxx was only listed for the last three months of the year, it was the 11th most frequently prescribed drug and the second most frequently supplied as a sample pack. Clearly, doctors are being used by manufacturers to get patients to switch brands.

The new industry code of conduct, which the government has decided will take the place of legislation, is also soft on samples. It justifies the use as it ‘familiarises the doctor with the product’. This is clearly nonsense and why we have a whole array of supports in place for doctors to find out about new developments in medications. If the government wants to stop the problem of leakage that has been estimated as possibly costing a billion dollars a year, then banning pharmaceutical samples represents a good first step.

Secondly, price signals and market mechanisms should be more appropriately targeted to manufacturers and distributors rather than consumers. The government has told us that Australia has a much lower use of generic medicines than other comparable countries. Why is this so? I can see little reason for a complex set of listings of generic drugs listed differently on the PBS because they are different brands and packaged in different doses. We think it is time the government considered other proposals. The government could, on advice from the Pharmaceutical Benefits Advisory Committee and the Pharmaceutical Benefits Pricing Authority, dictate what drugs they want and put them out for competitive tender. The successful tenderer would provide the generic medicines as specified by the government for a period of time, but other brands would not be considered in that period for PBS subsidisation. In other words, the government should get serious about using its monopolistic power.

No doubt we will hear tired old arguments about choice and how manufacturers will pull out of Australia. The evidence to date is that they do not pull out: there are sufficient profit margins even in our lean PBS system to keep manufacturers and pharmaceutical companies interested. Using tenders with one generic provider would, besides introducing greater efficiencies, allay the concerns of doctors who currently fail to prescribe a cheaper generic for fear of confusing the patient with different brands. We believe there are other mechanisms that could be considered to tackle problems of overprescribing and sustainability generally. Any creative solution will require considering the most appropriate way of addressing it.

The government has got it wrong in sending price signals to consumers who are dependent on their doctor’s assessment of their needs. I believe that price signals and the market will work best with manufacturers, and that clinical accountability lies best with the profession. It is difficult to understand why the government has brought this bill back again—perhaps it is bereft of ideas.
Regardless, we will not support this because it is poor policy.

Finally, we need to ask: have we got the balance right in terms of our reliance on pharmaceuticals versus a more balanced approach to health? I believe the answer is no. When constituents have written to me about this bill listing the enormous array of pharmaceuticals they rely on daily, I am struck by the poverty of their lives not only in financial terms but also their lack of enjoyable activities and community support. There is sufficient research in the medical and social sciences literature to demonstrate that social networks, hobbies, some simple remedies and a good diet can often take the place of medicines because they are, of themselves, improving health.

Yet, despite the overwhelming evidence on the cost-effectiveness of preventive health, a report released by the Australian Institute of Health and Welfare in December last year showed that less than two per cent of all governments’ health expenditure was spent on public health. The federal government’s contribution was a paltry $500 million. Contrast this contribution with the $2.3 billion presently used to subsidise private health insurance. Professor Deeble has recently demonstrated—with empirical evidence—the lack of value that this insurance rebate adds to our health system. Evidence based medicine may be this government’s catchcry, but I say: let’s have some evidence based policy. Cut costs from an unsustainable private health insurance rebate of $2.3 billion and let’s put some resources into preventive health measures and pharmaceutical reform, and we might achieve a better balance.

Senator HUTCHINS (New South Wales) (9.46 p.m.)—The National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2] is an attack on the health care system. The Pharmaceutical Benefits Scheme is meant to provide medicine to every Australian at an affordable price, but the budget proposal contained within this bill, which would cut approximately $1.1 billion from the Pharmaceutical Benefits Scheme over four years, increases the financial burden on Australians who use the PBS to buy medicines for their families.

In the Senate and the House of Representatives, the Australian Labor Party has already voted against this bill, and with good reason. The bill would increase the cost of standard subsidised medicines by $6.20 for each prescription. Concession card holders will have their costs increased by $1. The Australian Medical Association has opposed such an increase in the Pharmaceutical Benefits Scheme copayment. The AMA should know what people can and cannot afford— their membership represents the very people who prescribe medicine under the PBS. General practitioners are at the coalface and deal with the functions of the system on a daily basis. Their representative organisation, the AMA, opposes the government’s proposed increase to the copayment on the grounds ‘the sickest and poorest Australians will suffer if this legislation gets through’. These increases represent a 30 per cent hike in the PBS patient copayment. In total, the government has increased the cost of essential medicines by 70 per cent since it came to office in 1996.

Any government which imposes additional financial costs on sick and vulnerable members of our society is entirely out of touch with the needs of families. Anyone with kids will tell you that they all get sick at once, and that means that parents may well have to pay an extra $20 or $30 each time their children are ill. The government is essentially punishing families for what is out of their control. For the 300,000 families who reach the safety net each year, the price hikes in this bill will cost them an extra $190. The Pharmaceutical Benefits Scheme should support families, not make medicines prohibitively expensive. Not only does the government propose to cut the $1.1 billion from the Pharmaceutical Benefits Scheme but it has also been revealed in Senate estimates that the government plans to spend $49.6 million on an advertising campaign ‘to inform the community of the high-quality medicine systems funded by the taxpayers’.

Debate interrupted.
ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Human Rights: Vietnam

Senator SANTORO (Queensland) (9.50 p.m.)—At a time when the government of Vietnam speaks of ‘doi moi’ as a means of modernising and developing the country, many of Vietnam’s greatest intellects, independent voices and enduring spirits are in jail or under house arrest. This repression of peaceful dissent blights the Hanoi government’s human rights record. Under the policy adopted in 1997, the security forces can detain any individual without trial for two years and this two-year period is renewable so that detention can be for as long as the government wishes. The clear purpose of this arrangement is to silence public dissent.

I recently was made aware of the good work undertaken by the Free Vietnam Alliance to publicise the plight of democracy advocates in Vietnam. In particular, tonight I want to place on the record the plight of two individuals. Firstly, Nguyen Khac Toan is a 47-year-old former North Vietnamese army member. He served from 1972 to 1977 and took part in the military campaigns against South Vietnam. After the fall of South Vietnam, he became disillusioned with the liberation cause advocated by Hanoi and saw instead the need for real freedom, the rule of law and democracy in a unified Vietnam. He was sentenced in December 2002 to 12 years in prison for espionage and is in prison in Ha Dong province, northern Vietnam. Nguyen Khac Toan first became active in the dissent movement in 1995, and in recent years helped organise petitions by retired military veterans calling for democracy, social equality and an end to corruption. He became a freelance reporter helping to distribute within Vietnam the writings of democracy activists and from November 2001 to January 2002 was the source for reports on the citizen protests outside the National Assembly and party headquarters in Hanoi. He was arrested on 8 January 2002 at an Internet cafe.

The second victim of Hanoi’s policy whom I wish to put on the record in the Senate tonight is Tran Khue, a professor of literature and an influential writer in the underground press. In July 2002 Human Rights Watch honoured Professor Tran Khue with its Hellman-Hammett Award, which recognises the courage of writers facing political persecution. He was detained on 29 December 2002 after he spoke by telephone to an overseas conference about the issue of Hanoi donating land to China. In February last year he wrote an open letter to the Chinese President, Jiang Zemin, to protest recent land and sea treaties between Hanoi and Beijing. This letter was published on the Internet. In March 2002 security police raided his house in Saigon.

If the Vietnamese government wishes to be embraced by the global community, it must end its practice of locking away people who choose, courageously, to dispute its policies. I recognise that Australia and Vietnam have begun a dialogue on human rights, and that is welcome news. If the Vietnamese government were to stop repressing dissenters, the large Vietnamese community in Queensland would welcome it. It is to the great credit of Australia’s 155,000-strong Vietnam born community—more than 11,000 of them in Queensland—that it has so swiftly and energetically become such an important economic element in our society. In particular, the strong sense of family that Vietnamese people possess means that parents, often themselves highly qualified professional people, sacrifice a lot to ensure their children are educated and become the professional people they do: doctors, dentists, engineers and the like. This is a huge benefit to Australia.

The Vietnamese community demonstrates daily that Australia is indeed a country of opportunity for those prepared to make the inconvenient and sometimes painful extra effort new settlers must make to build a new life and greater prospects for their children. In Queensland the community has been led for a long time by Dr Cuong Bui, a long-time adviser on Vietnamese community issues not only in the state I come from but also right across Australia. Dr Bui has served as presi-
dent of both the Vietnamese Community in Australia (Queensland Chapter) and the national body. He was a member of the Reference Committee for the Ethnic Communities Council of Queensland Multicultural Reconciliation Project during 1999-2000. Dr Bui’s role in his own Queensland community and in the wider Australian community is worthy of being noticed in this place.

OneSteel Limited

Senator BUCKLAND (South Australia) (9.55 p.m.)—Tonight I would like to speak briefly about the effects of events in February on my home community of Whyalla and on the whole of the community served by the OneSteel steelmaker in Whyalla. It was a joyous announcement by OneSteel’s Managing Director and Chief Executive Officer, Dr Bob Every, when he announced that OneSteel had achieved an after tax profit improvement of 178.7 per cent during the six months to December 2002. Why is that such an important achievement? It is very good for their books and for the shareholders—and on that point I should declare that I have a stated interest in OneSteel and am proud to be associated in that small way with that company. It is the result of something that started back in the 1990s and I pay tribute to those who worked with me during the time of restructuring the Australian steel industry insofar as it affected the Whyalla steelworks.

The steelworks was one that had been earmarked by the former owners, BHP, for closure. I can clearly remember two occasions when we were threatened with the closure of that plant and the loss of a massive number of jobs. Had those closures taken place at that time, Whyalla would be no more than a small whistlestop on the way between Port Augusta and Port Lincoln. But the strength of OneSteel’s performance is testimony not only to the style of management, led by Dr Every and his management people, but also to the work force within that industry at Whyalla for the manner in which they accomplished workplace reforms. We hear much from this government telling us how workplace reform revolves around fair or unfair dismissal bills; in fact, it revolves around people in the industry working to-gether to achieve something that is worthwhile.

The Whyalla steelworks, while quite a small steelmaking plant on a world scale, is the very heart, the core, of OneSteel’s manufacturing operations. I think that is what a community working together can accomplish. During the time of the spinout of OneSteel from the former BHP, which was just prior to me coming into this place, there was a great deal of scepticism about whether this company could survive the first couple of years on its own—and survive it has. I take a great deal of pride in working very closely with so many of my colleagues and with the company to ensure that that occurred, because we accomplished something that the current government, with their approach to industrial relations, could never have achieved.

Dr Every said the major maintenance work that had been done at Whyalla had been at the pellet plant in 2002. More importantly, the big announcement on that particular day when the results of OneSteel were announced was that they would reline the sole blast furnace at the steelworks. This blast furnace was last relined when I was still employed by BHP and was an operator on the blast furnace. It has broken all world records for performance and life. It was built to last anywhere between six and 10 years, it was blown in or started operating in its current form in early January 1980 and it has not stopped since, apart from normal maintenance work. Eighty million dollars will be spent on the relining, and that amount needs to be added to the many millions of dollars the company has been spending over the years to upgrade various parts of the furnace so that when eventually it needs to be relined—which will now be in 2004—all the auxiliary parts of the plant will already be in place and it will only be down for the short period of time needed to rebrick the inside of the furnace.

The $80 million to be used on the blast furnace relining is a real sign to the community and to Australia that OneSteel has confidence in its ability to continue producing steel at Whyalla and that it is there for the long haul. Many suggested several years ago
that the steelworks would operate until about 2015, if I remember the date correctly. This furnace will in fact operate until the year 2020. With the methods of iron making developing as they are now, and with OneSteel’s commitment to utilising the ore reserves it has, the blast furnace and the steelworks will go well into the future—and, I suspect, will still be operating efficiently and profitably well after I have passed from earth. That will have been done because of the management practices and the work force practices developed by the people who work in the industry.

I take a great deal of pride in this company. It is the centre of manufacturing for Whyalla; it is the major employer. It was very good to me when I worked for it, even though it was then in the guise of BHP. The steelworks was a place where I had the opportunity to learn about good workplace practices and to develop skills that I was able to use in later life. I take a great deal of pride in being associated with the management and the workers of that company because of their commitment to ensuring that this major company operates.

It is important to put on the record, as I and others have probably done before, that OneSteel Whyalla is the sole producer of rail lines for the Alice Springs to Darwin rail link. It is a small steelmaker on a world scale but, even though that rail line is well ahead of schedule and there is now talk of it opening early, in 2004, OneSteel Whyalla has had the ability to deliver every length of steel on time so that the track-laying process does not stop. It has also now been able to build on that reputation to further its activities outside Australia. Consideration will be given to exporting product from OneSteel, an area the company had not been involved in because it was concentrating on the domestic market to give it a sound basis for the long term. It has done that, and I take this opportunity to congratulate every person in all forms of employment at OneSteel, particularly at Whyalla, where they are indeed the heart of steelmaking for that company.

Transport: Road Safety

Senator MOORE (Queensland) (10.05 p.m.)—Last week, after a 12-month state government investigation, 91 charges were filed and served against a Brisbane based transport company, Harker Transport, and a further 91 complaints and summonses are in the process of being served against eight drivers from that company. These charges have been laid under the Queensland chain of responsibility legislation, introduced in 1999, which allows for the investigation and the legal accountability of all involved in transporting goods, not just the drivers. This legislation reflects that everyone in the transport industry has responsibility for safety and that everyone in the chain of responsibility can be held accountable. The Queensland minister, Steve Bredhauer, in response to questions in parliament stated:

It is worth noting that the vast majority of operators are doing the right thing. However, the Beattie government remains committed to improving road safety and will continue to pursue rogue operators who engage in illegal or unsafe road transport behaviour, endangering not just themselves but other road users.

This state government investigation of the Harker company was in response to a strong campaign involving the Transport Workers Union, people in the industry and the wider community of Queensland concerned about genuine road safety and the senseless carnage on our roads. Every week, local media reports on road accidents resulting in the loss of life, horrific injuries and untold trauma for families and emergency service workers. Sometimes the stories of loss are submerged in internal columns in local papers—"Unnamed driver killed" or "Traffic delayed after semi-trailer overturned"—and we almost miss the stories. Others, by the nature of the circumstances, receive graphic coverage and strike the community by their tragedy or pure senselessness. But, no matter what the coverage, there are always victims.

The issues of driver fatigue, pressure on drivers to meet heavy and tight schedules, trips without appropriate rest breaks and demands to maintain concentration for extended periods whilst in control of very large, heavily loaded vehicles have been highlighted by court cases resulting in prison sentences for drivers involved in fatal transport accidents. No sentence, prison time or fine can remove the nightmares, the remorse
or the personal accountability experienced by any driver involved in a fatal accident. The Transport Workers Union has worked with drivers and their families who have suffered through this experience and who have been the public face of the issues—stark pictures on the TV news or in newspaper coverage.

The Queensland legislation acknowledges that, while drivers do have and must have personal accountability, there should also be consideration of all circumstances around the incidents; and it allows the pursuit of all persons involved in transporting goods. As described by Minister Bredhauer:

Often drivers who are driving tired are doing so because it was demanded of them by their superiors. We know that drivers are sometimes told that failure to comply with dangerous requests will result in the loss of their job.

The Queensland secretary of the Transport Workers Union, Hughie Williams, quoted in the Courier-Mail, stated that he had sympathy with drivers who were caught at the end of the chain of responsibility. He said:

I keep saying to drivers to simply say no, but it is not always easy because their jobs depend on the hours.

The full public glare is on the driver, but the responsibility must be examined and appropriately allocated. Naturally, bringing charges against a company is only a step in the process. Harker Transport have publicly denied the charges and state that they will be vigorously defended. However, the Queensland legislation does enshrine the chain of responsibility and ensures that all levels will be investigated and that the horrific losses will be examined. As Hughie Williams says:

Lots of innocent people have been killed and the campaign for changes to the long haul industry must be maintained.

All aspects of the industry are regulated and need to be accountable and public. We are all users of our highways and we rely on appropriate legislation to protect our safety. When the law is broken, there are penalties. These do not make up for the loss of life, but they do reflect the community expectation of shared responsibility. Our safety must be a shared concern—the Transport Workers Union, drivers, owners, government and customers. There is a common goal to outlaw rogue practices and to ensure that well-trained, healthy drivers are working with the best equipment on the best, well-maintained roads.

The Transport Workers Union is concerned that appropriate documentation be maintained by operators and that all records are public and open to scrutiny. The Queensland Secretary of the Transport Workers Union has recently written to Harker Transport. No doubt he has written to them lots of times, but this particular letter reinforces the need for the maintenance of correct records and concern about the shredding of large volumes of documents.

The campaign for safety will be continued. There will always be accidents; however, our expectation must be that we can reduce the dangers and the pressures on drivers. Recently, I was fortunate enough to meet with people from the industry during the annual industry safety awareness campaign. I talked with drivers and operators, and I was lucky enough to go for a trip in one of those amazingly large vehicles. The drivers have great respect for their profession and enjoy their job. However, they are aware of their responsibilities. They cannot be alone. There is a chain of responsibility for safety. The law must be aware of this chain and acknowledge it, and we must have faith in our legislation and our safety.

Senate adjourned at 10.12 p.m.

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

A New Tax System (Family Assistance) (Administration) Act—

Child Care Benefit (Allocation of Child Care Places) Amendment Determination 2003 (No. 1).

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2003 (No. 1).

Aboriginal and Torres Strait Islander Commission Act—Aboriginal and Torres Strait Islander Commission (Travel) Determination 2003.


Australian Meat and Livestock Industry Act—Export of Sheep from Northern Ports Amendment Order 2002 (No. 1).


Civil Aviation Act—Civil Aviation Regulations—Airworthiness Directives—Part—


Civil Aviation Amendment Order (No. 2) 2003.

Exemptions Nos CASA EX03/2003-CASA EX07/2003


Environment Protection and Biodiversity Conservation Act—Instrument amending list of—

Exempt native specimens under section 303DB, dated 4 February 2003.


South East Trawl Fishery Management Plan 1998 (Revocation).


Horticulture Marketing and Research and Development Services Act—Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Apples to All Export Markets)] Order (No. 1) 2002.

Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Dried Grapes to All Export Markets)] Order (No. 1) 2002.

Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Mandarins, Tangelos, Grapefruit, Lemons and Limes to the United States of America)] Order (No. 1) 2002.

Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Oranges to All Export Markets)] Order (No. 1) 2002.

Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Pears to All Export Markets)] Order (No. 1) 2002.

Horticulture Marketing and Research and Development Services [Regulated Horticultural Products and Markets (Stone Fruit (Peaches and Plums) to Taiwan)] Order (No. 1) 2002.


National Health Act—Declarations Nos PB 1, PB 2 and PB 4 of 2003.

Determination No. PB 3 of 2003.

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998:

- Indexed lists of departmental and agency files for the period 1 July to 31 December 2002—Statements of compliance—Department of Foreign Affairs and Trade.
- Departmental, Tourism and Resources portfolio.

**Departmental and Agency Contracts**

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

- Departmental and agency contracts—Letters of advice—2002 spring sittings—Treasury portfolio.

**PROCLAMATIONS**

Proclamations by His Excellency the Governor-General were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified: