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CONDOLENCES
Loof, Mr Rupert, CBE

The President (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

The President (12.31 p.m.)—It is with deep regret that I inform the Senate of the death, on Friday, 21 March 2003, of Mr Rupert Loof CBE, a former Clerk of the Senate, at the age of 102 years. Mr Loof worked for the Senate when it sat in Melbourne and moved to Canberra with the opening of the first parliament here in 1927. He retired in 1965. On his 100th birthday, Mr Loof was given a lunch in his honour in the President’s suite attended by a number of current and former clerks. Apart from his long and sterling service to the Senate, Mr Loof was noted for his many other activities, including as a musician and an inventor. He was well known throughout the network of parliamentary clerks and in the Canberra community. I thought that the Senate should note his passing.

WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002 [No. 2]
Consideration of House of Representatives Message

Message received from the House of Representatives returning the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2], acquainting the Senate that the House further insists on disagreeing to the amendments made by the Senate, and requesting the reconsideration of the bill in respect of the amendments insisted on by the Senate to which the House insists on disagreeing.

Ordered that the message be considered in Committee of the Whole immediately.

Senator IAN CAMPBELL (Western Australia)—Parliamentary Secretary to the Treasurer) (12.33 p.m.)—I move:

That the committee does not further insist on its amendments to which the House of Representatives has insisted on disagreeing.

I do not intend rehashing the debate that I think we have had twice here in the last few sitting days.

Senator LUDWIG (Queensland) (12.33 p.m.)—I did intend to raise a few matters in relation to the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] but, as the Parliamentary Secretary to the Treasurer and Manager of Government Business has said, this is an instance of the government further insisting and we on this side continuing to insist on the amendments. I think the government understands our position. I understand that is the position of the Democrats as well. Our position is quite clear, we have stated it a number of times both over the original bills themselves and also in relation to these amendments, so perhaps we do not need to go through the policy reasons, which we have already articulated clearly and forcibly to the government.

Senator MURRAY (Western Australia) (12.33 p.m.)—The Democrats agree with the Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate that this matter has been extensively canvassed. It does not need further remarks to be made on the record in light of the extensive remarks already made. The Democrats will insist on the amendments. We disagree with the views of the House of Representatives and the government on this matter. I think there is nothing more of importance that we can say at this time. If anyone wishes to return to our views, they will find them on the Hansard record.

Question negatived.

Resolution reported; report adopted.

WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTED ACTION) BILL 2002 [No. 2]
Second Reading

Debate resumed from 5 March, on motion by Senator Ellison:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (12.36 p.m.)—I rise to speak on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2]. The No. 2
in the title tells us that this bill has been here before. In fact, this is the fourth bill proposing the introduction of a regime where secret ballots must be held before protected industrial action can be taken. The first bill, as the Senate may recall, was known as the ‘More pay, better jobs’ bill—that description was quite wrong—and is now being referred to more easily as the ‘MOJO’ bill. That was followed by another bill on this issue in 2000. The previous bill to this one was called by the same name, except that it was the No. 1 bill. We now have this matter before us again. It is one of three double dissolution triggers in the government’s workplace relations portfolio. The other two are the bargaining fees bill and the so-called fair dismissal bill—more easily referred to as the small business exemption bill—which was dealt with earlier today by message from the House of Representatives.

The case against this bill has grown weaker and weaker. Since the last time this was debated, the Australian Bureau of Statistics indicates that working days lost due to industrial disputes continues to fall. In the 12 months from October in each of the years 2000, 2001 and 2002, the figures are respectively 627,000, 379,000 and 259,000. So we can see that the incidence of disputes has been declining significantly over that period. The decline in the incidence of industrial disputes has been tracked and analysed by Mr Josh Healy from the National Institute of Labour Studies. In an article he published last year, Mr Healy remarked that the decline has been dramatic. I think those figures bear that out. While there are competing explanations, there is a strong argument that the cooperative arrangements put in place during the years of the ALP-ACTU accord did much to develop an industrial climate that is marked less by conflict and more by cooperative industrial relations. This really stands at odds with this government’s approach to industrial relations. Industrial relations under this government has been marred by conflict.

Mr Healy also investigated Australia’s comparative record. Here one finds that, although historically Australia has had high rates of industrial disputation compared to other industrialised nations, the rate of decline of industrial disputes in Australia has been the sharpest of all except for New Zealand. The decline in working days lost due to industrial disputes over the 1990s has been 43 per cent for Australia, 12 per cent for the US, 30 per cent for the OECD countries, 40 per cent for the EU and a significant figure of the order of 75 per cent for New Zealand.

Australia’s record was the subject of a recent comment by the President of the Australian Industrial Relations Commission. The Hon. Justice Giudice, in a speech delivered on 6 February this year, stated:

Viewed in historical terms the level of industrial disputation had never been lower than it was in the 1990’s. In 1970 around 550 working days were lost per 1000 employees and in 1980 around 650. During the decade from 1991 to 2000 the highest annual total by far was 240 working days lost in 1991 and in the year 2000 there were just 83 working days lost per thousand employees. The additions to the Commission’s jurisdiction which occurred during that last decade occurred during a period when strikes were relatively infrequent. Should strikes ever revert to the level of the 70’s and 80’s, the pressures on the Commission’s services are likely to be significant. Frequent users of the Commission receive a standard of service in relation to industrial disputes which is probably not rivalled for speed of response by any other major court or tribunal system in the country. Most urgent matters now receive a priority listing within days, sometimes less than a day. If there were even a doubling of the number of strikes, which would still be a low number in historical terms, maintenance of that response rate would be impossible.

In that passage His Honour made a significant point. Even though the current rate of industrial action is low, if the commission had to deal with an increase in the level of disputation it would cause a serious impost on the commission’s effectiveness. Herein, of course, lies an issue that should not pass without remark. Under this bill, where legal industrial action is contemplated a substantial drain would be imposed upon the commission’s resources. Rather than operating as an efficient and effective tribunal which settles disputes by conciliation or arbitration where necessary, the commission would embark on a new career—effectively that of an elections office. It would bring to the industrial arena a regime of ballot bureaucracy.
which may be totally out of proportion to the matters at issue between the parties. So the focus of the commission would not be on the dispute itself or on effectively trying to settle it but, rather, on going through the balloting process and ensuring that all of the Ts and Is are crossed and dotted. It would effectively become an adjunct to or a new electoral commission. It would need to have a level of expertise and the resources to be able to undertake these tasks. One wonders whether that is really the government’s wish.

Under this bill, the steps that have to be taken before employees can take protected industrial action are not only lengthy but also involved, intricate and, in my view open to differing interpretations that can set litigation running. Firstly, an employee or a union must apply to the Australian Industrial Relations Commission for an order that a secret ballot be held. Herein lies another problem that keeps arising in the way the coalition amends this bill. This clause is now 170NBB—there is an alphabet of letters after the clause number. If no union is present, then the employee cannot even make an application without the support of a prescribed number of employees. Then we go through a process of determining what a prescribed number of employees is. For example, if there are fewer than 80 relevant employees, the prescribed number is four. If there are between 80 and 5,000 employees, the prescribed number is five per cent. If there are more than 5,000 employees, the prescribed number is 250. This is outlined in clause 170NBAA.

Unfortunately, the bill does not make clear what constitutes support for an application. So here is another fertile area for litigation to be commenced. What we then do, rather than settle the issue of the industrial dispute itself, is concentrate on the electoral process, and litigation collaterally arises about that issue, which is twice removed from where we started. You then have resources, expenditure, time and money being put into the collateral actions rather than those directed at settling the industrial dispute in the first instance. The commission obviously is the place where that can happen. The commission is where parties have always received—as far back as I can recollect—a good service in both federal and the state jurisdictions.

The application that has to be made following on from the process must set out questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action, details of the types of employees who are to be balloted and any details required by the rules. That is another area where we do not have the rules as yet, as I understand it, as to what they might entail. That will then be provided to us under clause 170NBBA(1). We have to revert to the ‘alphabet act’ to find out what the provisions will be. When you examine issues such as those, it becomes a little unrealistic when you deal with workplaces with large numbers of employees, places I have been familiar with in the past where 2,500 might attend a mass meeting to determine action. When you look at distilling those issues, the time taken not only will be extensive but also can create additional confusion where, many times, industrial action can be averted by people applying a little commonsense. But, when you put into workplaces provisions which do not have commonsense attached to them, one wonders what will really happen. One should not be surprised if it creates an environment where industrial disputation is encouraged.

The application then—we have not yet finished with the process—must be accompanied by a copy of the notice initiating the bargaining period, the particulars accompanying that notice and a declaration that the proposed industrial action does not relate to an objection provision. Once all that is done, there might be a valid application for a secret ballot—only if that has been complied with and nobody has taken any exception to the process embodied in that section.

Then the commission must give parties the opportunity to make submissions under clause 170NBCB. We are now up to the process where at least the commission might have seized upon it. We have some ground to cover until we reach clause 170NBDE, which is when the result of the ballot is known. Nevertheless, we will press on. It might be easy for lawyers to follow this, but I do not envy anybody the task of going to a workplace to explain this process in a sim-
ple, direct way that is easily understood and dealt with without being confusing.

The commission must then satisfy itself that the applicant for the ballot has genuinely tried and is genuinely trying to reach agreement with the employer. It must also consider whether the proposed ballot is not inconsistent with the objects of establishing a transparent process which allows employers directly concerned to choose by means of a so-called 'fair and democratic ballot' whether to authorise industrial action, supporting or advancing claims by employees or organisations of employees and the applicant having not at any time contravened the secret ballot provisions of the act. And there you have it.

If the commission has managed to satisfy itself of all of the above, it must frame an order for the ballot specifying—and it would have to specify it with some degree of specificity—the name of the applicant or agent, the types of employees who are to be balloted, the voting methods, the timetable for the ballot, the name of the person authorised by the commission to conduct the ballot and the name of the person authorised by the commission to be the independent adviser for the ballot. You sometimes wonder whether or not the objects of workplace relations would get lost in this process—the objects being able to settle industrial disputes quickly and effectively by the simple means available to ensure that workers can come to agreements that reflect the understanding between the employer and the employee—or whether or not they get lost in what the process is all about. With all of this to contend with, it would be a lot to expect that the commission would have any time to deal with settling disputes, dealing with unfair dismissals, maintaining the award safety net, hearing test cases, dealing with section 127 and section 166A matters—although that may not be a bad thing—dealing with organisations' matters and so on.

Over the years, the commission has evolved—all can attest to that—an ability to respond to industrial relations issues. This is not the process or the place it should evolve to. It is not directed at employees, at the workplace or at assisting employers or employees. One can only understand it as an ideological drive by this government to confuse everybody into the process. In fact, I think the real agenda is to seriously attack the ability for employees to take protected industrial action. That appears to be the design of the legislation and nothing more. If it is that, this government really should say so. I am sure Senator Santoro will explain to us that that and nothing short of that is in fact the real agenda.

Currently, protected action is not something that can be taken without serious consideration in any event. When protected industrial action is contemplated, things run like this in any event. There is a process in place and the process itself has its own safeguards. The safeguards are that, firstly, a bargaining period would have to be validly initiated; secondly, employers or employees are required to give at least three days written notice of the nature of the proposed action; thirdly, the industrial action has to be preceded by an attempt to reach agreement; fourthly, industrial action by an organisation of employees has to be duly authorised by the organisation's committee of management; fifthly, the industrial action cannot involve personal injury, wilful or reckless damage to property or the unlawful taking or use of property; and, sixthly, the Industrial Relations Commission sees value in ordering a secret ballot of employees and such industrial action has to have the approval of a majority in the ballot.

At the time it was argued to be complex—and it still is; it is a matter that the parties seem to be able to deal with just adequately. These ample safeguards are in the act as it stands, but industrial reality has other far more effective checks. So it is not a matter—and I think this is where the government sees that the issue can only really be ideologically driven—where people take industrial action without first contemplating or seriously considering the effects on themselves and the results that they may achieve out of it. I am sure most people would prefer to seek outcomes through bargains, have them certified by the commission and get on with their life. In the many years that I have been employed in the industrial relations area, I cannot ever
recall industrial action—if it is to be contemplated—being initiated by unions or ‘union bosses’, as the coalition would categorise us, demanding everyone out the gate.

Anyone who has been closely associated with industrial action understands quite clearly that passions run high and that people, as a collective workplace, sometimes decide that the actions of the employer have crossed the line. My recollection is that, in many instances where that has occurred, I have in fact been arguing that no industrial action should take place, that the commission should be notified and that the parties should try to address their grievances through the commission to resolve things, because that is the way the legislation is designed and usually the most commonsense approach to take. Where you then have industrial action and it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action. In other words, it is to encourage the employer to sometimes sit down and realise that there are serious issues, the act provides, as it currently stands, processes and mechanisms. It is not about trying to put in place a complicated, difficult process where you have not only no safeguards in my view but a system which is designed to stop a party taking industrial action.
I do not think the legislation is predicated on the premise that there is intimidation and therefore there must be secret ballots. As you have acknowledged, it is not impossible that there may be intimidation, but I think the simple proposition is, as Mr Anderson said—

Mr Anderson being another member of the department—

that the principle of democracy can be most readily guaranteed by a secret ballot process.

This is a situation where the department is saying that the bill is not predicated on intimidation, yet much of the argument I hear from government members is that it is. Frankly, I would rather refer to the evidence on the record on that basis.

So the first issue is that of the bill only attending to one area of days lost, which is those lost under protected action. The second issue, of course, is that no evidence has been offered to the committee, nor is available in the general community, that intimidation occurs on any scale which requires a legislative response. That too is probably another criticism we would make of this bill—

that is, it adopts a shotgun approach, not a rifle approach. My own belief is that, if you identify issues in particular industries, it is better to apply the remedy to those industries rather than to approach the matter by initiating complex, technical and often difficult to comply with legislation across all industries where there may not in fact be a problem.

Let us return to the issue of industrial days lost. In 1970 there were 550 working days lost per thousand employees. In 1980 that had lifted to 650 working days lost per thousand employees, which was a real issue. During the decade 1991 to 2000, the highest ever figure was 240 working days lost per thousand employees in 1991. It is important to recognise that the Labor Party at that time understood that the issue was getting out of hand, and it was the Labor Party who, in 1993-94, initiated the first wave of legislation to radically alter the industrial relations environment. The second wave, as everybody knows, was in 1996-97, when the coalition followed up on Labor initiatives and refined that groundbreaking law introduced, I seem to recall, under Mr Keating by Mr Brereton. At that time, the highest figure was 240 working days lost per thousand employees in 1991. The latest figures for the 12 months ended January 2002 show that there were 49 working days lost per thousand employees. So industrial disputation has come down drastically, and this characteristic of a more peaceful, more cooperative, more efficient, more flexible industrial relations environment is commented on favourably in the OECD reports and in other areas. So these figures do not indicate a major problem.

Another indication that there is no major problem is the presence of sections 135 and 136 of the Workplace Relations Act, which permit the Industrial Relations Commission, at their discretion, to order secret ballots. There have been well over 30,000 enterprise bargaining agreements where they could have initiated secret ballots, on either their own motion or on the application of various parties, and my records show that they have only done so 12 times. That too is an indication that there is a very low level of concern.

This bill requires the conduct of a secret ballot by employees as a prerequisite for authorisation from the Industrial Relations Commission to take protected industrial action during enterprise bargaining negotiations. The point has been made by the Labor spokesperson that this is a long-term policy objective of the coalition. So in that sense it is quite proper for them to continue to pursue it; however, it is a long-term obsession which is not founded on a great need and is likely, if introduced in this form, to actually make more rigid and less effective the system that we currently have. The only precedent for this sort of law was in Western Australia. It caused immense union and political heat, it shed very little light and no beneficial outcome ever occurred. In fact, the act ended up being a dinosaur and its demise was welcomed by employers and employees alike. So that is the record there.

This bill, as I said earlier, is the coalition’s third attempt to make access to protected industrial action for enterprise bargaining under the Workplace Relations Act contingent on there being a ballot of the employees involved, and the Commonwealth generously have suggested they will pay 80 per cent of the ballot costs. They are short of money for
the war so, if we knock off this bill and they do not have to force ballots, they can save that 80 per cent they otherwise would have spent and put it to other more pressing needs.

This bill is the coalition's third attempt but it is a less aggressive version of its two predecessors: the quaintly named mojo bill, the 1999 More Jobs Better Pay bill, and its softer successor in 2000. But its technical requirements remain overly complex, prescriptive and onerous. There is also no general evidence, as I said earlier, of intimidation in union meetings called to initiate protected industrial action that would justify such a sweeping change. In one or two places, in fact, the bill is rather badly drafted, which I must say is unusual for the department concerned.

I have said that a more targeted or selective approach to secret ballots, with Industrial Relations Commission attention to unions or industries where intimidation is more likely, would be less onerous, less costly, more effective and relevant in areas where it is truly needed. That is not the government's approach—in my view, it should be—but of course if it were to be, you would still have to make the case for those particular industries and you would have to produce the evidence. Sections 135 and 136 allow the commission to order a secret ballot or for union members to make an application for the Industrial Relations Commission to conduct a ballot. Of course, as we know, elections for union officials are already by secret ballot. So there are secret ballot provisions in the law.

When the bill was before us in September last year I said that at the committee hearing I discovered to my great surprise that most unions do not have in their own rules secret ballot provisions for industrial action. I think that is a great omission; it is a great shame. Missing from the IR scene, therefore, is a means for union members to ask for a secret ballot to be conducted by the union at their members' request. The unions that were selected to appear at the hearing, which included the AMWU, said that they had absolutely no objection to secret ballot processes by a union for their union members, so axiomatically that would mean that any legislation introducing a requirement that unions should have in their rules secret ballot provisions which they would voluntarily use at what they regarded as the appropriate time would be a step forward in the proper functioning of unions in these areas.

The Democrats' policy recognises the legitimate role of unions in protecting the interests of workers who wish to be represented by them and in moving to improve the internal democracy and accountability of unions. We believe that the Industrial Relations Commission should have sufficient powers to end industrial action and to resolve underlying issues by arbitration. We have always supported the democratic protections afforded by secret balloting processes but there is no empirical or credible evidence that an industry-wide set of somewhat complex rules such as those that are being proposed is justified.

For the interest of the chamber, I have circulated my amendments on sheet 2877. Most importantly, they seek to introduce secret ballot rule provisions for unions, and they should be dealt with if not in this circumstance then in later bills. I say that because I think the reason this bill is coming back in this way is simply that it is a double dissolution trigger mechanism. Therefore, if there were serious policy issues to be discussed, such as those that I will attend to in the committee stage, it would only be right and proper for them to be dealt with. For the purposes of this debate, the department should note that I said earlier that proposed new section 307A(1)(b), for example, was badly worded. Perhaps the department will take the opportunity between now and this evening to initiate an amendment to improve their own drafting, because the provisions before us are not too good.

The issue at hand, therefore, is whether a longstanding policy of the coalition deserves to be accepted by the parliament of Australia as a legitimate basis for changing the law. The fact that it is a longstanding policy is not relevant to the parliament, except to note it in passing. What is relevant to the parliament is to examine whether there is any evidence of its need. The committee hearing and the statistics provided by the department both now
and in the past do not make the case for the advancement of the bill. Therefore, it is my view that the bill should continue to be rejected unless our amendments are accepted.

Senator SANTORO (Queensland) (1.12 p.m.)—I want to depart from my prepared notes and seek to address some of the issues that have been raised by honourable senators. It is important that I address first of all the point with which Senator Murray concluded. The point that he seemed to make is that the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2] is again before the Senate because it is a matter of policy for the Howard government. That point by Senator Murray complements the point that Senator Ludwig made in his opening remarks when he said that the bill is being introduced again because of blind ideological reasons. Senator Murray made the further point that there is no evidence, which was another point that Senator Ludwig made in passing.

Senator Murray—And Mr Smythe.

Senator SANTORO—I will come to that, Senator Murray. First of all, on behalf of the government, let me reject the suggestion that blind ideology is driving the reintroduction of this bill into this place. I respectfully suggest that, if the principle of secret ballots were put to the members of just about any workplace within any establishment, in a secret ballot that workplace would vote for the provision of secret ballots within their workplace, particularly when it came to strikes.

Intimidation in the workplace does occur. There are various forms of intimidation within workplaces. There is still overt intimidation and implicit intimidation in today’s workplaces, despite the great advances that have been made to the industrial relations laws of this nation, mainly as a result of the efforts of employers who have agitated over many years. I will come back to this point later and talk about the high level of confrontation in the seventies and eighties mentioned by Senator Ludwig and Senator Murray, because there is a reason for the very high levels of confrontation and industrial disputation during those times. But the point that I am making is that there are implicit and explicit forms of intimidation, despite the fact that the laws do afford employees far greater protection than used to be the case in the early and mid-seventies.

Those on this side of the Senate support the validity—the sanctity, almost—of the principle of secret ballots. We have heard Senator Murray say that there are other secret ballot provisions within industrial relations legislation and that that is a good thing. I ask: what is the difference? How can a principle be good in one part of industrial relations legislation and not be good in another part, particularly within a workplace where intimidation will occur in ways that cannot be quantified and may not even be talked about if the provision for secret ballots, particularly for industrial disputations, is not there?

Another argument that has been put forward by the two speakers before me is that this bill is all about confrontation and that it goes back to the dark days of the mid to late seventies and early eighties. Presumably, they are referring to when there was, again, a non-Labor government in place. They say that this bill is basically a throwback to that era. One of the major reasons why there was record industrial disputation back in those days is that the then Fraser government was beginning to push through reforms which were clearly very unpalatable to the Labor Party and the union movement. Those reforms were being supported by the employer movement in this country and were, of course, being opposed by the union movement. There was enormous confrontation, but that was the result of what I believe was unprincipled and totally arrogant opposition by the union movement to the huge mandate that the then Fraser government had received to implement all sorts of reforms, including industrial relations reforms.

We have the suggestion that the policies of today, like the policies of yesterday, are hugely confrontational in the area of industrial relations. Of course, from the union point of view they are confrontational, because this particular provision—this simple principled provision of secret ballots in relation to industrial disputation—will deprive union leaders of much implicit power over
work forces within Australian workplaces. That is what is at the crux of this bill: depriving union leaders within workplaces, and unions generally, of a very subtle but nevertheless strong tool in terms of intimidation. I say to Senator Murray and to others who have spoken before me that just because the department said that this particular piece of legislation has not necessarily been driven by empirical evidence—which, as I have just suggested, is fairly hard to come by—does not mean the government of the day, which in this particular case has received a mandate to introduce this sort of reform—this was a very explicit area of policy developed, announced and promulgated particularly during the last three elections—should not go forward and put forward legislation in the other place, and then in this place, that supports a very principled piece of policy.

I heard Senator Ludwig say that, as a rule, he and other union leaders—he was, of course, a union leader in Queensland—

**Senator Abetz**—Who wasn’t, over there?

**Senator SANTORO**—You are right, but I do not want to get into enunciating those sorts of statistics—not at this stage, anyway. But Senator Ludwig made the curious statement that, as a rule, unions do not favour industrial disputation and, as a rule, union leaders do not just call out to their workforce, ‘Let’s all go out.’ I am on the record as saying that, when I had to deal with them in an official capacity, Senator Joseph Ludwig, as he is now, and his father, Bill Ludwig, were two of the more pragmatic union leaders in the state. That is probably one of the reasons why the ALP sent Senator Ludwig to the Senate. Back in my day, I actually complimented both Mr Ludwig Sr and Mr Ludwig Jr. He was probably destined for greater heights in the union movement in Queensland. But the point is that I did go on the record, often, saying that the AWU in Queensland, of which Senator Ludwig is a creature, was one of the more—how can I put it?—

**Senator Forshaw**—He wasn’t a ‘creature’. He was a highly regarded member.

**Senator Hogg**—An apparatchik.
simply does not follow. What is wrong with giving employees the direct ability to vote at the relevant time as to whether they will go out or not? There can be no argument against the principle—the essential, almost sacrosanct principle—that is contained within the legislation. I utterly and totally reject, on behalf of those on this side of the Senate, that this is a spurious, ideologically-driven piece of legislation.

Again, in terms of the unfair dismissal laws, I issue this challenge to those opposite, as I did in a debate in this place last week: go out and talk to your workers, to the people you seek to represent, and ask them whether they would like the opportunity to be involved in secret ballots in determining whether there is industrial disputation. See what they tell you. Better still, why don’t you ballot your members, maybe under Industrial Relations Commission supervision or Electoral Commission supervision, to see whether or not they would support secret ballots within workplaces for industrial dispositions?

Senator Forshaw—The AEC runs more union ballots than it runs in any other organisation.

Senator Santoro—You are talking about two different areas of law. Again, this clearly demonstrates that it is those on the other side of this place who are ideologically driven, and not us. If those opposite were not ideologically driven, they would be consistent in the arguments they have been putting forward today. I reject the arguments that they have put forward.

This is a principled bill. This is a bill that contains provisions that are supported by the vast majority of Australians. I say to those opposite: if you have any courage, you will make your opposition against secret ballots for protected action one of your election planks at the next federal election—and see how far that gets you—together with your opposition to the coalition’s unfair dismissal policies. Your policies have been rejected now by the Australian people at the last three federal elections and will be rejected again.

Senator Forshaw (New South Wales) (1.26 p.m.)—I thought I was only going to speak for about 10 minutes but, after Senator Santoro’s speech, I will probably take the full 20 minutes. Once again, we have this government introducing a piece of legislation which has two purposes only. The first purpose is to further restrict the rights of trade unions—democratic, registered trade unions—in this country from protecting and enhancing the rights and conditions of employment of workers in this country. That is the purpose of this legislation, just as it is the purpose of almost every other piece of workplace relations legislation that this government has introduced into this parliament since it took office.

I think this is about the third or fourth time that this bill has been brought before the parliament. It has been rejected on three occasions, but this government rolls it back in again. Why does it bring it back again? It is not because it really believes that this is going to improve the prospects of employment for people in this country. It is not because it believes that this is going to enhance the orderly negotiations that should take place and, in just about every case, do take place under the industrial relations system in this country. It brings it back because it wants to have another trigger for a double dissolution. That is the second purpose. It is a cynical attempt to set up a situation where the government has a number of pieces of rejected legislation, so that, if the Prime Minister gets it into his head to call a double dissolution, he will have the constitutional requirements to do so.
There are far more important issues affecting this nation and the world today than this piece of drivel. The government should focus on the important issues affecting this nation in terms of both the international situation and domestic issues. It should focus on the issues that the Australian people are focused on and on which they want leadership from their government, rather than just coming back here with its ideological obsession to beat workers and trade unions around the head.

Senator Santoro, in his speech, asked, ‘Why shouldn’t the Labor Party support secret ballots for workers before industrial action is taken?’ Let me answer Senator Santoro’s question. We support employees—whether they are members of unions or not—having their say in the decisions that they and their representative organisations make. If you look at both the current act and the previous legislation, which goes way back to 1904, you will see enshrined in there the principle of membership involvement in trade unions and employees’ involvement in the development of their own employment conditions.

As a trade union official who spent 18 years in the trade union movement and was National Secretary of the Australian Workers Union—the union which Senator Santoro just referred to—I can tell you that it was the members themselves who made the decision, as a last resort, to take industrial action by withdrawing their labour. They made the decision in meetings where they all had their say and could stand up and vote for or against the proposition to take industrial action.

Senator Santoro interjecting—

Senator FORSHAW—Senator Santoro, when this legislation finally comes to a vote in this parliament it is not going to be a secret ballot. It is going to be a ballot held on the floor of this chamber, which is one of the two houses of this great democracy we have, and we will all stand up and be counted as members of this parliament. We should not be afraid to stand up and vote according to the views that we hold, and that is the same principle that operates throughout this democracy, whether it be in organisations such as trade unions or in organisations such as community clubs and the like. The concept that every time you have a ballot it has to be a secret ballot is not one that is absolute in the democratic process.

The fact of the matter is that the process has worked well for almost 100 years in this country, since the Conciliation and Arbitration Act was first passed. I can say quite confidently that members of trade unions—and that is where this legislation is directed—have a far greater say in the running of those organisations than shareholders do in the running of companies in this country. You have only to look at recent examples to see that that is correct.

As was raised by way of opposition interjections—and I am sure my good colleague Senator Hogg will raise this too—this legislation does not say, ‘If we are going to propose secret ballots for employees and union members before they take industrial action, there should also be a secret ballot of the shareholders of the corporation before a decision to lock out those employees is taken.’ I do not recall that ever being advanced by anybody on the coalition side of this debate. It does not suit their ideology. You see, they would rather have a situation where management or the board of directors make the decision, and that happens constantly in the corporations in this country.

In trying to respond to that proposition, Senator Santoro said, ‘They’re different areas of law.’ They are not different areas of law at all when you are dealing with the employee-employer relations that exist within a company. Employment law applies equally to the employees and to the employer—which often is a company or a registered corporation. Therefore, it applies to the company’s shareholders, because the shareholders are the owners of the company. It applies as equally to them as it does to the employees. So if you are going to advance these half-baked, crazy propositions, then at least try and get some consistency into your arguments. But, of course, that is what happens with the coalition on so many of these issues. There is never any consistency. It is all about tipping the balance in favour of the employ-
ers that coalition members think they represent.

I say to members of the government, ‘Go out and talk to businesses as we in unions have done for years and years.’ One of the interesting things about this whole debate is that union officials spend more time talking to company representatives, human relations people and IR managers in businesses. We spend more time talking to them than any of you lot do! It was our day-to-day business to sit down with employers and negotiate wages and conditions. As an official of the union I was constantly dealing with employers in a huge range of industries that the AWU was involved in. We did not spend every single minute of every day talking about strikes—it was probably less than one per cent of our time.

We were dealing with day-to-day issues such as health and safety, and issues which actually affected the number of employees that that company had. When companies got into economic difficulties they would come and talk to us about those things. We talked to them about a whole range of issues such as how we might cooperatively advance the interests of their business and promote employment, and we did that constantly, day after day. We understand better than you people in the coalition what businesses need. I found that employer representatives—and I notice that in his remarks Senator Santoro paid tribute to officials of the AWU—wanted a system where they could sit down with representative organisations and discuss and negotiate the management of industrial relations in their business. That was our history.

Senator Santoro also said in his remarks that there was a massive, constant wave of industrial disputes across this country in the seventies, eighties and nineties. Frankly, that is just not true. If you have a look at the statistics you will see that it is not true. There were, no doubt, individual cases where there were major disputes, but to suggest that this country was on its knees—that it was almost out of business because of massive industrial disputation through all of the years of the Hawke-Keating governments and even through the years of this government—is a nonsense proposition. You are still locked back in a time warp where you think that Bob Menzies is the real Prime Minister. You are trying to head back to the fifties, and I will concede there were some issues at that time. When employees are constantly faced with the threat of the sack and the threat of a lockout—we saw Mr Corrigan try those tactics—you will get serious industrial disputation, in most cases provoked by rogue employers.

Let me turn to the legislation. What does this bill require? This bill requires that a secret ballot be held before industrial action which would be deemed to be protected industrial action under the Workplace Relations Act is taken. But it also requires, as part of that broad proposition, that it be a postal ballot. So first of all what you do is to say, ‘Well, it has to be a secret ballot.’ So employees are not able to come together at their workplace and discuss the issues at that time. Then, having been in a situation such as we are in this chamber—discussing the issues and getting reports on how the negotiations are going—they are not able to proceed to a vote, which is what happens now when union meetings or meetings of employees are held on job sites.

**Senator Eggleston interjecting—**

**Senator FORSHAW**—That is the way the process works, Senator Eggleston. I know you have no idea about how it works. You might tell us one day how it works in the Australian Medical Association. How many secret ballots does the AMA have, Senator Eggleston? I would be interested to know how many they have. I would be interested to know how many secret ballots the Law Society of Tasmania or the Bar Association of Queensland have. How many secret ballots do they have before they make decisions?

**Senator Abetz**—They do.

**Senator FORSHAW**—Senator Abetz is sitting there saying, ‘They do.’ We will check it out. As well as having been a union official, Senator Abetz, I do have some legal qualifications and I know a little bit about how those organisations work, and I know that that is a nonsense proposition. They do not hold a secret ballot for every single deci-
sion they make—you know that, and I know that.

**Government senators interjecting—**

**The ACTING DEPUTY PRESIDENT** *(Senator Bolkus)*—Order! Senators on my right, would you please stay quiet. That includes you, Senator Abetz.

**Senator FORSHAW**—This proposition would remove the ability to have an open ballot of employees or members at a workplace; rather, it would require a postal ballot. So you build in a time delay. You are at a critical point in the negotiations and the negotiations have broken down. Employees have a right to make a decision and to take protected industrial action. They have a right to take industrial action which has been recognised in employment law for hundreds of years—the right to, as a last resort, withdraw their labour. Rather, the government say that they have got to have a postal ballot and to build in a delay. Then they have to prepare a roll. Well, that will take a few days, or maybe a week or more by the time the machinery gets into action. Then not only do you have those requirements but a minimum of 40 per cent of the people have to vote—you have to have a quorum.

Interestingly enough, in the Corporations Law, when votes are taken—and that is generally only at annual general meetings or special meetings of a company that are called by a corporation—it is the directors that invariably have the say, because they hold all the proxies. We do not have proxy voting in trade unions, but that, of course, is a feature of Corporations Law. I am not opposed to proxy voting per se, but that is one of the reasons why you have a concentration of power in the boards or in the management of the major corporations in this country. It probably helps to explain why we have had such massive collapses as we have seen recently with HIH and One.Tel, and the fallout from that, as well as the situation at AMP. In these cases, billions and billions of dollars of shareholders’ funds—the funds of ordinary Australian taxpayers who are shareholders in those companies—have been lost. And yet, the people who made those decisions walk out the door with possibly $10 million, $20 million and $30 million in their pockets.

That is the sort of situation that you people in the government promote. You come in here and say, ‘The greatest problem facing this country is the threat of industrial action in one company and, therefore, you have to have a secret ballot of the members.’ ‘Get real,’ I say. Get away from your ideological obsession about beating down on workers. Start focusing on doing something about fixing up the mess that exists in corporate Australia, where the hard earned savings of workers in this country are being lost because of mismanagement and, in a number of cases, straight out criminal activities.

I think I have covered the issues that I wanted to cover in the 10 minutes that I was going to speak for—I was provoked into speaking for longer. I am now going to leave it to my good friend and colleague Senator Hogg to carry on where I have left off. Once again, this legislation will be rejected by this chamber. It should be rejected and then consigned to the bin where it belongs. Let us get on with the real business of dealing with the real issues that are affecting the lives of Australians today.

**Senator HOGG** *(Queensland)* *(1.44 p.m.)*—The debate on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2] has been interesting, to say the least. I have not participated in the debate when this bill has been before the chamber on other occasions, but I felt it necessary to do so on this occasion because, like my colleagues, I think this really is becoming a very cynical and very unnecessary exercise. The proposal that is being put forward by the government will further weaken important elements of cooperation and conciliation in the processes within the employer-employee relationship. The Senate chamber lights have just gone out.

**The ACTING DEPUTY PRESIDENT** *(Senator Bolkus)*—Senator Hogg. I think the power has gone out. Well, they have been asking for us to stop supplying power to the government! I do not think this is what was intended.

**Senator HOGG**—I will continue to speak even though I am half in the dark, which is not as much as usual! It is well known that I
have a background in the trade union movement, particularly in the eighties and the nineties—the period that people like to refer to so much when talking about industrial disputation and problems. I was the branch secretary of the second-largest trade union in Queensland. On numerous occasions I found myself in situations where claims were before the employers and I as a trade union official had to deal with those claims on behalf of my members and had mass meetings where those matters were put to the members of my trade union. In spite of what Senator Santoro implies, there was never any overt or implicit intimidation on my part or on the part of any officials of my organisation at any of those mass meetings that occurred. No-one ever interpreted my actions in that way, and it would have been completely wrong to have done so. As for the power that was imputed to go with being a trade union official, I can assure senators on the other side that that is complete nonsense. If you have the right arguments, thoughts and debate, you will reach the right outcome, and that does not necessarily mean that it is the outcome that you as a trade union official might have desired in addressing a particular mass meeting of the workers that you have represented in negotiations.

It is important to look at the Labor senators’ report in the Report on the provisions of bills to amend the Workplace Relations Act 1996 of the Senate Employment, Workplace Relations and Education Legislation Committee of May 2002. The Labor senators’ report from paragraphs 1.45 to 1.49 really sums up what this piece of legislation is about. I am not going to go through these paragraphs in any great detail, but the heading sums it up. It says ‘Absence of any demonstrated need’. Paragraph 1.45 says:

The Government has never sought to demonstrate the existence of the problem that the Bill is supposed to address.

Never, ever! Senator Carr was involved in putting this together, and one can see, therefore, that it has got some very penetrating and deliberate conclusions. Paragraph 1.47 says:

Nor is there any evidence that current levels of industrial disputation require additional legislative controls. Enterprise bargaining and employment insecurity and enormous levels of personal debt have seen levels of industrial disputation fall to their lowest level since recording began.

That is being borne out again here in the debate today. The Labor senators’ report then got to the nub of what this debate is about. Paragraph 1.48 says:

... the Minister has asserted that the bill will enhance freedom of choice for workers and ensure that protected action is a genuine choice of workers concerned. This implies that current arrangements are defective in this regard and indeed the Bill, like its predecessors, is based on an assumption of intimidation of employees by union officials or the mass of members at meetings.

Paragraph 1.49 goes on to refer to the fact:

No convincing evidence was presented to support insinuations of intimidation.

That has been my experience in my organisation, which is also the largest trade union in this nation—that is, intimidation does not prevail anywhere throughout that organisation or throughout many other trade unions. One might try to assert it in the case of one or two, but making those assertions stick has fallen on fallow ground indeed. It is ideologically driven—there is no doubt about that—and it is not a balanced approach.

To that end, I want to take a few moments to go through the submission of the Shop Distributive and Allied Employees Association to that committee inquiry that was held last year. It is a very good submission; it is a very good union. I want to go through these quotes rather than waste time traversing a whole lot of Hansard. It said:

With the introduction of any new legislation the government should ensure that it is even handed. That is the one thing that this legislation does not do; it is not even-handed. The submission went on to say:

If the government is serious with this proposed amendment then it should, in order to maintain a balanced position require that employers are also subject to the same secret ballot provisions required of workers.

So the submission of the SDAEA was quite reasonable: if the government were to put forward legislation, it should be even-handed and there should be a balanced position requiring the same constraints upon the em-
ployers as there are upon the employees. The submission said:

There have been numerous examples where employers have been prepared to take protected industrial action in the form of lock out of workers. That is what this is about; protected action. If it is against the workers, it is fine in the view of this government for protected action to be taken by the employers without any constraints whatsoever, but where employees might be considering taking protected industrial action then every obstacle has to be thrown in the path of the employees. The submission went on to say:

Where an employer is a corporation or partnership, then there should be an absolute obligation on the employer to test, through a democratic process, the views of its constituent stakeholders to see whether or not they support the taking of protected industrial action against employees. This is one of the areas where, if it is good enough to impose a condition on workers, then it is good enough to impose exactly the same condition on employers.

What is good for the goose is good for gander. The submission goes on:

It would appear that the Government believes that Chief Executive Officers of major corporations which may have large shareholders can effectively be a law unto themselves and be the decision maker for and on behalf of their constituents. It would appear that the Government takes the view that shareholders of corporations have no right to have a say in relation to such serious issues as the taking of protected industrial action by a corporation against its workers.

We are talking about industrial law and protected industrial action against employees. It is reprehensible that the government believe that they can apply that condition, where there must be a quite convoluted, overly prescriptive balloting process for employees, but the employers get off scot-free. The submission to the committee goes on:

If the Government is concerned to promote democratic processes in relation to the taking of protected industrial action and to ensure that the taking of protected industrial action is not used as a substitute for genuine discussions during the bargaining period, then it would appear that placing the same secret ballot obligations on employers as will be placed on employees would encourage employers to genuinely try to reach agreement on a matter in dispute ...

I do not think there is any doubt that the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2] is purely and simply a lever for political purposes, to be used to as part of a suite of measures to secure a double dissolution. Senator Murray said in his submission here before that it was overly prescriptive. I support that. It is burdensome. It is not conducive to resolving any industrial dispute whatsoever. This bill is designed to swing the balance of power back to the employers. What is needed in the resolution of many industrial disputes is commonsense, and that is something that unfortunately seems to be lacking on the other side of politics.

I come from a union background where I have had to stand up before many people at mass meetings and put to them the facts of the matter. Those people, in many instances, voted—without any prompting from reprehensible legislation such as we have before us today—in a secret ballot process which was a simple process. They spoke their minds and invariably, if they were suitably incensed—and they mainly were, by the outrageous responses that employers give from time to time—then they voted the way they felt and they were not intimidated by any trade union officials that I have been associated with or have ever known.

It seems to me that the legislation is quite unnecessary. It does nothing at all to support the resolution of disputes between employers and employees. If the government were in any way serious about doing something in industrial relations, they certainly would take some time to go out and find out what goes on in the real world. I am quite sure that there are a number of people over there who, whilst they might put forward a sincere view on this issue, do not really understand what goes on in the real world. They do not know what it is to confront a number of people at a mass meeting. If they think that a trade union official is going to stand up there and have some sort of power that will enable that trade union official to bully or intimidate the workers at that meeting, then they are completely wrong.

I note that I am being joined by a number of colleagues who would have shared the
same sort of experience that I have had over a long period of time in the trade union movement. There is no doubt at all that this is not what trade unionism is about. Trade unionism is about giving a fair, reasonable outcome to the employees that the particular trade union represents and giving a reasonable outcome for the employer to continue their business, because, without that, the companies that employ many of these people would go out of business. For those reasons, I believe it is well and truly a sensible action for this parliament, this Senate, to once again reject this piece of legislation and reject it purely and simply because it is unbalanced, it is not even-handed and it does not deliver a fair outcome to the people in our workforce.

Debate interrupted.

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 Minchin, Minister for Finance and Administration, Minister representing the Minister for Industry, Tourism and Resources and Minister representing the Treasurer, will be absent from question time today. Senator Minchin’s absence, Senator Abetz will take questions relating to the Industry, Tourism and Resources portfolio and Senator Coonan will take questions relating to the Treasury and Finance and Administration portfolios.

QUESTIONS WITHOUT NOTICE

Defence: First Strike Doctrine

Senator CHRIS EVANS (2.00 p.m.)—My question is directed to Senator Hill, Minister for Defence. Is the minister aware of comments by the Minister for Foreign Affairs that Australia does not support the US doctrine of first strike and that his, Senator Hill’s, comments to this effect were not authorised? Does the minister stand by his comments of June and November last year when he indicated support for the doctrine? Minister, just what is the government’s policy on pre-emption? Does the government support the right of countries to militarily attack other nations because of a perceived possible future threat? Is the Minister for Defence speaking for the government on this issue or is Mr Downer?

Senator HILL—I am aware of some media on this subject today. I was approached this morning by Mr Downer, who said that the report was a gross misrepresentation. I have, of course, accepted him at his word. Obviously what I said last year and what the Prime Minister said last year stands. In relation to self-defence, which is authorised under the United Nations Charter, there has always been an entitlement to act before the attack is actually carried out. In the past, when there was long notice of such attacks, it was possible for the doctrine to be developed in fairly narrow terms. So one would look to see if the attack was imminent, if it was real and a number of other such criteria to determine whether the response was legitimate. What we were saying last year and what many others around the world have been saying is that, in this new environment of terrorist acts by non-state players and the behaviour of rogue players in relation to weapons of mass destruction, the doctrine surrounding self-defence as it applies to the right to pre-empt the attack may need further consideration. Apart from the Australian Labor Party, I do not know of many others who do not accept that point.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer and his confirmation that he still supports the theory of pre-emption. Is the minister saying then that pre-emptive strikes can only be launched by the US or is that right—the right to launch military attacks against any other nations that may be perceived as a threat in the future—attached to all countries? Would the minister and the Howard government support any other country launching a pre-emptive military strike on another country under this new doctrine?

Senator HILL—What I have been trying to explain to Senator Evans is that this is not a new doctrine and that, under the jurisprudence that has been developed to the legitimate entitlement of self-defence, one has never had to wait until the attack. It would in fact be foolish to expect one to wait until the attack without responding—but there have to
be circumstances that would justify this
defence. What I am saying is that, in a world of
terrorism, where the attacks are not adver-
tised, where they are carried out by non-state
players and where they use asymmetric
means such as flying aircraft into buildings,
this jurisprudence needs revision. As I said
before, other than the ALP in Australia, there
are very few others who dispute that fact.

Iraq

Senator JOHNSTON (2.05 p.m.)—My
question is to the Leader of the Government
in the Senate, Senator Hill. Will the minister
update the Senate on the contribution of
members of the Australian Defence Force to
the international effort in disarming Iraq?

Senator HILL—I am pleased to take this
opportunity to bring the Senate up to date
regarding the recent activities of our forces. I
am pleased to report to the Senate that all
Australian troops deployed on Operation
Falconer are safe and well. Personnel from
all three services continue to play a vital part
at the forefront of coalition operations
against Iraq. HMAS *Anzac* has been in-
volved for three days now in providing naval
gunfire support to British forces engaged in
clearing the Al Faw Peninsula of Iraqi
forces. Targets have included enemy bun-
kers, artillery positions and coastal defensive
positions. *Anzac* fire would have helped sup-
press the Iraqi forces. UK commanders have
praised the *Anzac*’s performance.

Mr President, you will be interested to
know that an Australian Navy officer, Cap-
tain Jones, is in charge of the multinational
operations in the northern Persian Gulf from
his headquarters on HMAS *Kanimbla*. HMAS *Darwin*,
along with a number of US and British ships,
is part of this task group. There has already been reporting of their
interception of an Iraqi attempt to lay a large
number of sea mines. If that had been suc-
cessful, the consequences could have been
catastrophic.

The Army’s landing craft continue to pro-
vide support to coalition operations in the
area. The task of mine clearance further up-
stream in the waterways has commenced and
we would expect the ADF mine clearance
teams to be active in that area in the near
future. Our special forces continue their re-
connaissance missions deep within Iraq.
These missions have brought them into con-
tact with Iraqi forces on a number of occa-
sions in the last few days. On Saturday night
they called in an air strike on an enemy in-
stallation containing equipment which could
have been used to handle missiles—includ-
ing a special crane, fuel tanks, command and
control vehicles, and generators. The site
was subsequently destroyed by coalition
military aircraft.

Most recently, overnight an SAS element
observed an Iraqi platoon, equipped with
heavy weapons, travelling in vehicles. The
SAS again called in close air support to en-
gage the platoon. Also overnight, our FA18
fighter aircraft led a strike mission on identi-
fied enemy targets in Iraq. The Hornets
worked closely as part of a team with other
coalition aircraft of various types to conduct
a successful attack, during which our aircraft
dropped a number of 2,000 pound bombs on
a target. They returned to base safely on
completion of their mission. Our P3 Orion
reconnaissance aircraft and C130 Hercules
transport aircraft continue to provide invalu-
able support to the coalition. We can all be
very proud of the courage, professionalism
and skill of our forces and of the contribution
they are making to removing the threat of
weapons of mass destruction and to a safer
Australia.

Iraq

Senator HUTCHINS (2.08 p.m.)—My
question is to Senator Hill, the Minister for
Defence. Minister, can you confirm whether
Turkish troops have entered the Kurdish ar-
reas of northern Iraq and, if so, how many
Turkish troops are now believed to be in
Iraq? What is Australia’s position on any
such incursion? Does Australia support Tur-
key’s right to enter Iraq?

Senator HILL—Our advice, as of a little
earlier today, was that Turkish military forces
as such had not entered Iraq but that a num-
ber of personnel who could be better de-
scribed as having police type functions,
lightly armed and dressed in a military style
have entered Iraq and are carrying out func-
tions to secure the border and to assist with
any humanitarian needs.
The possibility of a Turkish military force as such entering Iraq is clearly being addressed through arrangements with the United States. It is no secret that there is considerable concern at that possibility. We can understand why Turkey might be of a mind to do so—because of their concern about the establishment of an independent Kurdish state—but we certainly would not encourage it. We would prefer to deal with those issues in other ways through the coalition. Our position is really not dissimilar to that, except we are not negotiating with the Turks; the United States is.

Senator HUTCHINS—Mr President, I ask a supplementary question. Minister, if, as you say, there are no military personnel in that part of Iraq, has the government taken any action whatsoever to advise the Turkish embassy of Australia’s position in relation to any Turkish pre-emptive strike on Iraq?

Senator HILL—Obviously I would have to check that with the Minister for Foreign Affairs, but I think our position is well appreciated by the Turkish government. We appreciate the assistance that they are now giving, albeit a little late.

Senator Chris Evans—You can’t tell us, but they’re well aware of it!

Senator Faulkner—You don’t know, but they know!

Senator HILL—Don’t know what? If you want to know what has been communicated through our embassy—which I thought was what the supplementary question was about—then I will check that with the Minister for Foreign Affairs.

Iraq

Senator TCHEN (2.11 p.m.)—My question is to the Minister for Family and Community Services and the Minister Assisting the Prime Minister for the Status of Women, Senator the Hon. Amanda Vanstone. Would the Minister inform the Senate of the role being played by women in Australia’s armed forces during the current conflict in Iraq?

Senator VANSTONE—I thank Senator Tchen for the question. I think that Australians generally and Australian women in particular will be interested in the reply. There are just over 200 women within the Australian group, which is about 10 per cent of the force that is deployed. I am advised that the Australian Defence Force is made up of roughly 50 per cent Navy, 40 per cent Air Force and 10 per cent Army. Women are already eligible to serve in about 90 per cent of the employment categories in the ADF; they are only excluded from those involving direct combat. Women make up about 13 per cent of the Australian Defence Force, so the 10 per cent in Iraq is not far off the general percentage composition of women in the Defence Force. They are totally integrated into operations.

I can give some advice on the types of roles they are undertaking. In the Navy, for example, there are many female members on board our ships in the Persian Gulf. They are able to undertake any number of duties—for example, as officers of the watch and in boarding parties, maintenance, logistics support, operations room and weapons systems operations. In the Army, roles include combat support tasks and logistics. In the Air Force, they include air crew, maintenance and logistics tasks. I am also advised that about 20 per cent of the crew of HMAS Kanimbla are women. They are involved in a whole range of the ship’s activities. I think it is important to put these facts on the record today because, while I am sure every Australian wishes for the safe return of every one of our defence personnel engaged in this activity, I am equally sure that there is a special place in the hearts of Australian women for the women who are serving.

Iraq

Senator WONG (2.13 p.m.)—My question is to Senator Hill, the Minister for Defence and the Minister representing the Minister for Foreign Affairs. What information can the minister provide to the Senate on reports from the International Committee of the Red Cross that power and water supplies in the southern Iraqi city of Basra have been out of operation for the past 48 hours? Can the minister confirm, as the Red Cross has stated, that the main water-pumping station is in the area within the control of US forces and that, without immediate restoration of water supply, there is an immediate risk of humanitarian disaster in Basra? What con-
tingency plans do US or coalition forces have in place to deal with cuts in essential services such as power and water? And what action will the Australian government take to ensure that Red Cross engineers have immediate access to restore power and water supplies to Basra?

Senator HILL—It is an unfortunate reality during wars that essential services are often lost and innocent people suffer as a result. In this particular conflict, a great deal of effort is being made to avoid civilian casualties and to avoid, as much as possible, discomfort to innocent communities. The quarrel that we have is certainly not with the Iraqi people—they have suffered enough under Saddam Hussein. Our quarrel is with Saddam Hussein’s possession of weapons of mass destruction, which he has used on his own people before and has used on others. I also have heard that some essential services are down in Basra. The city is still the subject of conflict. I am sure every effort will be made to return those essential services as quickly as possible.

Senator WONG—Mr President, I ask a supplementary question. Can the minister confirm that, if the United States reported aim of isolating and laying siege to Iraqi cities remains the strategy, the looming humanitarian disaster in Basra is likely to be repeated in numerous Iraqi cities as the conflict moves towards Baghdad? What contingency plans do coalition forces have for dealing with the provision of essential services to the Iraqi population and to hospitals and medical services?

Senator HILL—Mr President, I tried to make the point to Senator Wong—obviously it was not convincing—that every effort is being made to avoid suffering by innocent Iraqi people. Our objective, albeit an incidental objective, is to benefit the Iraqi people from this conflict, to give them a chance of a better life subsequent to the conflict. Thus, I again give her my assurance that every effort will be made to minimise such consequences.

Geneva Convention

Senator BARTLETT (2.17 p.m.)—My question is to the Minister for Defence. As the minister would be aware of complaints by the United States Secretary of Defense of Iraq’s clear breach of article 13 of the Geneva convention concerning treatment of US prisoners of war and they are being broadcast on television, does the minister agree that article 13 of the convention must also apply to Iraqi prisoners of war held by the US? Will he ensure, using the close relationship that Australia has with the US, that the US will also meet the requirement of the convention that POWs must at all times ‘be protected against insults and public curiosity’? Given the United States sudden interest in complying with international law, will the minister now also use his close relationship to the United States to make sure that the Australian citizens currently being detained without charge in Guantanamo Bay, being held incommunicado and with no human rights at all, in blatant breach of international law, are given some rights?

Senator HILL—Not only are we a party to the Geneva convention but we respect our obligations under it. While it is not my role to speak for the United States, I am sure they respect their obligations under it as well. That convention applies particular rights in relation to prisoners of war, and that is appreciated. The situation in relation to those illegal combatants in Guantanamo Bay is different, as we have discussed in this place on a number of occasions in the past.

Senator BARTLETT—Mr President, I ask a supplementary question. The minister would be aware that I did not call the people at Guantanamo Bay prisoners of war, but there is still a clear and blatant breach of international law, that they are being held—and those Australian citizens are being held there—without trial, incommunicado and without any legal rights whatsoever. Will the government maintain consistency in requiring application of international law by advocating on behalf of our own citizens in that regard, and will the minister also rule out Australia’s agreeing with the United States to allow them to get an exemption under article 93 from the operation of the International Criminal Court so that they are removed from any accountability from their actions in war conditions?


Senator HILL—Senator Bartlett’s interpretation of the obligations under international law obviously differs from that of the Australian government. We certainly do not accept that there is a breach of international law in this regard. We are also pleased that those being held are being properly looked after, although their circumstances would certainly not be described as comfortable. They are being properly fed, given medical treatment where necessary and are allowed to practise their religious rights. That has been our primary approach to that particular matter. In relation to one of the individuals there, in my humble assessment, had he not been handed over to the United States in Afghanistan, he probably would not be with us today and I am pleased that that occurred.

Foreign Affairs: Travel Advice

Senator WEBBER (2.20 p.m.)—My question is to the Minister representing the Prime Minister and the Minister for Foreign Affairs, Senator Hill. Does the minister recall the Prime Minister stating on numerous occasions last week that there was no intelligence warranting any upgrade in threat assessment for Australians? Was there any new intelligence which formed the basis for the release of a global travel advisory by the Department of Foreign Affairs and Trade at 7.43 p.m. last Friday night? Can the minister confirm that this travel advisory advises Australian travellers of a general risk of terrorist activity to Western interests? Why then has there been no upgrade of the domestic threat assessment for Australians staying put here in Australia?

Senator HILL—I said last week that we obviously act on the advice of our independent, objective specialist advisers in this area. In relation to terrorist threats in Australia, we have been on a heightened alert since 11 September 2001. That continues to be the situation. That is the advice we have been given and that is the advice we have acted upon.

Senator WEBBER—Mr President, I ask a supplementary question. In light of this revised general travel advisory issued by DFAT late last Friday, does the Howard government now acknowledge that Australia and Australians, both at home and abroad, face an increased terrorist threat as a result of Australia’s participation in the war against Iraq?

Senator HILL—Speaking generally, the answer to that is no. But obviously in circumstances where there is a conflict and Australia is participating as one of the coalition seeking to enforce UN Security Council resolutions, it is understandable that that might affect the travel plans of some. They would want an update from the Department of Foreign Affairs and Trade in relation to those matters, and that is the purpose of the advisories that are given by the department from time to time in relation to international travel.

Small Business: Trade Practices Act

Senator MURPHY (2.22 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. The minister would be aware of the concern amongst small business following the High Court’s Boral decision as to the application of section 46 of the Trade Practices Act when dealing with anticompetitive behaviour and the misuse of market power. Can the minister inform the Senate what the government has done to determine the steps that need to be taken to allow section 46 to work as it was originally intended and when we can expect legislation to give effect to the changes that are necessary?

Senator ABETZ—The High Court of Australia found by a 6-1 majority that Boral Masonry Ltd did not breach the misuse of market power provisions of the Trade Practices Act. On Friday, 28 February 2003 in the Federal Court, Justice Giles rejected an application to dismiss the ACCC’s misuse of market power case against Qantas. Justice Giles dismissed the application because there are a number of evidentiary matters to consider that differ from the Boral case. The government are currently in the process of preparing a response to the Dawson committee’s review of the Trade Practices Act. On Friday, 28 February 2003 in the Federal Court, Justice Giles rejected an application to dismiss the ACCC’s misuse of market power case against Qantas. Justice Giles dismissed the application because there are a number of evidentiary matters to consider that differ from the Boral case. The government are currently in the process of preparing a response to the Dawson committee’s review of the Trade Practices Act.
sions in the Trade Practices Act. The decision of Justice Giles indicates that section 46 is not unworkable and that each case needs to be considered on its own merits. Can I also indicate to Senator Murphy that honourable senators such as Senator Ron Boswell and Senator Guy Barnett have made representations about this. They have a very strong record of supporting small business and the government will consider their views along with other views that are put to us in our general consideration of the Dawson report.

Senator MURPHY—Mr President, I ask a supplementary question. I thank the minister for the answer. But, Minister, can you illuminate on when we might expect this government response so as to assist small business with the very serious concerns they have in respect of future cases that might need to be dealt with by any court?

Senator ABETZ—As to the exact timetable, I do not know. I will pass that on to the Minister for Small Business and Tourism, the Hon. J. Hockey. In the event that there is any further information, I will report back to the senator.

Australian Security Intelligence Organisation: National Security Briefing

Senator FAULKNER (2.26 p.m.)—My question is directed to Senator Ellison in his capacity as Minister representing the Attorney-General. Can the minister assure the Senate that no minister in the Howard government or member of ministerial staff leaked to an ABC journalist the alleged contents of the national security briefing provided to the Leader of the Opposition by ASIO last Friday? Minister, what inquiries have the Attorney-General or ASIO made into this alleged leak of national security information? I ask the minister to inform the Senate of what has been the outcome of those inquiries.

Senator ELLISON—Mr President, Senator Faulkner has raised an issue which deals with the leaking of some information.

Senator Ian Macdonald—Alleged leak.

Senator ELLISON—I am obliged to Senator Ian Macdonald, who says it is an alleged leak, of course. ABC radio reported on Saturday that the opposition leader received a briefing from the Director-General of ASIO last week in relation to security issues. As the Senate may be aware, ASIO regularly briefs the opposition leader on national security matters. This is in the normal course of matters. The Senate may also remember that the opposition leader talks regularly about the fact that he receives such confidential briefings. The ABC reports at the weekend contained nothing to suggest the journalist had information regarding the detail of the content of the briefing, and it should come as no surprise that in general terms the briefing provided was consistent with public statements made by the government last week regarding threat levels in Australia. The government have clearly and consistently stated that we are operating on the basis of advice from relevant security agencies such as ASIO. Certainly, the government can understand Mr Crean’s discomfort at having to acknowledge that the government’s position is correct. Our advice is that there is no intelligence of a specific threat to warrant an increase in the overall threat level to Australia, which has been at heightened levels since September 11, 2001.

Senator Conroy interjecting—Senator Chris Evans interjecting—

Senator ELLISON—I hear the interjections from the opposition, but clearly Mr Crean is embarrassed that he and others opposite disputed that fact for three days, in a blatant scaremongering attempt, before seeking a briefing from ASIO. He has now been proven wrong. Now that they have the facts, the government looks forward to the opposition confirming that their position in this regard has now changed. In relation to whether there will be an investigation, can I say that again Mr Crean talks regularly about the fact that he receives such confidential briefings. That is something which is out on the public record. There is nothing in the ABC reports that suggests the journalist had information regarding the detail of the content of that briefing to Mr Crean. The advice that I have from the Attorney-General is that he has discussed the matter with the Director-General of ASIO and agreed that there
would appear to be nothing that would warrant an investigation into the matter.

Senator Faulkner—Mr President, I ask a supplementary question. Minister, while it is true that the fact that these briefings are provided is not confidential, it is not true to say that the alleged contents of that briefing were not made public. Perhaps the minister can inform the Senate what disciplinary and legal action would actually be taken against a person found to have leaked national security classified information. In the event of this alleged leak being traced back to the minister or a ministerial staffer, can the minister confirm that there will be no political protection provided to that person or persons? Can you give that commitment?

Senator Abetz—Time, time, time!

The President—Senator Faulkner, that was a very long supplementary question.

Senator Ellison—Senator Faulkner is debating the subject when he says that he disputes the question as to the detail reviewed. Perhaps he is inviting me to go into that detail publicly but, for obvious reasons, I will not in the interest of national security.

On the other issue as to the leaking, Senator Faulkner asked the hypothetical question, ‘What if?’ I can tell you that Senator Faulkner, with his involvement in the Public Service—and he professes to have a great involvement with the Public Service—knows full well the consequences of any unlawful leaking of information by a member of the Australian Public Service.

Iraq

Senator McGauran (2.31 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister outline to the Senate how Australia’s primary producers are likely to be involved in the humanitarian contribution the government is making to assist the Iraqi people, and will the minister outline the long-term prospects for Australia’s wheat trade in the Middle East?

Senator Ian Macdonald—I thank Senator McGauran for that very important question. Those of us on this side do have a very great interest in the reconstruction of Iraq when hostilities cease. Whilst the Australian government is involved in the international effort to disarm Iraq, the Australian government is already engaged in a variety of ways to meet the immediate needs of the Iraqi people—some of which will involve Australia’s primary producers, Senator McGauran. We have provided an additional $17½ million to UN humanitarian agencies, the International Committee of the Red Cross and Australian non-government organisations for humanitarian assistance. In addition, Australia will supply 100,000 metric tonnes of Australian wheat to support the provision of urgent food aid to the Iraqi people. Australian wheat is already on ships in the gulf, and these humanitarian supplies can be delivered as soon as ports and other distribution points are secured. We are working very hard on getting shipments into Iraq and distributing them as quickly as possible.

We are also looking to Iraq’s future needs and we are deeply engaged with the United Nations, the British government and the American government on post conflict reconstruction issues. Assisting with the economic rehabilitation of Iraq is a top priority, and agriculture is certainly a sector where Australia can make a very effective contribution. Australia and Iraq have more than 50 years of agricultural links through the supply of wheat, which we know about—and, as well, meat and dairy products have also been the subject of trade between the two countries. We have also done some considerable work in assisting Iraq in the dryland farming area, where we have a particular expertise that we are able to help the Iraqis with. This has occurred through tough times of aggravated political difficulties and actual military hostilities.

Over the past 50 years, Australian farmers have been a supplier of very reliable, high-quality wheat to the Iraqi people, and we expect this supply to continue once a democratic and just regime is in place in Iraq. We have already identified Australian agricultural experts to assist with planning and will ensure that these experts can be deployed to Iraq once the security situation allows them to enter that country. These steps will ensure that Australia’s agricultural industries are
well placed to retain previous trade arrangements and well placed to identify new trade opportunities in the Middle East as they occur.

Iraq

Senator O’BRIEN (2.35 p.m.)—My question is also to Senator Ian Macdonald, the Minister representing the Minister for Agriculture, Fisheries and Forestry. Can the Minister confirm that the Secretary of the Department of Agriculture, Fisheries and Forestry wrote to a number of key rural industries last Wednesday seeking their support for the adoption by national animal health networks of a heightened level of alertness due to ‘current international circumstances’ and specifically requesting an increased awareness of any indication that could signal the occurrence of a highly contagious disease? Can the minister confirm that Australia’s Chief Veterinary Officer has also contacted members of the Consultative Committee on Emergency Animal Diseases requesting the same increased level of awareness? If there is no increased threat to Australia as a result of our direct involvement in the conflict in Iraq, as claimed by the Prime Minister, why has the government significantly increased the level of preparedness for a possible outbreak of a highly contagious disease?

Senator IAN MACDONALD—I thank Senator O’Brien for raising these general issues about Australia’s quarantine and biosecurity arrangements. As Senator O’Brien will know, from the questions he has asked at estimates committees, from media reports and, I suspect, from private briefings that we have arranged for him with the department, since September 11 and since Bali Australia’s biosecurity and quarantine arrangements have been sharpened. Since those times we have had a very high level of defence against possible incursions from terrorists, and that is to be expected, as the government has made fairly clear over the years. We have had any number of conferences and arrangements with the appropriate state agencies to let us know immediately there is any sign of incursion. This has all occurred, I might say, since September 11, and particularly since Bali. Our processes are well in place. We have had a lot of training exercises. We think that we are as alert and as ready as we possibly can be should there be any incursion from terrorists or other sources entering our country.

Senator O’Brien asked me a couple of specific questions. As to whether I was aware that the secretary wrote to certain people, I am not aware of that. If that did happen—I regret to say that, from experience, I cannot accept as true Senator O’Brien’s assertion that it happened, because he has been caught out so many times—and if it is important to Senator O’Brien to know whether the secretary did write to these organisations I will certainly get that information for him. Senator O’Brien raised another specific question about some very precise information. Again, he asked whether I am aware, and the answer to that is no, I am not aware, but I will certainly get the information that Senator O’Brien sought from the minister and report back to the Senate as soon as possible.

Senator O’BRIEN—Mr President, I ask a supplementary question. Is the minister seriously suggesting that the term ‘current international circumstances’ in a letter of 19 March—that is, last Wednesday—did not refer to the impending conflict in Iraq? In the light of the Howard government’s significant upgrading of the threat assessment for Australian plants and animals but its refusal to do so for the Australian people, can the minister confirm that some of the contagious diseases relevant to animal health, such as anthrax, are equally valid as concerns for the human population of Australia?

Senator IAN MACDONALD—Senator O’Brien first of all asked me, ‘Was a letter sent?’ then he allegedly quotes from a letter. Why he bothered to waste his time, if he has a copy of the letter, I am not quite sure. Perhaps he could have given it to me. If he had given it to me I might have been better able to assist him. The second part of his question was based on an incorrect premise, so it does not warrant answering. If he is asking for my expertise on how anthrax affects human beings and animals, I can tell Senator O’Brien that I am not the most qualified person to answer that question, but I can read the
newspapers the same as he can. I know that anthrax is a problem to human beings, as it is to animals.

Immigration: Ms Puangthong Simaplee

Senator GREIG (2.40 p.m.)—My question is to the Minister for Justice and Customs, Senator Chris Ellison. I refer the minister to the recent exposure of the tragic case of Ms Puangthong Simaplee, who was trafficked into Australia at the age of about 12 and forced to work as a prostitute. Is the minister aware that, after some 16 years of this bonded labour, Ms Simaplee died in September 2001, a lonely and painful death in detention, having been seized and sent straight to Villawood and subsequently given inappropriate treatment for her drug addiction? I ask the minister: given that women trapped in this appalling situation are victims of crime rather than perpetrators of it, will the government reconsider its policy of mandatory detention for people in these circumstances and implement a more humane method of dealing with trafficked women?

Senator ELLISON—It is a serious issue that Senator Greig raises. As I understand it, he is talking about someone who entered Australia illegally. There are two aspects to this question: people who enter Australia illegally and people who enter Australia legally and then engage in illegal activities. That is a question of trafficking that we have seen recently in Victoria. The government condemns in the strongest possible terms anyone being trafficked, whether it is into Australia or any other place. The government has strong legislation which criminalises some of the most serious forms of exploitation that are particularly associated with trafficked persons and persons who are in Australia illegally. This was demonstrated in 1999, when we introduced legislation that criminalised slavery, sexual servitude and deceptive recruiting for sexual services. Slavery carries a maximum penalty of 25 years imprisonment, sexual servitude attracts a maximum penalty of 15 years and deceptive recruiting carries a maximum penalty of seven years.

In 2002 the government introduced further legislation that criminalised facilitating the illegal entry of a person into a foreign country for the purposes of exploitation. That offence carries a maximum penalty of 25 years imprisonment. These pieces of legislation are in addition to Australia’s criminalisation of child sex tourism legislation which was introduced in 1994. To date there have been 16 investigations under child sex tourism provisions, resulting in 12 convictions with one case still pending.

The Australian government has a strong commitment in relation to these areas of criminal activity. Its ongoing commitment to combating trafficking in persons is underscored by its recent signing of the United Nations protocol relating to trafficking in persons. That protocol is one of three protocols to the United Nations International Convention against Transnational Organised Crime, to which Australia is a signatory. The government is now considering ratification of the TOC convention and its protocols. The Australian Federal Police actively investigates credible reports of trafficking in persons and sexual servitude. The AFP has investigated all matters referred under the 1999 sexual servitude offences legislation, amounting to 13 investigations. Three of those matters are still under investigation. The remainder did not disclose a case to answer or did not have a reasonable prospect of conviction. This is due in part to the reluctance of potential witnesses, many of whom are in the country illegally, to testify. Where a person who is in Australia legally is required to assist with criminal investigation or to give evidence, they may be granted a criminal justice stay visa. Australia is also active in regional efforts to combat trafficking in persons.

From 28 to 30 April this year, Australia and Indonesia will again cohost a regional ministerial conference on not only people-smuggling but also trafficking in persons and related transnational crime. This is an issue which the government takes seriously. As to the detention of the person concerned, I believe that is more of an immigration matter and I will take up that aspect with the Minister for Immigration and Multicultural and Indigenous Affairs.

Senator GREIG—Mr President, I ask a supplementary question. I thank the minister
for his response, but I ask whether he agrees with the observation that one of the flaws in the existing legislation is that the women concerned are so speedily removed from the country that they cannot testify? Has the government given consideration to going down the US path of allowing for a special visa category so that such women can testify against the traffickers on the proviso that they can then remain in Australia?

Senator ELLISON—I did mention that we have a criminal justice stay visa. That is where a person who is illegally in Australia and is required to assist in or give evidence in a criminal investigation can remain in Australia. In this situation, Senator Greig is saying that the person has not been able to stay in Australia for the purposes of assisting in an investigation or giving evidence. I will look into that, but there is a provision for that to happen and the AFP has matters under investigation. I will look into the aspect of people who may wish to give evidence being removed before they can. If there is anything further, I will get back to the Senate.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a delegation of parliamentarians representing the parliament of Papua New Guinea, led by the Hon. Byron Chan MP. On behalf of honourable senators, I have pleasure in welcoming you to the Senate and I hope that your visit will be both enjoyable and informative.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

National Security: Terrorism

Senator STEPHENS (2.47 p.m.)—My question is to Senator Ellison, the Minister representing the Attorney-General. I refer the minister to the Prime Minister’s statement during his press conference yesterday. He said:

... since the start of operations in Iraq we haven’t received any specific intelligence that would warrant a further upgrading or heightening of the terrorist alert ... it’s already very high.

What exactly is Australia’s current level of terrorism alert? What message does the government’s confusion on this issue send to ordinary Australians? Surely, the community is entitled to feel alarmed at the Prime Minister’s continued lack of understanding of just what our current threat level is.

Senator ELLISON—There is no confusion whatsoever as to the level of threat in Australia. As a Western country, Australia has been a terrorist target since 11 September 2001, and Australia has been on a heightened level of alert since then. As demonstrated by the Bali bombings, the threat is not restricted to Australia itself but extends to Australians and Australian interests overseas. The Minister for Foreign Affairs has just made a comment in relation to Surabaya. I am advised that, since the forward deployment of Australian forces was announced in December 2002, no intelligence has been received requiring the raising of the overall threat level in Australia. Threat levels in Australia were raised following the September 11 attacks, and a security alert was announced by the government on 19 November last year. That is still in force. Should information become available to the government which requires a change to threat levels, the public will be advised. But I stress that we are not going to enter into any detailed gradation of threat levels as other countries do; that is for other countries. The question of the impact of Australian involvement in Iraq and the likelihood of a terrorist attack in Australia is part of the current public debate. There is no impact of the current conflict in Iraq on our current level of threat.

Senator STEPHENS—Mr President, I ask a supplementary question. Minister, I asked you: what exactly is Australia’s current level of terrorism alert? Surely, as Minister Abbott said last week, Australia’s involvement in the US led attack on Iraq has heightened the risk of a terrorist attack against Australia or Australian interests. Doesn’t the current alert in Surabaya prove that that is the case? Again, what is the current level of terrorism alert?

Senator ELLISON—The situation in Surabaya relates to information that has been received in relation to that area and does not relate to the conflict in Iraq. The situation is discrete to that particular area, and a statement has been made in relation to that. Aus-
tralia has remained at a heightened level of security alert since September 11. We do not have colour coding; we do not have gradations on a scale of one to 10. We do not have that in this country in the way that other countries do. That is a matter for, say, the United States or the United Kingdom. We remain at a heightened level of security alert, and that has been the state in this country since September 11.

Customs: Illicit Drugs

Senator SCULLION (2.50 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate about the Australian Crime Commission report into illicit drugs, released today, and initiatives being taken by the government to stem the flow of drugs?

Senator ELLISON—This is a very important question. Today, the Australian Crime Commission, in its new format, issued the Australian Illicit Drug Report for 2001-02. We have seen the formation of the new Australian Crime Commission, which comprises the former National Crime Authority, the Office of Strategic Crime Assessment and the Australian Bureau of Criminal Intelligence, bringing together law enforcement around the country. This report is acknowledged internationally as an effective tool for law enforcement in gauging drug trends, the illicit supply of drugs and the origins of illicit drugs in Australia and, of course, outside Australia. There have been some key findings. The government welcomes the continuing reduction in the supply of heroin. But the Australian government is not complacent. We realise that the war on drugs continues and that we must make further efforts in the fight against drugs—and we continue to do so through our Tough on Drugs policy.

A couple of areas of concern include the growth in the supply of amphetamines and the take-up of the use of amphetamines and precursor chemicals. During this period, Customs had a very large seizure of ephedrine, which is a precursor to the manufacture of amphetamines. Amphetamines are largely manufactured in Australia. However, there have been attempts to import amphetamines into Australia and Customs has had a very significant seizure of over 300 kilograms in one instance.

In relation to measures being taken by the Australian government, I can say that we have announced, in the last budget, the amphetamines signature program, which can identify where amphetamines are coming from and how they are being made. Again, this is an essential part of criminal intelligence for our law enforcement bodies. I have also announced, with the Parliamentary Secretary to the Minister for Health and Ageing, Trish Worth, the setting up of a national council dealing with the diversion of precursor chemicals. What we are finding, and it is mentioned in the report, is that precursors to amphetamines are being used and diverted from lawful medicines, particularly cold and flu tablets. What is happening is that there has been an extraction of precursor chemicals into the illegal amphetamine market. Motorcycle gangs have been identified as being a key area of supply for amphetamines. This is something the Australian Crime Commission has taken on board. It is conducting a national investigation into the role of outlaw motorcycle gangs in relation to the supply of illicit drugs, particularly the supply of amphetamines.

Although there has been much progress in the fight against drugs, it remains a task not only for law enforcement. It is a fight which we conduct on all fronts, dealing with education, health and law enforcement—education to reduce the demand for illicit drugs, health to deal with diversionary programs in the treatment of those people who have a drug addiction and, of course, law enforcement to reduce the supply. We cannot be effective with education and health if we do not firstly reduce the supply of illicit drugs. The government remains totally committed to its Tough On Drugs strategy and the war on drugs continues.

National Security: Terrorism

Senator FAULKNER (2.54 p.m.)—My question is directed to Senator Ellison in his capacity as Minister representing the Attorney-General. What is the government’s attitude to making Australia’s current domestic threat assessment level public? Is such an
assessment classified? I ask, again: what is the threat assessment level?

Senator Ellison—I believe the previous answer I gave has informed the Senate of the situation, which is that Australia has remained in a heightened state of security alert since September 11 2001. The question of the current state of alert was dealt with in November last year, and we have not had any information which would give us cause to change that level of threat assessment. The opposition is trying to say that, in some way, the war in Iraq has affected this threat level. It has not. We currently have a heightened level of security alert. That remains, and information we have received has done nothing to indicate that that should change. I indicated earlier that in specific instances we do get information which has some detail to it—and that applied in the situation of Surabaya. But, in relation to Australia, we have had credible information of a general nature which has been the cause for this heightened level of alert.

Senator Faulkner—Mr President, I ask a supplementary question. With respect, Minister, I think it is an important supplementary question. Aren’t threat assessment levels about warning and educating the Australian public? I ask you again: what is the attitude of the government about making the threat assessment level public? Is such a threat assessment classified? If it is not classified, can you now tell the Australian Senate what the threat assessment level is?

Senator Ellison—I do not think I can answer the question other than to repeat what I have said before. But I can say something in relation to the education of the people of Australia, and that is that we have seen a national information campaign which has been very effective.

Senator Faulkner—Is it classified? If it is not classified, tell us.

Senator Ellison—It is not classified, and it has been stated publicly. We have just seen a national information campaign which has dealt with this and has been acknowledged, by the response of the Australian community, as one of the most recognised information campaigns of recent times.
specialist trainees to work in supervised positions in designated outer metropolitan areas. I am delighted to say that some of the specialist colleges have extended this further and are looking at the possibility of having their specialist trainees undertake a rotation in general practice in an outer metropolitan area in order to experience general practice, which will maybe give them a better idea of what is involved in a general practitioner referring a patient to a specialist—in particular, what happens if the information does not come back. So there has been an additional benefit from that program.

The three programs have been designed—and I am sure people on the other side could not care less about understanding some of the difficulties in these programs—to not undermine our program of getting doctors into rural areas. We had to design incentives that did not suck doctors back from the rural areas into outer metropolitan areas and undermine the tremendous response we have had to our program of getting doctors into rural and remote areas, through which, over the last five years, we have seen an increase of over 11 per cent in estimated full-time doctors. In fact, last year we had a record increase of 4.7 per cent in estimated full-time doctors—or full-time equivalent doctors—in rural areas. So we have seen a turnaround. We have seen these measures beginning to have an impact and actually delivering and redistributing doctors in an appropriate way.

On Friday, I announced that an additional part of More Doctors for Outer Metropolitan Areas would be a package that provides higher incentives to doctors who are prepared to move to outer metropolitan areas sooner rather than later. Grants of up to $20,000 will be available for doctors relocating to an established practice, and those who wish to establish a new practice can apply for a grant of up to $30,000 which will be given to them over a period to ensure that they stay in the outer metropolitan area. Partial grants will be available to practitioners who do not intend to work full time in the outer metropolitan areas. To be eligible, applications must be received by the department by 30 June 2003. This is in order to ensure that we facilitate this program as quickly as possible, to get the doctors into those outer metropolitan areas. Doctors groups, particularly the Australian Division of General Practice, have welcomed this and indicated that there will be another measure—(Time expired)

Senator WATSON—Mr President, I ask a supplementary question. The Minister for Health and Ageing has provided the Senate with a very impressive list of initiatives, and I believe—through my knowledge and representation—that there are others. Could the minister give further information on the other initiatives? I congratulate her on what she has already achieved.

Senator PATTERSON—I thank Senator Watson for his interest. This measure will help to speed up the program of getting doctors into outer metropolitan areas but, in addition, the program for getting doctors into rural areas has been facilitated, in particular—and I am very proud of what the Howard government has been able to do—by the fact that we have rolled out nine rural clinical schools and 10 university departments of rural health. This enables young people, when they are training as medical practitioners, allied health professionals or nurses, to undertake their training in a rural area. It gives people working in rural areas the opportunity to have an academic career and still deliver a service in rural areas. The Labor Party would not care tuppence about it, but it is a tremendous initiative to see in Broome, Bendigo, Shepparton, Traralgon and other places around Australia university departments and clinical schools which are giving young people the opportunity to undertake their study in those areas and also giving academics the opportunity to undertake their study—(Time expired)

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

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Answers to Questions

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.04 p.m.)—I move:
That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

We have had the extraordinary situation in question time today where the Minister for Justice and Customs—the minister who represents Australia’s Attorney-General in this chamber—is unable to say to the chamber what Australia’s threat assessment level is. This might be fair enough if that information were classified. Senator Ellison was not just asked this once today; he was asked on four occasions. After he was unable to provide the Australian public with that information on the first two occasions, I asked him again whether the threat assessment level was classified. On the first occasion, he was not able to answer that. On the second occasion, he was able to inform the Senate that the threat assessment level was not classified. But he was still unable, at any stage, to inform the Senate today of what Australia’s threat assessment level is.

That is not good enough if it is not classified information. Threat assessment levels are designed for warning and educating the Australian public. It would assist if a minister who has responsibility for these incredibly significant public duties was able to come into the Australian parliament and say to the Australian people what those threat assessment levels might be. We know that the Minister for Justice and Customs has said that the threat assessment levels ‘have been heightened’—those are his words. He has not been able to tell us where they have been heightened from and what level they are now at. That information has not been forthcoming from Minister Ellison in the Senate today. Perhaps he does not know. But if he does not know—and he has demonstrated profound ignorance in this chamber today—he should know.

It is extraordinary that the minister for justice in this country comes into the chamber every second question time and tells us about the tremendous achievement of providing a fridge magnet to ordinary Australians on which they can write telephone numbers of emergency services. He is happy to tell us that day after day in the Senate but incapable of saying to the Australian people what Australia’s threat assessment level is or whether Mr Howard at his press conference was right when he said: I mean it’s already very high.

They are the words of Prime Minister Howard yesterday at a press conference, and we have no confirmation today of whether Mr Howard’s assessment is correct. I repeat: we gave the minister an out; if the assessment is classified information then, fair enough, do not say it to people, do not say it in this chamber. But the minister ended up saying it was not classified. When asked on four occasions what the threat assessment level is, this incompetent minister was unable to provide that information to the Australian people. This is in a security environment, the minister told us in the Senate today, where there is a heightened threat assessment level. This ought to be of great concern to all Australians, particularly when the government plays politics with the leaking of alleged information in security briefings to the Leader of the Opposition, Mr Crean. This is totally unsatisfactory, not good enough and an appalling performance from Minister Ellison in Senate question time today. (Time expired)

Senator SANDY MACDONALD (New South Wales) (3.09 p.m.)—I wish to take note of answers to questions asked of Senator Ellison as well. Before I do so, in connection with this I want to pay tribute to Paul Moran, the ABC cameraman who was killed in northern Iraq over the weekend. Paul Moran was not a war correspondent; he was a cameraman. War correspondents become very much a part of our lives. I pay tribute to Paul Moran for the job that he did in northern Iraq and acknowledge the fact that he was killed by terrorist groups that were associated with al-Qaeda. I also wish Eric Campbell very well.

In connection with the question asked of Senator Ellison, this is really a question of semantics. I cannot really see what the Labor opposition are getting at here. The government is acting responsibly. It says that there
is a heightened level of threat. We do not have a colour-coded system like the US, which I tend to think is more alarmist than able to make people alert. Our government is responsible. It wishes to make people aware of potential threats, but it does not colour-code. It makes people alert and not alarmed. We do not have the system they have in the UK, which I think is a numbered system.

Clearly, the government acts with the best advice possible. It is not vexatious on these matters. In terms of security matters, governments have to be responsible and informed. They know information that other people do not know—that is the way it has to be. The war against terror, as we know, is not a war in the sense of having a known enemy; it is a grinding of intelligence that makes it possible for governments to take responsible decisions about their citizens. As I said, the government acts in accordance with advice it takes from its security services, which are not only very good but very well resourced and getting better. Their job will be made a great deal easier if the legislation presently before the House of Representatives, which has been to this chamber, providing greater assistance to ASIO to investigate matters of concern and security of the Australian people is passed through this place.

The overall threat in Australia has not changed from the beginning of the war in Iraq. It remains at a heightened level following 11 September last year, with the special alert issued by the government on 19 December last year remaining current. When advice about security is required, the government gives it. The specific advice given about the Surabaya threat was for 22 March. If there is a threat, the government provides information about that threat in a very responsible way. As the government has indicated, some specific threat levels in respect of some defence facilities and foreign interests in Australia have been raised. Quite obviously, we are in a state of war, and some security arrangements have been tightened as a matter of prudence. But threat levels in respect of US and UK interests have not changed and have been at ‘high’ for some time. We are in a heightened state of threat level.

Threat levels against Australian interests in a number of countries, especially in the Middle East, have been raised because of the war. The government has been totally open and transparent about this through the DFAT travel advisories. Only yesterday, my sister went overseas. I take a very keen interest in the travel advisories for where she was going, which happened to be somewhere in the Middle East. She is quite conscious of the risks, and that information was provided to her by the DFAT travel advisories. Clearly—and it is quite obvious why, in view of the announcement yesterday in respect of Surabaya—the threat levels have not been raised in some countries; they have remained high all the time. The government has been open with the Australian people since September 11 in sharing as far as it can information relevant to public policy. That is what a responsible government does. It wishes to make the population aware of possible threats but not to alarm them.

Senator O’BRIEN (Tasmania) (3.14 p.m.)—Firstly, I associate myself with Senator Sandy Macdonald’s remarks about Paul Moran and Eric Campbell. It is unfortunate that they found themselves victims of a terrorist attack which was directly associated with the military campaign in Iraq. I hope that it is the last; I fear that it will not be.

I am speaking in this debate particularly in relation to a question I asked of Senator Ian Macdonald in question time today. He sought to tell this chamber that a letter sent by Mr Taylor, the Secretary of the Department of Agriculture, Fisheries and Forestry, last Wednesday, 21 March, was sent at a time when, if we believe the government, we were already supposed to be operating at a fairly high level of alertness. Mr Taylor has effectively confirmed that the view of the government is that there is now an even higher risk of a terrorist attack as a result of our direct involvement in this unjust war. Mr Taylor wrote to a number of key rural industries last Wednesday, seeking their support for the adoption by national animal health networks of a heightened level of alertness to the possibility of animal disease outbreak. Let me use his exact words. He said:

Due to the current international circumstances …
I interpose there: what were the current international circumstances last Wednesday? We were about to embark on a war in Iraq. They were the circumstances. It was not 11 September 2001; it was the circumstances of the war in Iraq that he was referring to. He went on:

I am writing to seek your support to ensure that our national animal health networks adopt a heightened level of alertness over the next few months—

in other words, during the period in which the war campaign and, possibly, the postwar campaign were expected to be carried out. In his letter, Mr Taylor specifically requests an increased awareness of any indication that could signal the occurrence of a highly contagious disease. Also, Australia’s Chief Veterinary Officer, Dr Gardner Murray, has contacted members of the Consultative Committee on Emergency Animal Disease, requesting the same increased level of awareness, again talking about increasing the level of awareness in the context of the current international circumstances.

If there is no increased threat as a result of our direct involvement in this unjust war, why has the government significantly increased the level of preparedness for a possible outbreak of a highly contagious disease in our animal population? Why is it that, almost contemporaneously with the commencement of hostilities, the government says, ‘We have to be prepared for a possible outbreak of a highly contagious disease in our animal population?’ Frankly, that is code for: be prepared for the possibility that some highly contagious disease will be introduced into our animal population because of our connection with the current international circumstances. That means that the government suspects but does not have direct information about a particular risk of a terrorist incursion or the release into our environment of organisms which will pose a problem. I mentioned in my question the issue of anthrax. We have had anthrax outbreaks in cattle populations here, but in the context of the current international situation one can only conclude that the government possibly suspects that anthrax will be introduced into the animal population in places different from where it has already occurred.

What issue would have caused Mr Taylor to say what he did, other than the outbreak of war? Frankly, it is unbelievable to suggest that there would be any other purpose. The fact that Dr Gardner Murray has also asked that of other committees with an interest in the area—Plant Health and Safemeat; the latter of which is, in particular, responsible for food safety for human beings—indicates that the government is considering that, arising from the war, there is a possibility of the introduction of dangerous organisms into our food chain. *(Time expired).*

Senator BRANDIS *(Queensland)*  (3.19 p.m.)—Mr Deputy President, I wish to take note of the answer given by Senator Hill to the question asked of him by Senator Johnston.

The DEPUTY PRESIDENT—No, that is not in order. The question before the chair is the motion moved by Senator Faulkner. I need to confirm whether it included all answers, including those of Senator Hill. I understand there is a point of confusion.

Senator O’Brien—Just to clarify the record, Senator Faulkner moved a motion to take note of answers to all opposition questions in question time today.

The DEPUTY PRESIDENT—That is the motion before the chair, as I understand it.

Senator BRANDIS—I will then direct myself to the answers of Senator Hill to questions directed to him by opposition senators.

The DEPUTY PRESIDENT—That is in order.

Senator BRANDIS—We have heard much talk in this debate about assessments, but I want to talk about one particular assessment that has been bruited around this country and around the world in the last couple of weeks by those opposed to the war to liberate the people of Iraq—that is, the extravagant claims that have been constantly made by senators in this chamber, made by Labor members of the House of Representatives and, I well remember, made in a television debate I did a few weeks ago with the
member for Sydney, Tanya Plibersek, on the ABC’s _Lateline_ program. The mantra that has been uttered time and again is: ‘Hundreds of thousands of innocent civilians, most of them women and children, will be killed.’ Even yesterday in the so-called peace demonstrations that we saw in Australian capital cities this misleading claim was made: ‘Hundreds of thousands of innocent civilians, most of them women and children, will be slaughtered.’

There have now been four nights of precision bombing of military and governmental targets in Iraq, and not even the Iraqi government has claimed that a civilian facility has been struck. Of all the thousands of pieces of ordnance delivered on Baghdad, Basra and other cities in Iraq, the claim has not even been made by the enemy, by the Iraqis, that civilian facilities have been hit or targeted. What we do know is that this has been—as Mr Rumsfeld, the American Secretary of Defense, said in a news conference over the weekend—a military campaign the likes of which the world has never before seen, in which enormous care has been taken to ensure that only military and governmental targets, legitimate targets under international law, have been struck.

To this day, do you know how many civilian deaths the Iraqi government has alleged have occurred? It alleges that three civilians had been killed by collateral damage. Of course, any civilian death in war is a deeply regrettable thing, but it makes the world of difference for people to get out into the streets, to get onto the airwaves, to come into this chamber and to the chamber in the other place and make wrong-headed, hysterical claims and say that hundreds of thousands of women and children will be killed, when the reality is that—as we now know, and anybody who approaches this most difficult issue with a cool head and a rational mind must acknowledge—the most striking feature of this campaign has been the successful concentration exclusively on military targets. The success of this campaign to date—and we can but hope with guarded optimism that it will continue to be successfully confined to military and governmental targets—exposes the hysteria, the hypocrisy and, frankly, the dishonesty of those who made those extravagant claims about civilian casualties.

While I am on the question of civilian casualties, I want to pause for a moment to speak of the civilian casualties of the government of Saddam Hussein, because I did not use those words lightly before when I said, ‘This is a war to liberate the Iraqi people.’ I was talking to friend of mine in London the other day and I was asking him about the demonstrations in London. He said, ‘There were thousands and thousands of signs held up by those demonstrators that said “Free Palestine”, but I didn’t see a single sign that said “Free Iraq”.’ You could have looked around the capital cities of this land yesterday and you would not have seen a single placard or banner that said ‘Free Iraq’. This is about freeing the Iraqi people from a bloodthirsty tyrant. When it suited Senator Brown 12 years ago to demand that military action be taken against Saddam Hussein, he himself demanded it. This is a campaign to disarm a rogue government and to free an enslaved people, and all the hysteria of the mob will not conceal that fact.

**Senator Wong** (South Australia) (3.24 p.m.)—I rise to speak to the motion moved by Senator Faulkner in relation to answers given during question time today, in which we saw the continuation of this government’s mixed messages and incomplete information when it comes to the issue of the assessment of the level of threat to Australians as a result of its decision to engage in the so-called coalition of the willing. There is an ongoing denial, continued today in question time, by this government that there is any increase in the level of threat to Australia as a result of our involvement in Iraq.

You would have to say that commonsense would generally tell us that it would be strange, if we are one of only three countries committing combat troops to this war, if that did not have some implications for the level of terrorist threat to Australians domestically and overseas. Most thinking Australians would have to question the government’s continued denial that there has been any change to the level of terrorist threat to Australia as a result of our commitment of troops.
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to this war. One would have thought that that has brought us into the focus of extremist groups even more than we were prior to our commitment.

We had John Howard late last month indicating that he did not think that we were any more of a terrorist target as a result of our commitment to the coalition of the willing. He has failed, as have all the ministers who were asked questions today, to respond to the statement made in late February by Clive Williams, the Australian National University’s Director of Terrorism Studies, that we would be now fourth on the world’s terror attack list as a result, in part, of our involvement in the war in Iraq. Mr Williams stated:

Australia’s involvement in a war in Iraq will inevitably increase our profile, and I’m pretty sure that bin Laden will quite quickly seize on the fact that we are one of the three countries that are combatants ... That will probably make us number four on the hit list—the US will be first, Israel will be second, the UK will be third.

No-one in the government has responded to Mr Williams’s assessment of the situation and they continue to deny, as they did today, that there has been any increase in the threat assessment levels to Australians both at home and overseas—but I will come to the travel advisory issue shortly. The government’s line did crack a little bit last week when Mr Abbott himself in parliament said:

We would be foolish not to admit that the risks of going to war in Iraq are frightening. We cannot rule out heavy casualties among allied troops

Then there is the increased risk of terrorist attack here in Australia...

Even the government’s own cabinet minister has indicated that there is an increased risk of terrorist attack here in Australia partly as a result of our commitment of troops to the war in Iraq. The government continues to deny this, despite the fact that we have had one cabinet minister on the public record saying it.

These mixed messages and the government’s inconsistent position have been continued in the context of travel advisories. Britain and the United States on 20 March issued global security alerts informing their citizens abroad of the risk of indiscriminate terrorist attacks. At that time, The Minister for Foreign Affairs, Mr Downer, said that in his judgment such an upgrading was unnecessary. However, today there was a question of Senator Hill, the Minister representing the Minister for Foreign Affairs, informing him that a new global travel advisory had been issued by the Department of Foreign Affairs and Trade last Friday evening at about quarter to eight and asking him on what basis that renewed travel advisory had been issued, what had been the new intelligence information which suggested that that had been required and whether that had some implications for the domestic situation. If there is an increased terrorist risk to Australians travelling abroad, surely that may well mean there is an increased risk of terrorist attack here in Australia. Today in question time the minister simply said, ‘People’s travel plans are up to them and, generally, no, the government does not accept that we are at any increased risk of terrorist attack by virtue of being one of only three countries participating in the war against Iraq.’ Finally, we also had Minister Ellison in today’s question time denying that there was any leak of national security briefings provided to opposition leader Simon Crean. If you read the transcript of the ABC interview, you will see that it is quite clear that there was a leak. The ABC was told that the head of Australia’s domestic spy agency had briefed Mr Crean. (Time expired)

Question agreed to.

**Immigration:** Ms Puangthong Simaplee

*Senator Greig (Western Australia)*

(3.30 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Greig today relating to mandatory detention and the practice of ‘trafficking’ in women for prostitution.

In moving this motion, I ask the Senate to reflect on a couple of things. I am left with the disturbing impression from Minister Ellison’s answer that the government does not fully appreciate the difference between consenting sex work in the lawful, regulated industry that exists in Australia and sexual slavery. In part of the minister’s answer to me today, he used the word ‘indulgence’ and
it would be interesting to go back over the Hansard record to find out precisely in what context he said that. I was left with the impression that he felt that some women coming to Australia and working in brothels here against their will were somehow indulging themselves in that they knew or believed that they were coming to Australia under specific and understood circumstances. That was also reflected in the minister’s answer to questioning from my colleague Lyn Allison during Senate committee hearings recently where the minister said:

We have not found that there is a slavery chain where people are brought into Australia under force ... people come here voluntarily to work in the sex trade ...

That is what Minister Ellison said at a Senate estimates hearings last month, and that was reported on the weekend just gone. I am not convinced that either empirical or anecdotal evidence supports that claim. I am not suggesting for a moment that some women are not coming out here wilfully, but the evidence suggests strongly that sexual slavery is much more insidious, much more coercive and its results much more horrendous than perhaps we have seen in this one example. We know, for example, that Ms Simaplee died from malnutrition. She weighed some 32 kilograms when she was in solitary confinement. She was then withdrawing from heroin and was, as we now know, inappropriately treated with largactil for that. I do not think anybody would reasonably argue that having spent 16 years in what I would describe as bonded labour is in some way an indulgence or presents any evidence to suggest that Ms Simaplee or women in her situation were somehow consenting in their behaviour.

I wonder, too, why it is that sex workers are treated differently under these circumstances. Had DIMIA stumbled across workers in other fields—be they waiters, cleaners, bricklayers or brain surgeons—working here illegally, I do not believe that those people would have been detained in these conditions and immediately returned to their country of origin. It seems to me to be a double standard. I would argue that there are perhaps only two realistic responses that government has to this situation. The first would be to provide visas to those women overseas who wanted to come here as consenting adults and work lawfully in the sex industry, given that prostitution is regulated and lawful in several states, including Queensland, the ACT and Victoria—and I understand that some other states are looking at this. Were that to happen, I believe it would effectively snuff out this black market and the insidious nature of this trafficking. I do not think that the government is going to give that suggestion the remotest consideration; visas on those grounds are currently denied.

So it seems to me that the only other effective way to deal with this is to get tough on trafficking. I am not convinced that that is happening at the moment. Although the minister made reference to laws passed in this country—in particular, the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999 which has been passed—as of February last year, there have not been any prosecutions. The minister made reference to some investigations—but no prosecutions. Yet I am advised by reliable sources that if DIMIA were to make some spot raids, even on local brothels here in the ACT, it would have close to a 50 per cent chance, any night of the week, of finding women working as sexual slaves or at least working unlawfully, having been brought into the country unlawfully. So we need to either apply the law vigorously or look at a different way of addressing the issue. Either way, we must never see again the appalling case of Ms Simaplee or similar. I believe this case came about because of the government’s lack of seriousness in approaching this issue. The best response, therefore, is rigorous application of the law, and that has to start with effective policing.

Question agreed to.

WORK FOR THE DOLE

Senator TCHEN (Victoria) (3.35 p.m.)—by leave—Last Wednesday night the Senate granted leave for me to incorporate a list of nominees for the Work for the Dole Prime Minister’s Achievement Awards 2002 into my adjournment speech. Unfortunately, I subsequently found out that, during transcription of the list, a number of names were
left off, including a number of individual winners. My apologies to the Senate and also to those people whose names were left off. I seek leave to have the correct list substituted.

Senator Ludwig—Mr Deputy President, I understand that, when Senator Tchen talks about the transcription, it was not Hansard. It might be worth while ensuring that that is clear.

Senator TCHEN—I thank Senator Ludwig for seeking that clarification. I was going to make it quite clear that my apology is also extended to Hansard. I provided them with the wrong list.

Leave granted.

The list read as follows—

Best Work for the Dole Participant 2002
Norman Scott, Albany, WA—Restoration Works & Walk Trail Maintenance (CWC: Albany & Districts Skills Training Inc; Sponsor: Albany & Districts Skills Training Inc)
Kareen Delacruz, Warrnambool, VIC—Uniting Church Childcare Project Assistance (CWC: Barry Smith & Associates/Your Employment Solutions; Sponsor: Uniting Church Childcare)
Alicia Alderton, Wynnum, QLD—Community Works (CWC: Mission Australia; Sponsor: Mission Australia)
Ken Lock, Wollongong, NSW—Indigenous Time Capsule (CWC: Wollongong City Employment Training; Sponsor: Wollongong City Employment Training)
Paul Dhurrumurra Ganambarr, Elcho Island, NT—Community House Painting Project (CWC: Darwin Skills Development Scheme; Sponsor: Darwin Skills Development Scheme/Galiwin’ku Community Council)
Richard Long, Burnie, TAS—Construction of 1909 Blériot XI Replica Aircraft (CWC: Tasmanian Business & Employment; Sponsor: TAFE Tasmania)
Olivia Dykstra, Southbank, VIC—Supporting Schools Programme (CWC: Australian Education Industry Centre; Sponsor: Australian Education Industry Centre/Toorak Primary School)
Peter Harvey, Pialba, QLD—Skill Centred Regional Queensland, Fraser Coast (CWC: Skill Centred Regional Queensland; Sponsor: Fair Haven Retirement Village)

Winner in this category
Michael Butler, Semaphore Park, SA—Investing in Our Heritage (CWC: Jobs Statewide Inc; Sponsor: Jobs Statewide Inc/Fort Glanville Conservation Park)
Warren Nannup, Chapman River Park, WA—(CWC: Mission Australia; Sponsor: Mission Australia/Coastcare)
Maria Tzirakis, Arcadia, NSW—Vision Valley Trail Blazers (CWC: Wesley Uniting Church; Sponsor: Vision Valley)

Finalist in this category
Cameron Sharp, Caboolture, QLD—Step Forward (CWC: Cadet Training & Employment; Sponsor: Cadet Training & Employment/Humpybong State School)
Darryle Glen, Eaglehawk, VIC—Eaglehawk Community Skills Project (CWC: The Salvation Army Employment Plus; Sponsor: Future Employment Opportunities)

Best Work for the Dole Activity 2002—Caring for Our Community
Surf’s Up 2—Lakes Entrance VIC (CWC: East Gippsland Institute of TAFE; Sponsor: Surf Life Saving Lakes Entrance Inc)
The bakery-Artrage Arts Centre—Northbridge, WA (CWC: The Gowrie; Sponsor: Artrage Festival)
Keepit Community Resources—Gunnedah, NSW (CWC: H&H Accredited Training; Sponsor: H&H Accredited Training/Mark Golledge)
For the Community—Ravenswood, TAS (CWC: Tasmanian Business & Employment; Sponsor: Ravenswood Walk Tall Association Inc)
Beautification and Restoration of the Community Hall—Kuranda, QLD (CWC: QfTE; Sponsor: Ngoombi Cooperative Society Ltd)
GV Billabong Gardens (Goulburn Valley)—Shepparton, VIC (CWC: Central Victorian Group Training Co; Sponsor: Central Victorian Group Training Co/GV Disability Centre)
Musicoz—Wollongong, NSW (CWC: Wollongong City Employment Training)
Wembley Bike and Timber Recycle—Wembley, WA (CWC: Mercy Community Care; Sponsor: Mercy Community Care)
St Peter’s Quiet Garden—Paynesville, VIC (CWC Bairnsdale Adult Community Education (BALE); Sponsor: St Peter’s by the Lake Anglican Church)

BCDC Courier Charity Fund Project—Ballarat, VIC (CWC: Best Community Development; Sponsor: Best Community Development) Winner in this category and overall winner
Best Work for the Dole Activity 2002—Caring for Our Heritage

Maintenance Mania—Orange, NSW (CWC: Central West Community College; Sponsor: Central West Community College/Parish of Holy Trinity Orange)

Construction of 1909 Blériot XI Historic Aircraft—Burnie, TAS (CWC Tasmanian Business & Employment; Sponsor: TAFE Tasmania, Burnie Campus) Winner in this category

Mission Ship—Stones Corner, QLD (CWC: Mission Australia; Sponsor: Mission Employment Stones Corner)

National Archives of Australia Project—Frankston, VIC (CWC: Barry Smith & Associates/Your Employment Solutions; Sponsor: National Archives of Australia)

Wyong Shire Heritage Centre Restoration—Wyong, NSW (CWC: Wyong WorkWise Inc; Sponsor: Wyong Shire Heritage Centre)

Precinct Construction & Steam Train Restoration Project—Warwick, QLD (CWC: Mission Australia; Sponsor: Southern Downs Steam Railway Inc)

Restoration of the C47-B Douglas Dakota—Port Adelaide, SA (CWC: Jobs Statewide Inc; Sponsor: The South Australian Aviation Museum)

Pearl Lugger Restoration—The Flora—Cairns, QLD (CWC: Townsville Employment Training Inc; Sponsor: Northern Training & Development Services)

The Stables—Portland, VIC (CWC: Portland Workskills; Sponsor: Portland Workskills)

Best Work for the Dole Activities 2002—Caring for People

Kidz Biz—Coopers Plains, QLD (CWC: Mt Gravatt Training Centre Inc; Sponsor: Village Avenue Community Church)

On the Pulse—Bendigo, VIC (CWC: The salvation Army Employment Plus; Sponsor: Bendigo & District Aboriginal Cooperative) Winner in this category

Brighton Garden Club/Service Inc—Bridgewater, TAS (CWC: Mission Australia; Sponsor: Brighton Garden Club/Service)

Jingili Kindergarten—Jingili, NT (CWC: Darwin Skills Development Scheme; Sponsor: Darwin Skills Development Scheme)

Better Community—Berkeley, NSW (CWC: The Illawarra ITEC Ltd; Sponsor: St Mary’s Retirement Village-Hostel)

Keep on Sailing—Labrador, QLD (CWC: Queensland Vocational Training College; Sponsor: Mission Australia—Nerang)

Our Youth-Our Future—North Hobart, TAS (CWC: Mission Australia; Sponsor: Lady Gowrie Tasmania)

Shoalhaven Advance Industries North Nowra Nursery—North Nowra, NSW (CWC: Wesley Uniing Church; Sponsor: Shoalhaven Advance Industries)

Best Work for the Dole Activity 2002—Caring for Our Environment

State Forest maintenance & Recreation Development—Watagan Mountains, Cooranbong, NSW (CWC: The Salvation Army Employment Plus; Sponsor: State Forests of NSW) Winner in this category

Indigiscapes in Redland—Capalaba, QLD (CWC: Mt Gravatt Training Centre Inc; sponsor: Mt Gravatt Training Centre Inc)

Linear Park Biodiversity Project—Walkerville & Vale Park, SA (CWC: Eastside SA Inc; Sponsor: Statewide Group Training)

Gecko Recycle Project No 2—Tugan, QLD (CWC: Queensland Vocational Training College; Sponsor: Gold Coast & Hinterland Environment Council association Inc)

Tilligerry Habitat State Reserve 2—Tanalba Bay, NSW (CWC: Eastlake Skills Centre Ltd; Sponsor: Tilligerry Habitat Association Inc)

Wetlands Support for Townsville & the Burdekin—South Townsville, QLD (CWC: Conservation Volunteer Australia)

Parklands Heritage—8 Mile Creek Project—Thurgoona, NSW (CWC: Mission Australia; Sponsor: Regional Skills Inc)

Best Work for the Dole Supervisor 2002

Sturt Smith, Collie, WA—Hands of Opportunity (CWC Mission Australia; Sponsor: Collie Community Recreation Association)

Jacob Arnold, Dandenong, VIC—Visy Modern Arts Project (CWC: Barry Smith & Associates/Your Employment Solutions; Sponsor: Youth Assist)

John Berry, Newcastle West, NSW—State Forest Maintenance & Recreation Development (CWC: The Salvation Army Employment Plus; Sponsor: State Forests of NSW)

Harold Johnson, Worongary, QLD—Light Horse Heritage assist (CWC: Queensland Vocational Training College; Sponsor: Community Services Australia)
Gaine Tanner, Mt Barker, SA—Community Support Program (CWC: Baptist Community Services; Sponsor: Baptist Community Services/Forest SA)

Kay Casey, Lockridge, WA—Lockridge Community Assistants (CWC: AMA Services; Sponsor: Lockridge Community Group)


Wayne Kenneth MacDonald, Eumundi, QLD—Building Better Community (CWC:Skill Centred Regional Queensland)

Greg Boehme, Darwin, NT—Rapid Creek Beach/Irrigation and Revegetation Project (CWC:Darwin Skills Development Scheme; Sponsor: Darwin Skills Development Scheme)

Julie Simons, Lakes Entrance, VIC—Surf’s Up 2 (CWC: East Gippsland Institute of TAFE; Sponsor: Surf Life Saving Lakes Entrance Inc) Finalist in this category

PETITIONS

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

Immigration: People Smuggling

To the Honourable President and members of the Senate in Parliament:

We request that the Senate call for a full independent judicial inquiry into the role of Australian Defence Force personnel and the Australian Federal Police in immigration-related activities including (a) the circumstances surrounding the sinking of the SIEV-X and (b) the people-smuggling disruption program in Indonesia.

by Senator Kirk (from 176 citizens).

Petition received.

NOTICES

Presentation

Senator Cook to move on the next day of sitting:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 27 March 2003, from 4 pm till 9 pm, to take evidence for the committee’s inquiry into Australia’s relationship with Papua New Guinea and other Pacific island countries.

Senator Sandy Macdonald to move on the next day of sitting:

That the Foreign Affairs, Defence and Trade Legislation Committee be authorised to hold public meetings during the sittings of the Senate on Monday, 16 June 2003, from 7 pm, and on Monday, 23 June 2003, from 7 pm, to take evidence for the committee’s inquiry on off-setting arrangements between the Veterans’ Entitlements Act and the Military Compensation Scheme.

Senator Murray to move on Thursday, 27 March 2003:

That the following bill be introduced: A Bill for an Act to amend the Commonwealth Electoral Act 1918 to provide for truth in political advertising, and for related purposes, Electoral Amendment (Political Honesty) Bill 2003.

Senator Allison to move on the next day of sitting:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations be extended to 15 May 2003.

Senator Bartlett to move on the next day of sitting:

That there be laid on the table, no later than 4 pm on Wednesday, 26 March 2003, the Memorandum of Understanding signed on or around 12 March 2003 between the Australian Government and the Islamic Republic of Iran, which includes measures to combat illegal migration.

Senator Johnston to move on the next day of sitting:

That the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund be authorised to hold a public meeting during the sitting of the Senate on Thursday, 27 March 2003, from 7.30 pm, to take evidence for the committee’s inquiry into the effectiveness of the National Native Title Tribunal.

Senator Stott Despoja to move on the next day of sitting:
That the Customs (Prohibited Exports) Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 17 and made under the Customs Act 1901, be disallowed.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:
   (i) the South Australian Parliament has passed the Nuclear Waste Storage Facility (Prohibition) Amendment Bill (No. 19),
   (ii) the legislation bans both the establishment of a nuclear waste dump in South Australia and the transportation of nuclear waste from other states in South Australia,
   (iii) a 4-month sunset clause is contained in the legislation to allow legal advice to be sought to strengthen its effect, and
   (iv) a majority of South Australians and the South Australian Parliament are opposed to the Federal Government plan to site a nuclear waste storage facility in that state; and
(b) calls on the Federal Government:
   (i) to recognise that the South Australian Parliament has legislated according to the wishes of that state, and
   (ii) to not proceed to locate a national nuclear waste repository in South Australia.

Senator Brown to move on the next day of sitting:

That the Approval of Amendment 41 of the National Capital Plan (Gungahlin Drive Extension), made under section 19 of the Australian Capital Territory (Planning and Land Management) Act 1988, be disallowed.

Senator Kemp to move on the next day of sitting:

That the Senate—

(a) congratulates the Australian One Day Cricket Team on its outstanding achievement in winning the 2003 World Cup in South Africa on Sunday, 23 March 2003;
(b) conveys, on behalf of all Australians, the nation’s pride and congratulations for the performances of all the team members who played in the team over the course of the competition;
(c) expresses its thanks to all the team’s support staff and others who have contributed to the success of the team;
(d) notes that Australia is the only nation to have won this prestigious World Cup on three occasions and, in doing so, the team was undefeated through out the competition, winning 11 straight matches, scoring its highest ever One Day International total in the final, and extending its winning run to 17 One Day Internationals and 17 consecutive World Cup wins;
(e) notes that a number of the members of the team are past scholarship holders with the Australian Institute of Sport; and
(f) acknowledges the contribution of the Australian Sports Commission to the development of young Australian cricketers.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.37 p.m.)—I give notice that, on the next day of sitting, I shall move:

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

Corporations (Fees) Amendment Bill 2002
Corporations (Review Fees) Bill 2002
Corporations Legislation Amendment Bill 2002
Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003
Energy Grants (Credits) Scheme Bill 2003
Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 [No. 2]
Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Bill 2002
Industry, Tourism and Resources Legislation Amendment Bill 2002
Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002
Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002
National Blood Authority Bill 2002
Taxation Laws Amendment Bill (No. 7) 2002
Veterans’ Affairs Legislation Amendment Bill (No. 3) 2002
Workplace Relations Amendment (Termination of Employment) Bill 2002

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

Leave granted.

The statements read as follows—

CORPORATIONS LEGISLATION AMENDMENT BILL 2002
CORPORATIONS (FEES) AMENDMENT BILL 2002
CORPORATIONS (REVIEW FEES) BILL 2002

Purpose of the Bill
These Bills will amend the Corporations Act 2001 (the Corporations Act) to implement Phase 7 of the Government’s Corporate Law Economic Reform Program (CLERP 7). The object of the Bills is to reduce the paper lodgment compliance burden on Australian companies and to assist ASIC in making optimal use of electronic communications technology. The Bills will also simplify the fees regime, provide for new fees and some fee relief for small business.

Reasons for Urgency
Passage in the Autumn Sittings 2003 is critical to allow for commencement on 1 July 2003 to ensure that the proposed new company reporting requirements are in place with sufficient lead time to prevent the need for ASIC to activate procedures under the existing reporting regime in relation to the 2003 calendar year reporting period.

(Circulated by authority of the Parliamentary Secretary to the Treasurer)

ENERGY GRANTS (CREDITS) SCHEME BILL 2003
ENERGY GRANTS (CREDITS) SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2003

Purpose of the Bills
The bills will maintain entitlements currently available under the Diesel Fuel Rebate Scheme (DFRS) and the Diesel and Alternative Fuels Grants Scheme (DAFGS) under a new scheme, the Energy Grants (Credits) Scheme (EGCS).

Reasons for Urgency
Sunset clauses contained in the DFRS and DAFGS legislation are due to take effect on 30 June 2003. Legislation to give effect to the EGCS needs to be in place before then with sufficient lead time to allow changes to the existing systems and procedures for both users and administrators of the schemes.

The introduction of the EGCS was announced as part of the Measures for a Better Environment package agreed between the Prime Minister and the Democrats in May 1999.

(Circulated by authority of the Treasurer)

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (DISABILITY REFORM) BILL (NO. 2) 2002 [No. 2]

Purpose of the Bill
This Bill will give effect to welfare reform initiatives announced in the 2002 Budget to:

• restrict qualification for disability support pension to those who lack substantial work capacity;
• encourage people with disabilities to be more active; and
• assist people to enter or re-enter the workforce.

Customers who claim disability support pension prior to the commencement of the new arrangements will continue to be assessed under the existing provisions until they lose entitlement.

Reasons for Urgency
Passage of the Bill is needed as early as possible so as to ensure finalisation of supporting administration. Early passage would also enable information about the final form of the measures to be widely publicised throughout the community with particular reference to those likely to be impacted by the measures in the short term.

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

HEALTH INSURANCE AMENDMENT (DIAGNOSTIC IMAGING, RADIATION ONCOLOGY AND OTHER MEASURES) BILL 2002

Purpose of the Bill
To amend the Health Insurance Act 1973 to:

• require the registration of practices that render diagnostic imaging procedures and radiation oncology services in order for Medicare benefits to be payable;
implement the recommendations of the Diagnostic Imaging Referral Arrangements Review to improve the referral arrangements for diagnostic imaging services funded through Medicare; and

• restore referral access in relation to diagnostic imaging services to osteopaths.

Reasons for Urgency
The Diagnostic Imaging Agreement, which expires on 30 June 2003, contains a provision to implement practice registration. Legislative amendments are required by the end of March 2002 to allow the Health Insurance Commission (HIC) to register practices, prior to the anticipated commencement date, when the HIC will cease to pay Medicare benefits for services rendered from unregistered practices.

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

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INDUSTRY, TOURISM AND RESOURCES LEGISLATION AMENDMENT BILL 2002

Purpose of the Bill
The Bill contains a range of minor and non controversial amendments to Industry, Tourism and Resources portfolio legislation. The amendments are intended to correct out of date references, to correct technical errors that have occurred as a result of drafting and clerical oversights, and to clarify provisions to ensure they operate in the way that was intended.

In particular, the Bill includes amendments to correct a deficiency in the Bounty (Ships) Act 1989 that will serve to improve the delivery of the Shipbuilding Innovation Scheme. The proposed amendments will allow progress payments to registered ship builders eligible for the R&D bounty, and are required because progress payments for R&D bounty were not provided for when the Shipbuilding Innovation Scheme was incorporated into the Bounty (Ships) Act 1989.

The Bill also repeals two Acts that no longer have any legislative role.

Reasons for Urgency
It is very important to the ship building industry that the Bill passes in the Autumn sitting period.

Legal advice has identified that the Bounty (Ships) Act 1989 does not provide for progress payments for R&D bounty. Progress payments to eligible ship builders have been stopped and cannot commence until the Bounty (Ships) Act 1989 is amended.

Australian ship builders are operating in a highly competitive international market marked by tight profit margins. In this market, progress payments are important for ship builders in managing their cash flows. Early restoration of progress payments is essential to ease these pressures on ship builders.

The amendment will not have any financial impact on Commonwealth revenue or expenditure.

(Circulated by authority of the Minister for Industry, Tourism and Resources)

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MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) BILL 2002

MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) (CONSEQUENTIAL AMENDMENTS) BILL 2002

Purpose of the Bills
The purpose of the Bills is to ensure that health care professionals have access to medical indemnity cover that is provided by properly regulated insurers, and to specify minimum standards for medical indemnity cover in certain circumstances.

Reasons for Urgency
The Bills are to commence from 1 July 2003. If passage of the Bills is not secured by the end of the Autumn sittings, uncertainty regarding the reforms may result. This would potentially see the steady progress that Medical Defence Organisations (including United Medical Protection and its wholly owned subsidiary Australasian Medical Insurance Limited) have made towards implementing the reforms contained in the Bill, put into question. Medical Defence Organisations have incurred significant costs in preparing for the Bills.

The reforms contained in the Bills will ensure greater certainty that claims will ultimately be met. Hence if the Bills are delayed, doctors (and their patients) would have less certainty that their medical indemnity arrangements will respond to any claims.

(Circulated by authority of the Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan)

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NATIONAL BLOOD AUTHORITY BILL 2002

Purpose of the Bill
To establish a new Commonwealth statutory body, the National Blood Authority (NBA), to provide a national management framework for the Australian blood and blood products sector on
behalf of the Commonwealth, States and Territories.

Reasons for Urgency

All jurisdictions gave their approval to the new arrangements for the national blood sector, including the establishment of the National Blood Authority and new joint Commonwealth, State and Territory financing arrangements, at the 29 November 2002 Australian Health Ministers’ Conference. These arrangements are set out in the National Blood Agreement which has been signed by seven of the nine jurisdictions. The remaining two jurisdictions (Western Australia and the Australian Capital Territory) are expected to sign shortly. It is the expectation of all jurisdictions and relevant stakeholder organisations that the NBA will commence operations on 1 July 2003.

In order to meet this deadline, passage of the legislation to establish the NBA in the Autumn 2003 session is required to allow time for the administrative work to establish the NBA to be completed prior to 1 July 2003.

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

TAXATION LAWS AMENDMENT BILL (No. 7) 2002

Purpose of the Bill

This bill amends the taxation law to:

- provide certain exemptions from Australian tax for individuals who are temporary residents of Australia for tax purposes;
- exempt from income tax the payment of compensation to Australian Defence Force members for loss of a deployment allowance owing to injury sustained while on eligible duty outside Australia; and to members of the Reserve Defence Forces, who leave as a result of injuries sustained while performing duties for the Reserve Forces, for the loss of pay and allowance;
- treat previously assessable income as not assessable income nor exempt income where the taxpayer must repay an amount in a later year of income and to permit amendments of income tax assessments for the year in which the amount was originally treated as assessable income despite the time limit for amendments to assessments being exceeded;
- increase the level of expenses above which the medical expenses tax offset applies from $1,250 per annum to $1,500 per annum; and
- provide an income tax exemption to the Commonwealth Games Federation from 1 January 2000 to 30 June 2007.

Reasons for Urgency

In order to provide certainty for taxpayers, the Commonwealth Games Federation and for certain eligible temporary residents, these measures require legislation as a matter of urgency. Passage in this sitting is required as the matters generally relate to the current and previous income year.

(Circulated by authority of the Treasurer)

VETERANS’ AFFAIRS LEGISLATION AMENDMENT BILL (No. 3) 2002

Purpose of the Bill

This Bill contains a series of minor amendments that are for the most part beneficial in that they deal with anomalies in the legislation and also clarify the policies that are to be applied in certain circumstances. The remaining amendments align certain provisions of the Veterans’ Entitlements Act 1986 with Social Security law.

Reasons for Urgency

Although the amendments are minor they will resolve anomalies which have seriously inconvenienced those groups of persons affected by them. The relevant amendments are those that:

- provide for the continued indexation of the child-related income support payments still being received by a small number of service pensioners
- allow for the transfer of periods of membership of the pension bonus scheme that operates under social security law to the VEA scheme
- provide for the backdating of claims for partner service pension in the circumstances where the veteran partner of claimant becomes eligible for the payment of a disability pension at the special rate.

(Circulated by authority of the Minister for Veterans’ Affairs)

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002

Purpose of the Bill

The Bill amends the Workplace Relations Act 1996 (the WR Act) to:

- extend the coverage of the federal unfair dismissal jurisdiction by making greater use of the corporations power in section 51(xx) of the Constitution;
• improve the operation of the federal unfair dismissal laws as it impacts on small business; and
• make a number of other improvements to the way the unfair dismissal laws operate.

Reasons for Urgency

The Bill seeks to correct inefficiencies in the current unfair dismissal system and deliver a number of reforms that would assist business, and in particular small business.

One of the major inefficiencies in the current arrangements is the operation of concurrent federal and state unfair dismissal jurisdictions. One of the most significant consequences of these arrangements is that similar unfair dismissal cases are being handled differently merely because they fall into different jurisdictions, resulting in inequitable treatment for both the employees and employers concerned.

This Bill would seek to simplify the existing arrangements by creating a national unfair dismissal jurisdiction for corporate employers. The complexity and confusion that currently arises from the existence of multiple, overlapping jurisdictions would be remedied and would benefit employers and employees alike.

A number of other proposals in the Bill would benefit business by reducing financial costs, increasing certainty of outcomes and resolving unfair dismissal claims more quickly.

The measures in this Bill will strongly contribute to economic and employment growth and should be implemented as quickly as possible so that business, employees and the broader economy can benefit from the reforms.

(Circulated by authority of the Minister for Employment and Workplace Relations)

Senator Brown to move on the next day of sitting:

That the Senate—

(a) notes that:
(i) Alcoa Corporation plans to build an aluminium smelter in Iceland, which will use power from the proposed new Karahnjukar dam project,
(ii) the Karahnjukar project, to be built by Iceland’s National Power Company, consists of nine dams, three reservoirs, tunnels and river diversions, which will destroy the second largest remaining wilderness area in western Europe as well as habitats for rare birds, seals and reindeer, and

(iii) a coalition of 120 non-government organisations from 47 countries, including the Iceland Nature Conservation Association, International Rivers Network, Friends of the Earth International and World Wide Fund for Nature, opposes the Karahnjukar project;

(b) considers that the Karahnjukar dams and associated smelter are incompatible with Alcoa’s claims to support sustainable development and environmental excellence;

(c) calls on Alcoa to cancel plans for this and any other smelters based on new dams in Iceland’s eastern highlands; and

(d) joins the call for banks and other financial institutions not to provide any funds for the Karahnjukar dams or the smelter.

Senator Brown to move five sittings days after today:

That the Space Activities Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 33 and made under the Space Activities Act 1998, be disallowed.

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for 25 March 2003, relating to the disallowance of items [2356], [2357] and [2358] of Schedule 2 to the Migration Amendment Regulations 2002 (No. 10), postponed till 26 March 2003.

General business notice of motion no. 389 standing in the name of Senator Evans for today, relating to the decline in the rate of bulk billing, postponed till 25 March 2003.

General business notice of motion no. 410 standing in the name of Senator Allison for today, relating to wind energy, postponed till 25 March 2003.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.39 p.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move the motion as amended:

That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Corporations (Fees) Amendment Bill 2002 and 2 related bills be extended to 26 March 2003.

Question agreed to.

HOWARD GOVERNMENT: PUBLIC TRANSPORT POLICY

Senator CROSSIN (Northern Territory) (3.41 p.m.)—I move:

That the Senate—

(a) condemns the Howard Government’s seven years of lack of interest and denial on public transport, as evidenced by:
   (i) its decision to add a goods and services tax to fares,
   (ii) its failure to address the fringe benefit tax disincentives on public transport fares,
   (iii) its failure to give urban buses a fair go under the Diesel and Alternative Fuel Grant Scheme, and
   (iv) its stated denial of any responsibility or consideration of public transport in the Auslink Green Paper that purports to lay the groundwork for a national transport plan;

(b) notes, with concern, the impact of increased congestion in urban and outer urban areas on quality of life, health, and access to jobs and services for Australians;

(c) emphasises the environmental gains to be made through policy measures that reduce transport emissions, especially by reducing car dependency;

(d) stresses that access to public transport is an issue in all regions, including regional towns and cities, impacting daily on access to jobs, education and services for Australians; and

(e) calls on the Howard Government:
   (i) to release any policy option and research papers commissioned or undertaken by the Commonwealth that canvass policy measures and costs associated with tax and regulatory barriers to increasing public transport usage, including the ‘Cost Benefit Analysis Study for Exempting Employer-Provided Public Transport from Fringe Benefits Taxation’ conducted by the Australian Greenhouse Office in 2002, and
   (ii) to accept a role for the Commonwealth in relation to public transport and declare that role in the Auslink White Paper, due to be released in 2003.

Question negatived.

COMMITTEES

Legal and Constitutional Legislation Committee

Reference

Senator FERRIS (South Australia) (3.41 p.m.)—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I move:

That the recommendation in the report of the Legal and Constitutional Legislation Committee on statutory powers and functions of the Australian Law Reform Commission, that the reference to the committee not proceed further, be adopted.

Question agreed to.

DOCUMENTS

Auditor-General’s Reports

Report No. 34 of 2002-03

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 34 of 2002-03—Performance Audit—Pest and Disease Emergency Management: Follow-up Audit.

PARLIAMENTARY ZONE

Proposal for Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.42 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 the design and location of pedestrian lighting in
the parliamentary zone. I seek leave to give notice of motion in relation to the proposal.

Leave granted.

Senator IAN CAMPBELL—I give notice that, on Thursday, 27 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 the design and location of pedestrian lighting in the Parliamentary Zone.

(Quorum formed)

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Reference

Debate resumed from 6 March, on motion by Senator Brown:

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.

upon which Senator Faulkner had moved by way of an amendment:

Omit all words after “26 June 2003”, substitute:

The performance of the Department of Foreign Affairs and Trade (DFAT) and other relevant agencies of the Commonwealth Government in the assessment and dissemination of threats to the security of Australians in South East Asia in the period 11 September 2001 to 12 October 2002, including:

(a) the assessment made by DFAT and other relevant agencies of the Commonwealth Government of the threat to Australians in South East Asia from al Qaeda (and associated terrorist organisations) prior to 11 September 2001;

(b) any change in the assessment of the threat to Australians in South East Asia from these terrorist organisations arising from the terrorist events of 11 September 2001 and the decision by Australia to participate in military actions with other coalition partners against al Qaeda in Afghanistan in November 2001;

(c) any further changes in the assessment of the threat to Australians in South East Asia from these terrorist organisations arising from the arrest and interrogation of the so-called ‘Singapore bombers’ in the period December 2001 to February 2002;

(d) any further change in threat assessments to Australians in South East Asia arising from the arrest and interrogation of Omar al-Faruq;

(e) any subregional variations on the assessment of the threat to Australians in South East Asia in the period 11 September 2001 to 12 October 2002, in particular within Indonesia, including Jakarta and Bali;

(f) any differences between the assessments of the threat made by DFAT and other Commonwealth Government agencies, and the assessments of the threat made by the United Kingdom, the United States, New Zealand, Singapore and Canada over the security of their nationals for the same period;

(g) any differences between the assessments of the threat made by DFAT and other related agencies of the Commonwealth Government and the content of the travel advisories, travel bulletins and embassy bulletins provided by DFAT in the period 11 September 2001 to 12 October 2002;

(h) any differences between DFAT travel advisories, travel bulletins and embassy bulletins in the period 11 September 2001 to 12 October 2002;

(i) DFAT’s conclusions of any deficiencies in the assessment system and the system for preparing travel advisories, travel bulletins and embassy bulletins in the period 11 September 2001 to 12 October 2002; and
(j) DFAT’s conclusions on improvements to dissemination of travel advisories, travel bulletins and embassy bulletins to the Australian travelling public in the future.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.46 p.m.)—I understand we are in the middle of debate on this issue. It might assist the Senate if I were to seek leave to bring forward a vote or determination on business of the Senate order of the day No. 3.

Leave granted.

The DEPUTY PRESIDENT—The question is that the amendment moved by Senator Faulkner be agreed to.

Question agreed to.

The DEPUTY PRESIDENT—The question now is that Senator Brown’s motion, as amended, be agreed to.

Question put.

The Senate divided. [3.52 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes…………… 33
Noes…………… 30
Majority………. 3

AYES
Bartlett, A.J.J. Bishop, T.M.
Bolkus, N. Brown, B.J.
Buckland, G. Campbell, G.
Carr, K.J. Cherry, J.C.
Collins, J.M.A. Crossin, P.M.
Denman, K.J. Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Greig, B. Harradine, B.
Hogg, J.J. Hutchins, S.P.
Lees, M.H. Ludwig, J.W.
Mackay, S.M. * Marshall, G.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Stephens, U.
Stott Despoja, N. Webber, R.
Wong, P.

NOES
Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A.
Ellison, C.M. Ferris, J.M. *
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. Patterson, K.C.
Payne, M.A. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.

PAIRS
Conroy, S.M. Ferguson, A.B.
Kirk, L. Hill, R.M.
Landy, K.A. Knowles, S.C.
Sherry, N.J.

* denotes teller

Question agreed to.

DELEGATION REPORTS
Parliamentary Delegation to the United Kingdom and the Netherlands

Senator Forshaw (New South Wales) (3.56 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the United Kingdom and the Netherlands, which took place from 18 to 29 November 2002. I seek leave to move a motion to take note of the document.

Leave granted.

Senator Forshaw—I move:

That the Senate take note of the document.

I am pleased to present this report of the Australian parliamentary delegation which visited the United Kingdom and the Netherlands in November last year. Mr David Hawker, the member for Wannon, who led the delegation, is today tabling this report in the House of Representatives and making an almost identical speech to the one that I am about to give.

During the two-week visit, our delegation was privileged to meet with a number of ministers, various senior government officials, members of parliamentary committees, and civic and business leaders in both countries. This report details the activities of the delegation and summarises the discussions held during the visits.

Productive exchanges took place with ministers in both countries on a range of im-
portant issues. Some of those, without being exhaustive, included such important matters to Australia and to both these European nations as agricultural reform within the European Union and the potential impact of reforms that may arise from the proposed expansion of the European Union. The delegation also held discussions with senior officials on current issues, such as the fight against terrorism, asylum seekers, airport and border security, and the situation then prevailing in Iraq and the debates in the United Nations, as well as on more domestic issues—but still of international importance—such as the management of foot-and-mouth disease outbreaks. A number of social and health policy issues including drugs, euthanasia, genetically modified organisms, and human cloning and stem cell research were also the subject of informative and sometimes, might I say, spirited discussion.

The first stage of the delegation’s program was a visit to the United Kingdom. A warm welcome was extended to the delegation by the United Kingdom parliament, including by the Speaker of the House of Commons, the Rt Hon. Michael Martin MP. Members of the delegation were very honoured to be guests of the parliament at question time in both the House of Commons and the House of Lords. During our visit to the United Kingdom, we were fortunate to meet with representatives from the Corporation of London and the London Stock Exchange. Notable from those meetings was the importance placed upon maintaining London as a world-class city with first-class services and security in order to retain its reputation as a leading international banking and financial centre. I might add, having visited London on a number of occasions, I cannot recall it looking so sprightly and pristine. Certainly the follow-on from the jubilee celebrations had much to do with that, and there was a lot of activity within the city with various infrastructure works taking place.

The delegation was invited to the City of York to meet with the city council and county council representatives. We discussed with them the impact of parliament’s modernisation plans for local government and the increasing difficulties that local governments are facing in funding local services. At the time we were meeting, the dispute with respect to firefighting services throughout the United Kingdom was occurring. It was interesting to discuss that with people, particularly with regard to the various levels of responsibility between the national government and the various councils. We also met with officials from York University, who outlined their highly successful and innovative approach to promoting and supporting the creation of commercial enterprises, particularly in the areas of science and information technology research. The delegation was appreciative of the interesting program hosted by the United Kingdom parliament through the auspices of the United Kingdom branch of the Commonwealth Parliamentary Association and of the generous and warm hospitality extended to us during our visit.

Our visit to the Netherlands coincided with the lead-up to the national election following the collapse of the coalition government and the assassination of Mr Pim Fortuyn, the leader of the Lijst Pim Fortuyn. However, despite the fact that the government was in caretaker mode, these political developments did not impact at all on the success of the visits. Members of the delegation were received warmly by members of the Dutch parliament, and the fact that this political dynamic was occurring in the Netherlands at the time meant that we had a first-hand opportunity to discuss those developments with members of the parliament. A feature of our visit to the Netherlands were the discussions with caretaker ministers and senior government officials on the Netherlands’s advanced policies on drug use and euthanasia, in addition to such issues as the forthcoming elections, European expansion and the Iraq situation.

The delegation attended question time in the House of Representatives and we were formally welcomed to the chamber by the president. Given the very warm welcome we received from members and officials of the Netherlands parliament, we were delighted to extend an invitation on behalf of the Parliament of Australia to the President of the Tweede Kamer, the House of Representatives, Mr Frans Weisglas, and to the Presi-
dent of the Eerste Kamer, the Senate, Mr Gerrit Braks, to undertake a reciprocal bilateral visit to Australia.

During our visit to the Netherlands we also had the opportunity to hold discussions with business representatives and authorities from the Amsterdam Schiphol Airport about airport security, noise abatement, land acquisition and its approach to creating airport cities. Of particular interest was the briefing and demonstration of biometric iris scanning for processing passengers. Schiphol Airport was the first airport to introduce this measure as a means of fast-tracking travellers through the airport security arrangements. We were also honoured during our visit to the Netherlands to visit the site of the memorial to the crew of the Lancaster JB 659 0F-J of No. 97 Squadron, who lost their lives when shot down over Amsterdam in 1944. Two of the seven crewmen were Australians. Members of the delegation laid tributes at the cemetery in honour of the crewmen.

In conclusion, I sincerely thank the leader of the delegation, Mr David Hawker, for the way in which he led the delegation. He went out of his way to include all members of the delegation in the discussions at all times and was a very hospitable and friendly leader of the group. I also express my thanks, as the deputy leader of the delegation, to the other members, namely Senator Steve Hutchins and Senator Bill Heffernan, Mr Bob Baldwin, the member for Paterson, and Mr Anthony Albanese, the member for Grayndler. I believe we all had a cooperative spirit during the visit, and the input of all members made it highly successful as well as enjoyable.

I am sure I speak for the other delegation members when I say that we received excellent support from the High Commissioner to London, His Excellency Mr Michael L'Estrange, and from the Ambassador to the Netherlands, His Excellency Mr Peter Huisin, and their respective staff. I thank the Department of Foreign Affairs and Trade and Austrade staff here in Australia and overseas for their informative briefings. I thank the Parliamentary Library for the support and advice we received. I would also like to mention the great work done by the Parlia-

mentary Relations Office and, in particular, Mr Russell Chafer, to coordinate the visit.

Finally, I give a special vote of thanks to Ms Denise Gordon, the delegation secretary. She kept us on time for our appointments, and her diligence and hard work helped to make the visit both informative and successful. I am sure all senators understand that you cannot undertake a trip like this without having a diligent secretary to make those arrangements. I thank the parliament for giving us the opportunity to undertake this visit.

Senator HUTCHINS (New South Wales) (4.06 p.m.)—I would like to echo the words of Senator Forshaw, who was the deputy leader of the delegation to the United Kingdom and the Netherlands. I would like to commence my remarks by thanking in particular Ms Denise Gordon, who was our secretary on the trip. It was my first trip as a member of a parliamentary delegation and I was not all that aware of what was expected of me. Ms Gordon was there to make sure that we were on time, that everything was coordinated and that not only was everything on time but it was fruitful. Ms Gordon is here today, and I know that I reflect the views of my colleagues and their spouses who were with them in expressing our deep appreciation of her effort.

As Senator Forshaw has said, there was a very full itinerary in both countries and that itinerary reflected the indicated areas of our interest. Common to the United Kingdom and the Netherlands were, of course, areas affecting defence, security, terrorism and trade. In both those countries we were given a very frank and honest view about those areas I have just mentioned. Mr Hawker, our worthy leader, has already outlined in detail in the House of Representatives the itinerary and the people we saw and were given access to in our trips in the United Kingdom. I would like particularly to thank the High Commissioner, Mr L'Estrange, and his staff for the efforts they put in to make sure we had the exposure we were seeking. I would also like to thank Mr Paul Jackson and Mr Andrew Pearson from the Commonwealth Parliamentary Association who, along with Ms Gordon, ushered us around and made
sure we got to the places in London and in York that we wished to attend. In particular I would like to thank Mrs Joy Pearson, the spouse of Andrew Pearson, who looked after the spouses’ program, and I know they really did enjoy themselves and were most appreciative of her contribution.

You cannot help but have a bit of sightseeing when you go on these delegations. One thing I found fascinating was that while Mr Albanese and I were looking for a famous pub called the Slug and Lettuce we came across in the York Cathedral a statue which said that it was on that spot that Claudius was proclaimed Emperor by his troops in the third or fourth century. I found that interesting.

When we went to the Netherlands we were assisted most ably by the ambassador, Mr Hussin, and his wife and particularly two staff members, Marina Tsirbas and Stuart Page. Once again we were given the exposure that we sought in relation to those areas that I mentioned earlier. As Mr Hawker and Senator Forshaw have mentioned, we had the opportunity to go to the House of Representatives and the Senate and we had the chance to deal with some fairly difficult and topical issues for us here in Australia—euthanasia, drugs and terrorism. Also, in a number of informal discussions we discussed immigration and how that is a difficult situation for the people of the Netherlands and their parliament.

The Netherlands is, and probably wants to continue to be, the hub of Europe for logistics and transport. I found it very interesting to have discussions with the Holland International Distribution Council, whose director, Mr Rene Boerema, had been out here at the invitation of the Australian government not long before we had spoken to him.

We also had the opportunity to go to the Aalsmeer flower market and to one of the local greenhouses where there were a variety of tulips. It was amazing to see hard men like Bob Baldwin, the member for Paterson, Anthony Albanese, the member for Grayndler, and Senators Forshaw and Heffernan almost melt at the sight of these tulips—the different colours and varieties. It was a sight to behold and I know that they appreciated it. If they could have brought some tulips back to Australia with them, I am sure they would have.

As I have already had the opportunity to mention, we did lay a wreath at the grave site of two Australian servicemen who were killed in World War II. I made an adjournment speech about Pilot Officer Alan Hart and Flight Sergeant Harold Boal. I have sent a copy of that adjournment speech to both their families and they have written back to me. It was very pleasing to do that, to commemorate the deaths of two young Australian men, and to be able to do that on behalf of the parliament of Australia. Once again I echo what Senator Forshaw has said: I do appreciate the parliament sending me and my colleagues on this trip overseas. I feel this delegation was worth while for me and I know it was for my colleagues.

Question agreed to.

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 Ms Gillard to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund in place of Dr Lawrence.

ENERGY GRANTS (CREDITS) SCHEME BILL 2003
ENERGY GRANTS (CREDITS) SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2003
Report of Economics Legislation Committee

Senator EGGLESTON (Western Australia) (4.14 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Energy Grants (Credits) Scheme Bill 2003 and a related bill, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
Senator GEORGE CAMPBELL—

I wish to make a number of remarks about the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2] that is back again before the Senate dealing with the issue of secret ballots for protected action. I listened with a bit of interest to the debate that took place before question time in the Senate and to some of the comments that were made by government senators in relation to this bill. I also noted that the debate before question time actually took place in semidarkness. I do not know whether that was a reflection of the fact that this bill on industrial relations wants to take us back into the Dark Ages. It was appropriate that a part of the debate before question time was heard in semidarkness in this chamber.

This bill was previously before the Senate last year. I think it is symptomatic of a government that has no policy agenda. It has no policy agenda in respect of industrial relations other than to seek to introduce legislation for two purposes: firstly, to create an environment of confrontation with what it sees as its ideological whipping-boy in the trade union movement and, secondly, to manipulate the political circumstances to allow it, if it sees fit at any time during its period of office, to be able to call a double dissolution. The Leader of the Opposition and others have said from time to time: if you want to have a double dissolution on industrial relations issues, then bring it on. We would be very happy to accommodate you and go into an election on those specific issues. There is no substance to your arguments—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—To my arguments, Senator Campbell?

Senator GEORGE CAMPBELL—

There is no substance to the government’s arguments. Mr Acting Deputy President, and you are part of that government, so I presume there is no substance to your arguments either if you are supporting the arguments of the coalition government on this particular issue.

This bill talks about the pretext of extending democracy in the workplace. Nothing could be further from the truth in the intent of this bill. The real objective of this bill is to tilt the playing field further in favour of employers to provide a course of protection for—almost to put a fence around—employers in an environment where protected action may be taken by putting into place a set of mechanisms that will simply frustrate the capacity of unions to be able to take or organise industrial action on behalf of the workforce they represent. That is the real agenda behind the promotion of this particular bill.

It is nothing new for coalition governments to run with the furphy of secret ballots. Tony Street did it when he was industrial relations minister back in 1975. The then Fraser coalition government introduced very substantive changes to the Industrial Relations Act back in 1975, among which were provisions for conscientious objectors, an industrial relations police force and a provision for secret ballots for industrial action. The truth of the matter is that those provisions have been in the act since that time and, if the minister cares to go and have a look at the extent to which they have been used since 1975 in industrial disputes, he will find they are very few and far between. In those instances where the provisions were used—the ones that I am aware of—it extended industrial action. It did not assist and facilitate in the industrial relations process in resolving disputes. It had the opposite impact of extending them. As a consequence, neither unions nor workers nor employers in the main would go anywhere near those provisions or have anything to do with them.

In the committee—of which I was a member—that inquired into this bill we asked the question on a number of occasions: why are you attempting to put into the act a secret ballot provision for employees if they wish to take industrial action? The argument is that it is to prevent intimidation—that intimidation goes on in the workforce and this is to stop that intimidation occurring. If that
is the case, why don’t you have a provision in there that requires you to have a secret ballot when you call off industrial action? Aren’t you concerned that people might be intimidated—

The ACTING DEPUTY PRESIDENT—Isn’t the government concerned, Senator Campbell?

Senator GEORGE CAMPBELL—Isn’t the government concerned, Mr Acting Deputy President, that employees might be intimidated in a decision making process to call off industrial action? No, that is not the case. This is not an issue about the government being concerned about extending democracy in the workplace. This is an issue about the government trying to tilt the playing field on behalf of employers.

We constantly heard in the committee’s inquiry the argument that unions are undemocratic and force their members to take industrial action against their will. That is not new—we constantly hear those sorts of claims from members on the other side of the chamber—but in reality it is not correct. Anyone who has had any experience with the industrial relations environment knows it is not correct. It is very rare that you get employers or employer organisations in this country making such claims, because they know it is not correct. I just heard Senator Santoro praising Senator Ludwig for the cooperation that he got from Senator Ludwig’s union, the AWU, on a variety of issues that Senator Santoro had to deal with when he was the Minister for Training and Industrial Relations in Queensland. If he had been here I would have asked him to outline a few of them to see whether or not we had been disadvantaged in the process of the discussions that they had together and in the way in which they cooperated effectively in that state.

The second fallacy is the argument that somehow or other you will assist the industrial relations process by making the process more complicated and by slowing down the capacity for unions to take industrial action. That is just not the case. That is not how industrial relations operate in the real world. That is not the way that industrial disputes occur. They do not occur through some dic-
tum coming out of a union office, whether it be a national office or a state office. In fact, when I was the secretary of the Amalgamated Metal Workers Union, my experience was that most disputes occurred without the union even being aware of them in the initial stages. It was the democratic process of workers on the job making decisions about how they related to their management that led in many instances to industrial disputes occurring. I think if you looked at the operation of most unions you would find similar circumstances with most of the unions in this country. If you also looked at union structures and the way in which unions function, you would find that they are not dissimilar to the way in which this parliament functions in many respects. They do function on a democratic basis. There are effective provisions within union structures for members at all levels to have a say and to have an impact upon the decisions that unions take on a whole variety of issues, only one of which is industrial action.

The whole question of secret ballots really came out of the paranoia that was demonstrated by the Australian Industry Group, the AIG, about Campaign 2000. Do you remember that campaign? Government members on the other side would be well aware of it—particularly Senator Kemp, who is a Victorian, because it was focused very much around Victoria and the activities of my own union and some other unions in the metal industry area. An absolute paranoia gripped the Australian Industry Group employers’ representatives about what the unions were going to do in prosecuting that campaign—that they were going jack up the whole of the state, that there would be nothing moving and that there would be widespread chaos and mayhem in the industry. What happened when Campaign 2000 came along? None of that materialised. The negotiations continued as they had in the past with employers in the industry and with the union, in some instances, or with the shop stewards or the workers themselves. The agreements were negotiated and signed up.

As I understand it, the agreements will be up for negotiation again sometime this year. I think the agreements expire around the end
of this month, and the negotiating period will commence around then. I am sure that, in those circumstances, a not dissimilar outcome will occur to that which occurred in Campaign 2000. The paranoia that was generated by the employers at that time obviously had an impact on the government and led to this legislation being designed and developed in order for this government again to demonstrate its bias and where it sits on industrial relations issues, which is four-square in support of the employer and against anything that unions or employees might seek to do to promote their interests.

I will conclude on these remarks because I notice that Senator Ian Campbell is back in the chamber to complete the debate. The reality is that this bill is fundamentally flawed in its intent, because if its objective is to create a more efficient industrial relations environment in this country it will fail and fail dismally in that objective. If it is about making the enterprise bargaining system more efficient, it will fail and fail dismally in that objective. It will do nothing to facilitate a more effective or more efficient industrial relations environment in this country. We on this side certainly know that this bill does not have any of those objectives tied to it. Firstly, this bill is there to serve a particular interest—that is, what are perceived to be the needs of certain employers in some industries. Secondly, this bill is back here again, having been rejected by this chamber, in order to again provide another double dissolution trigger, another weapon in the government's armoury, if it decides that it should go to the people at some stage in the near future with the dissolution of both houses of parliament. As I said before, if that is the issue that the government wants to confront the people on at the next election, all we can say from this side of the chamber is: the sooner it happens the better.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (4.29 p.m.)—Firstly, I thank all other honourable senators who have contributed to the debate on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2]. It is an important debate. Those senators who fall into the trap, as Senator George Campbell has done and as I heard Senator Andrew Murray do, of thinking that this is some sort of political bill that is aimed at a trigger delude themselves. As you would know, offering workers the right to a democratic vote on whether a strike takes place has been a commitment of our party for as long as I can remember. It was a commitment of John Howard when he was the shadow minister for industrial relations during the 1980s. It was a commitment that he took to the 1996, 1998 and 2001 elections. It is a fundamental commitment for a very good reason. We believe that the workers who can be forced to strike should be given a say, in private and without the threat of coercion, in making a decision that affects their lives, their livelihoods and, ultimately, the enterprise in which they work.

We do not think it is a radical proposal. A party that call themselves the Australian Democrats would have us believe that they believe in some fundamental democratic process. If they were serious about that, and if they were true to their name, they would support giving workers the right to make a decision or to be part of the decision making process when it comes to taking action. Of course, the action of withdrawing labour from an enterprise by going on strike is an important democratic right which the coalition has supported and supports through the workplace relations legislation that we enacted in this place in 1996. We have ensured that the law allows strike action in certain circumstances. But in this legislation, we seek to ensure that if the workers do not want to be part of that action—if they do not believe that there should be a strike—they have a very clear legal right that ensures that their view is taken into account.

Of course, the Australian Labor Party will spend hours, as they have already done in this debate, telling you all the reasons why you should not trust the workers and why you should trust the union bosses. They do not want to diminish the power of the union bosses who sit on the preselections which put them into this place, because if they did that
they would be cutting their own lunch. They would be undermining their own position in this parliament and they would be undermining their own preselection delegates, and any good politician on either side of the chamber knows that, if you are a smart politician, that is something you should not do. You can only feel sorry for those opposite because they cannot come to this debate without having a quite clear conflict of interest. It is very hard for the Labor Party to come to a sensible and sound position on industrial relations questions. They have a clear conflict of interest in these debates because of the very nature of their political party, where union delegates are guaranteed and in most cases have a majority on the floor of the preselections.

The sartorial Senator Ludwig stands up here and goes through all the technical reasons. He says, ‘The processes are too long. It is too detailed. It will take too long. It is inefficient.’ Democracy can be. Elections are complicated processes. When we have elections for this place we spend millions of dollars asking people to turn up at a polling booth between eight o’clock in the morning and six o’clock at night to pass judgment on their electorate officials. It costs a lot of money. You have to have the Electoral Commission, you have to have ballot papers, you have to have ballot boxes, you have to have scrutineers and you have to have processes that ensure the integrity of the ballot. It is a tedious process, but it is called democracy and it ensures that Australian people get a chance to vote on how they are governed. A tyranny or dictatorship is a lot more efficient. It is far more efficient to avoid allowing the workers—the people who put in the hard work, the people who stretch their backs, the people who sweat—to have a say in whether they go on strike when the union boss says, ‘Come on, we are all out.’ From my point of view, it is very hard not to ensure that the legislation allows the hard-working Australian who has chosen to be a member of a union to have a say in secret without coercion to make that decision.

Of course it involves some procedures, and you need to ensure that those procedures have efficacy. In response to Senator Ludwig’s criticisms, there are procedures within the bill that propose a straightforward and streamlined process. The bill does provide for prompt consideration of applications by the commission. In particular, it says that the commission must, as far as is practicable, determine applications for a secret ballot order within two working days. It sets a target of 10 working days to complete a ballot. In any assessment of industrial action in the history of Australia, that is an incredibly short period of time. That demonstrates that the government has a practical view that the provisions of this bill should ensure that a democratic process is not only put in place but also put in place in a timely manner.

One would expect the Australian Labor Party to oppose this bill, but I say to the Australian Democrats: this is a bill that delivers greater industrial democracy to the workers of Australia, gives them greater rights and ensures that they have a greater say in workplace relations in the workplace. We have worked to find practical and sensible solutions to its implementation. I would hope that the Democrats could see their way clear to supporting, on this occasion, this piece of legislation which we believe is a significant move towards empowering those who have the smallest amount of power within the industrial framework.

I will refer briefly to some other comments that Senator Ludwig made in relation to the bill. He said that the bill is not necessary because there is already protection against union intimidation in relation to industrial action under section 298R of the act. That section prohibits a union, official or union member from harming a union member because there is already protection against union intimidation in relation to industrial action under section 298R of the act. That section prohibits a union, official or union member from harming a union member because, amongst other reasons in the act, the member refused to join in industrial act or the member made or proposes to make an application to an industrial body for the holding of a secret ballot. However, the section does not expressly prohibit harm against a union member because the member other-
wise opposed a proposal for industrial action—for example, harm because the member spoke against the proposal at a union meeting. That is one of the reasons the bill is required: to protect union members and employees by guaranteeing them a free and private vote—that is, a secret ballot.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (4.39 p.m.)—I have circulated to the chamber sheet 2877 and there is a total of 10 amendments. I should in the normal course of events break up these amendments but, since this debate has been previously held and these amendments are substantially the same as before—and I suspect I know the attitude of the two major parties on this—I am content to put them all at once unless there is direction from the chair or suggestions from either side that they do not want to do that.

The CHAIRMAN—I understand that you will be able to move amendments (1), (4), (6) and (8) together by leave, but amendments (2), (3), (5), (7), (9) and (10) oppose other items. Do you want to seek leave to move together (1), (4), (6) and (8) on sheet 2877?

Senator MURRAY—that was to be my counterproposition. I was just trying to shortcut a little. But I am quite happy for that. I seek leave to move amendments (1), (4), (6) and (8) together.

Leave granted.

Senator MURRAY—I move amendments (1), (4), (6) and (8) on sheet 2877 together:

(1) Schedule 1, item 2, page 3 (lines 27 to 29), omit the item, substitute:

2 Subsection 134(5) (paragraphs (d) and (e) of the definition of prescribed premises)

Omit “or 136”, substitute “, 136 or Division 8A of Part VIB”.

(4) Schedule 1, item 20, page 7 (line 33), omit “170NBDC”, insert “170NBCD”.

(6) Schedule 1, item 25, page 10 (line 33) to page 36 (line 18), omit the item, substitute:

25 After Division 8 of Part VIB

Insert:

Division 8A—Secret ballots on proposed protection action

Subdivision A—General

170NBA Object of Division and overview of Division

Object

(1) The object of this Division is to establish a transparent process which allows union members directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by unions.

Overview of Division

(2) Under Division 8, industrial action by union members is not protected action unless it has been authorised by:

(a) the relevant union; or

(b) a secret ballot of relevant union members; or

(c) the Commission.

(3) A secret ballot is required if it has been:

(a) requested by a relevant union member; or

(b) ordered by the Commission.

(4) A secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules, the model rules established by the Commission;

and in any case rules must be adopted within nine months of the commencement of this provision.

(5) The rule that industrial action by employees is not protected action unless it has been authorised does not apply to action in response to an employer lock-out (see section 170MQ).

170NBAAA Definitions

In this Division:

ballot order means an order made under section 170NBBF requiring a protected action ballot to be held.

bargaining period has the meaning given in subsection 170MI(1).
negotiating party has the meaning given in subsection 170MI(3).

party, in relation to an application for a ballot order, means either of the following:
(a) the applicant;
(b) the employer of the relevant union members.

proposed agreement, in respect of a bargaining period, means the proposed agreement in respect of whose negotiation the bargaining period has been initiated.

protected action ballot means a secret ballot under this Division.

relevant union, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any union which is a negotiating party to the agreement.

relevant union member, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any member of the relevant union who is employed by the employer and whose employment will be subject to the agreement but does not include a union member who is a party to an AWA whose nominal expiry date has not passed.

Subdivision B—Authorising protected action

170NBB How is protected action authorised

Industrial action by employees is not protected action unless it has been authorised by:
(a) the relevant union; or
(b) a secret ballot of relevant union members; or
(c) the Commission.

170NBBA How and when can a union authorise protected action

(1) A relevant union may, subject to subsection (3), make a declaration to authorise industrial action by relevant union members as protected action in accordance with its rules provided that:
(a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration;
(ii) the nominal expiry date of the existing agreement; or
(b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration;
(ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or
(c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MQ.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division completed, during that later period.

(3) If a relevant union does not have in place rules that establish how protected action may be authorised, then protected action requested by a relevant union member may only be authorised according to a secret ballot conducted under the Commission’s model rules according to section 170NBCC.

(4) A relevant union may not authorise protected action under subsection (1) if a secret ballot is required under section 170NBBB.

170NBBB When is a secret ballot required to authorise protected action

A secret ballot is required, and no protected action will be otherwise authorised, if it has been:
(a) requested by at least two union members as provided by the rules; or
(b) ordered by the Commission.
170NBBB Secret ballot may be requested by relevant union member

A relevant union member may, during a bargaining period for the negotiation of a proposed agreement under Division 2 or 3 of this Part, request the relevant union to which the member belongs to hold a protected action ballot to determine whether proposed industrial action has the support of the majority of relevant union members.

170NBBBD Secret ballot may be ordered by Commission

(1) A party referred to in subsection (2) may, during a bargaining period for the negotiation of a proposed agreement under Division 2 or 3 of this Part, apply to the Commission for an order for a ballot to be held to determine whether proposed industrial action has the support of a majority of relevant union members.

Note: For the duration of a bargaining period, see sections 170MK (when it begins) and 170MV (when it ends).

(2) The following parties may apply:

(a) the relevant union to which the relevant union members mentioned in subsection (1) belong;

(b) any employer or organisation of employers who is a negotiating party to the proposed agreement.

170NBBE Commission must be satisfied of various matters

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

(a) any court, judicial inquiry or Royal Commission findings justify such an order; or

(b) any evidence or findings of coercion or intimidation of members proposing to take protected action makes such an order appropriate.

170NBBF Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order a protected action ballot to be held by the relevant union.

Note: The Commission may make an order requiring a secret ballot to be held for one or more bargaining periods.

Subdivision C—Conduct and results of protected action ballot

170NBC Ballot must be secret

A protected action ballot must be a secret ballot.

170NBCA How is a secret ballot to be conducted

(1) Subject to subsection (2), a secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules, the model rules established by the Commission.

(2) Before conducting a secret ballot a union must give its relevant union members:

(a) reasonable notice that the secret ballot will be held; and

(b) information as to the matters which are to be dealt with in the proposed agreement and the general nature of the proposed industrial action.

170NBCB Union rules for conduct of secret ballot

(1) A secret ballot is to be conducted according to the rules of the relevant union.

(2) If the relevant union does not have rules in place in accordance with subsection (1) for the conduct of a secret ballot to authorise protected action, then the secret ballot is to be conducted in accordance with the model rules established by the Commission under section 170NBCC.

(3) A union must adopt its own rules or the Commission’s model rules within nine months of the commencement of this Division.

170NBCC Commission model rules for conduct of secret ballot

The Commission shall issue model rules for the conduct of secret ballots.

170NBCD Declaration of ballot results

As soon as practicable after the end of the voting, the union must, in writing:

(a) make a declaration of the result of the ballot; and
(b) inform the relevant union members, negotiating parties and the Industrial Registrar of the result.

**170NBCE Effect of ballot**

(1) Industrial action is authorised under this Division if more than 50% of the votes validly cast were votes approving the action and:

(a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
   (i) the date of the declaration of the results of the ballot;
   (ii) the nominal expiry date of the existing agreement; or

(b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
   (i) the date of the declaration of the results of the ballot;
   (ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or

(c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MQ.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division completed, during that later period.

(3) The Commission may, by order, extend the 30-day period mentioned in paragraph (1)(a), (b) or (c) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.

(4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has been extended previously.

(5) If industrial action commences during the 30-day period, stops and re-starts within a reasonable period after the 30-day period, no new authorisation is required if the industrial action is substantially the same.

(6) Industrial action is taken, for the purposes of this Division, to be duly authorised even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

**Subdivision D—Funding of ballots**

**170NBD Liability for cost of ballot**

*Union member initiated ballot*

(1) The relevant union is the party liable for the cost of holding the protected action ballot, if a relevant union member initiated that ballot under section 170NBBC.

*Commission ordered ballot*

(2) If the Commission ordered the ballot to be conducted, the applicant for a ballot order is the party liable for the cost of holding the ballot.

(3) Subsections (1) and (2) have effect subject to subsection 170NBDA(3).

**170NBDA Commonwealth has partial liability for cost of ballot**

(1) If:

(a) the liable party notifies the Industrial Registrar of the cost incurred by the relevant union in relation to the holding of the ballot; and

(b) does so within a reasonable time after the completion of the ballot;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred by the relevant union in holding the ballot. The amount determined by the Industrial Registrar is the reasonable ballot cost.

(2) The Commonwealth is liable to pay to the liable party 80% of the reasonable ballot cost.
(3) If the Commonwealth becomes liable to pay to the liable party 80% of the reasonable ballot cost, the liable party for the ballot order is:

(a) to the extent of the Commonwealth’s liability, discharged from liability under section 170NBD for the cost of holding the ballot; and

(b) liable to pay 20% of the reasonable ballot cost 30 days after the Industrial Registrar’s determination.

(4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonable and genuinely incurred.

(8) Schedule 1, item 30, page 37 (line 15) to page 38 (line 12), omit the item, substitute:

30  After section 307

Insert:

307A False statement in application for protected action ballot order

(1) A person must not, in an application for a ballot order under Division 8A of Part VIB:

(a) make a statement; and

(b) in making the statement, be reckless as to whether the statement is false or misleading in a material particular.

Penalty: 10 penalty units.

(2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under Division 8A of Part VIB.

Note: For strict liability, see section 6.1 of Criminal Code.

In moving these amendments, I think it necessary to recap some of the assertions and the elements that surround the area of secret ballots. It is absolutely true that the previous government, the present government, the present act and all political parties and independents in this place support the principle of secret ballots, both in the normal areas that we understand, such as parliamentary elections, and in the particular circumstances of workplace relations. It is for that reason that secret ballot provisions already exist in the law.

The coalition is seeking not to introduce new principle or introduce secret ballot provisions for the first time but in fact to add to the processes. What they are intending to do is to move from a situation where mandating secret ballots is at the discretion of the Industrial Relations Commission, which it is at present, to a situation where having secret ballots is mandated. The intention of mandating it in all cases has at its heart a supposition—which the department has said openly and on the record is not so—that intimidation is rife in the area of protected industrial action. Why do I emphasise that it is in the area of protected industrial action? It is simply put, there may be practices in unprotected industrial action, where people operate in some heat and in a less regulated manner, where intimidation may occur. I do not know if that occurs or not.

Unfortunately, statistics have not been provided, nor are they available from either the department or the Australian Bureau of Statistics, as to the number of days lost as a result of unprotected industrial action. Protected industrial action, as we know, is now down to the record level the coalition rightly crow about. I have heard them crow many times in this chamber, as I am sure other members of the chamber have, about the lowest level of industrial dispute in Australia’s history, which, as at January 2002, for the 12 months was 49 days lost per 1,000 employees.
To return to the law as it was enacted, sections 135 and 136, which occupy nearly four pages of the act at present, clearly indicate the circumstances in which the commission may order a secret ballot. I will not bore the chamber by quoting the entire act but, for instance, section 135 (1) says:

Where:

(a) an organisation is concerned in an industrial dispute with which the Commission or another tribunal acting under a law of the Commonwealth is empowered to deal (whether or not proceedings in relation to the dispute are before the Commission or other tribunal); and

(b) the Commission considers that the prevention or settlement of the industrial dispute might be helped by finding out the attitudes of the members, or the members of a section or class of the members, of the organisation or a branch of the organisation in relation to a matter;

the Commission may order that a vote of the members be taken by secret ballot (with or without provision for absent voting), in accordance with directions given by the Commission, for the purpose of finding out their attitudes to the matter.

That is unequivocal. The commission has the ability to intervene. Also, it is stated under section 136 (1), relating to application by members of organisations for secret ballots:

Where:

(a) the members, or the members of a section or class of the members, of an organisation or branch of an organisation are directed or requested by the organisation or branch to engage in industrial action; and

(b) the members directed or requested are, or include, members (in this section called the relevant affected members) who are employed by a particular employer at a particular place of work;

application may be made to the Commission, by at least the prescribed number of relevant affected members, for an order under subsection (2).

So members of affected industrial organisations may approach the commission for secret ballots. There is no impediment in the law and there is every support in the law for that to occur. The question then arises: since the law was enacted—commencing on 1 January 1997—have there been circumstances in which secret ballots have been ordered? The answer is yes. With regard to protected action, my records indicate that there have been 12. How many enterprise bargaining agreements were conducted under protected action over that period? There were over 30,000. It really is not a very high demand. There is a reason for that. The entire reason that the Labor Party introduced the concept of enterprise bargaining and the coalition refined it, in both instances supported by the Democrats, is that as far as possible you want to leave the bargaining agents—the employer and the employees—to get on with it and negotiate their outcomes in their own terms and in their own manner with the least amount of interference from the regulator or anybody else as possible.

When you move to a situation where you start mandating secret ballots, you actually clog up the system. You make it more difficult to operate.

That is the reason we have been concerned that this is an antimarket device. It is ineffective in terms of the way in which the labour market—if I can use an economist’s term—will operate in the resolution of wages and conditions. The consequence is that we have looked at this and asked if there are any instances where members of a union, for instance, may need more protection as a result of intimidation. We suspect there are cases. We suspect there are a minority of people in some industries who behave improperly. Given the statistical nature of malfeasance in our community, it would be highly unlikely for there not to be a percentage of people who need attention. However, if it is a case that is in a particular industry or practice, then you need to home in on that and focus your bill on those areas. This bill does not; it seeks to apply a general rule across all of the provisions. The Australian Democrats found a hole by a remarkable discovery that most union rules do not have provisions for secret ballot processes. When asked, the unions at the hearings we attended said on the record that they had absolutely no objection to a call for a secret ballot—run a cardboard box up to the front, drop in your pieces of paper and have them counted by scrutineers. There was nothing of that sort; there was no problem. The difficulty I had was that they do not have any rules that are laid out for how that
should occur. I think that is a missing part of the act.

I have taken some time and trouble to develop and devise a set of amendments that would deal with this area. We have looked at making voluntary secret ballots for protective action available to union members under union rules. We are suggesting that voluntary secret ballots should only be initiated by union members. This secret ballots proposal represents a new approach that would achieve internal union democracy and decision making rather than impose additional external hurdles to accessing protected industrial action. Under this proposal, union rules would be able to provide for a secret ballot of eligible members as part of the process for authorising protected industrial action when required, and when required by members. The members would only activate the secret ballot on request; it would not be mandated. By the way, it is not as if we have put up a great hurdle for this to happen; we have suggested that two members may be sufficient to activate the union rules approach.

Aside from the very minimal requirements necessary to ensure fairness and accountability in the ballot, unions would be free to determine the form of secret ballot that best suited their circumstances. There would be no prescription in relation to the method of secret ballot—attendance or postal—or calling for the ballot or the ballot question. In other words, it is up to the unions to devise what best suits them. The result is a simple requirement that will strengthen internal union decision making without mandating, limiting or delaying access to protected industrial action. On request, protected industrial action could be endorsed by secret ballot of members eligible to participate in the industrial action conducted in accordance with the rules of the union. The minimum procedural requirements for a secret ballot to authorise protective action would be that the union must advise members before the ballot as to the matters that are proposed to be dealt with, and the general nature of the proposed industrial action—for example, whether there are to be strikes, bans or both—and notify members and the employer that a ballot has been conducted, along with the result of the ballot.

These simple procedural requirements are intended to ensure that members have a reasonable opportunity to participate in the vote, to understand the industrial action they are being asked to endorse and to be informed of the result of the ballot. These requirements should be able to be easily integrated into unions’ existing practices for approving industrial action. For example, I understand that most unions currently provide some notice to members of any meeting that may consider industrial action. There would be no prescribed quorum, although unions could choose to set a quorum through their rules. Each secret ballot should be able to authorise protected industrial action for a reasonable period. To ensure certainty in relation to access to protected action, a ballot would be valid in spite of any technical breaches in processes that were done in good faith. This measure implements the policy achieved by privative clauses—a clause which prevents review in the courts to the ballot process and ballot result on technical grounds. Members would, of course, have the right to challenge any material breach of the rules, but provided the breach was technical and was done in good faith it would not jeopardise the protected status of the industrial action.

Unions would be required to modify their rules to provide for secret ballots to authorise industrial action within nine months of the bill being passed. To assist in this regard model rules would be developed. That is an important point: model rules would be developed in the absence of rules by the unions—in other words, by an industrial relations commission but with submissions that unions in whole or in part could adopt. Any union that failed to introduce the required rules in the prescribed period would be obliged to adopt the industrial relations commission model rules.

As I said in my contribution to the second reading debate, it is my belief that, once again, the principal motive for this bill is to secure a double dissolution trigger rather than to attend to a legitimate negotiation for an outcome that would advance the cause of
secret ballots without throwing sand into the engine of industrial democracy. I would urge the government, if they decide to proceed on their political course, to come back later to my amendments and to perhaps consider them in another bill and advance these matters as I have outlined.

Senator LUDWIG (Queensland) (4.54 p.m.)—Before the government speak on these amendments, it is worth while letting them know our position in relation to them so that they can form their view accordingly. Labor will not be supporting the amendments moved by Senator Murray. We can perhaps go so far as to say that we gave them very careful and serious consideration. There are matters that Senator Murray is keen about; however, when you examine the amendments in the light of the comments we have made in relation to the principal bill, they really fall under the same heading—that is, there is no necessity for the amendments to be put and there is no necessity, in truth, for the bill to be put.

The government understand that and are aware of our position. I would add that particularly marked in this debate is that no proof has been put about the actual mischief that this legislation is supposed to address. There is a lot of rhetoric from the government in relation to this issue. In fact, the government seem to be clearly of the view that the concept of how industrial relations works at a practical level is that union bosses—to use their phrase—call strike action and the like. Far be it from me to remind the government that industrial relations has worked quite distinctly differently from that for many years. As long as I have been involved in industrial relations, the process primarily followed in all of these debates in the workplace has been about what action to take, how to respond, how to deal with the employer and how to address workplace issues. The union movement has for a long time been pushing for consultative committees and for mechanisms to allow consultation to take place at the workplace because, through consultation, views can be shared and a solution can be found. That is always, and has been since I have been involved in industrial relations, the most practical way of progressing a debate. In fact, we have found in many instances that it is both the employer’s obstinacy and the employee’s difficulty in not wanting to consult the employer in finding pathways to avoid consultation that have been the sticking point.

The way around that in more recent times has been to involve the commission in these debates at the workplace to assist both the employer and the consultative committees to overcome some of the issues that have confronted them. It is, I am sure the coalition would agree, a far better way to resolve your differences by ensuring that there is a frank, open and fair sharing of information and being able to arrive at an end point.

The idea that union bosses can have the sway that Senator Ian Campbell suggests, that they can walk into a place and call out workers at will, really defies logic. In fact, from my experience in workplaces over some 11 years—and I am not sure what Senator Ian Campbell can go on—the opposite tends to be the truth. You have instances where a 1,000-strong work force might wish to take industrial action but it is not the appropriate time or place to take it and a better strategy should be adopted. On many occasions I have argued for consultation rather than for taking industrial action to resolve differences, because by its very nature industrial action harms not only the employer’s business but also the employees and the goodwill that has been generated between the parties. Therefore, it is action that can separate parties rather than bring them together.

So it is fanciful for Senator Ian Campbell to suggest that unions have the types of mechanisms to call on people and take them out in industrial action and for him to think that that is how modern industrial relations is practised. In fact, most of the time we argue about how we ensure that the employer will sit down and negotiate. That is the hardest part: ensuring that the employer will sit down, take enterprise bargaining seriously, negotiate a certified agreement for the workers and ensure that the workers’ rights are respected by the employer. Those are the arguments that are at the heart of the debate and they are the arguments that have been
put, and in many instances the employer has failed to respond in a reasonable way.

When parties respond unreasonably then of course actions tend to speak louder than words on some occasions and people do decide to take industrial action. But it should not be without going through the processes, because those processes are there to protect those individuals from the consequences of their actions. They also act as a mechanism to explain what the action is about and to explain the process if you are going to take industrial action, whatever type it may be—because it does not always mean going out the gate; it can be in the form of overtime bans, work restrictions or a whole plethora of actions.

Senator Ian Campbell would characterise the debate as one of removing workers from the workplace. It is far from that. It is usually, if it is to be resorted to at all, one of the last resort actions when you are faced with an employer who is simply not listening. I think Senator Ian Campbell is perhaps not listening to the debate either in relation to this. He needs to clearly understand that the arguments that he has put up in support of this legislation are weak; they are anecdotal—perhaps not even anecdotal from Senator Ian Campbell. I am not sure of his experience in dealing with industrial relations at the workplace. They are perhaps from some of the 1950s novels he has read—maybe out of an American movie. The reality is far from that, and this legislation is simply unnecessary. It is complex and it is not required. There are protections in place and Senator Ian Campbell knows that. It is an ideological drive by them. There is really nothing else you could argue from the government’s perspective and it is about time they simply admitted to it.

Senator Ian Campbell (Western Australia—Parliamentary Secretary to the Treasurer) (5.01 p.m.)—I would like to make a couple of points—maybe three or four—because I think Senator Lightfoot wants to have a cup of tea. I will make it long enough so he can enjoy that before we have an inevitable division. One point I would like to make—and I think Senator Murray would respect the fact—is that the government has, through the minister, conducted discussions to try to find some common ground on this. I think Senator Murray would respect the fact that there is a commitment on behalf of the government in terms of the principle of improving democracy in the workplace. I think our two parties are aiming at the same principles. We do believe that there are some significant flaws in the Democrat proposals, however. We do not think they provide enough protection for union members. The simple way to demonstrate that is that, under the Democrat proposal, in one respect some brave union member has to stick their hand up and ask for a ballot, and they do not get protection against coercion or intimidation if they do that. This bill in many respects seeks to give that person, who may be regarded as brave, protection for doing that.

Senator Ludwig, in his response to Senator Murray’s proposals, has said, ‘You’ve got nothing to worry about. There is no intimidation and no coercion. There is nothing but anecdotal evidence of intimidation or coercion against people who do that.’ One of the reasons is that people who go out in public and make these sorts of allegations can be the subject of intimidation and coercion. Senator Ludwig laughs.

Senator Ludwig—No, I didn’t.

Senator IAN CAMPBELL—They do not come up to Senator Ludwig and say, ‘I’m being intimidated and coerced.’ They do not complain to him, they do not complain to Senator George Campbell, and they do not even complain to Senator Peter Cook. I find it remarkable that Labor Party senators can say, ‘There’s no need for this legislation because there’s no intimidation and coercion in the workplace.’ It is a cry of see no evil and hear no evil.

In respect of the other sections of the Australian Democrats’ proposals, the Democrats leave it, in the first instance, to unions to create the rules around a secret ballot. If I understand them correctly, they give the unions up to nine months to design those rules; if not, the model rules designed by the commission would be applied. Senator Murray made a telling point. He said that at the committee hearings into this legislation the union officials all said, ‘Secret ballots are a
good idea,' and, ‘We’ve got nothing against secret ballots,’ but, when asked whether they had any rules in place for secret ballots, there was a unanimous, ‘No, we don’t.’

Senator George Campbell—There’s no demand for them.

Senator Ian Campbell—Senator George Campbell interjects that there is no demand for them. Again I make the observation that, in a union organisation where you do not even have rules for secret ballots and where there is, no doubt, a strong feeling against secret ballots—it is virtually unanimous on the other side—would you seriously expect the union organisers to draw up sets of rules that they never wanted to implement? In a way, Senator Murray’s suggestion that the commission should have a set of model rules that could be adopted by unions is a step forward, but it would take a huge leap of faith to expect that unions would voluntarily adopt those rules, ensure that members were aware of their rights and make sure that members have adequate time to request a ballot. The amendments certainly leave open the very real possibility that unions could draft secret ballot rules in such a way as to minimise the windows of opportunity for members who would request such a ballot. It is not open for an individual union member to apply to the commission for a ballot under his provisions. Only a union, an employer or an employer organisation could apply.

The Democrat proposal says that the commission could only order a ballot if it were satisfied:

... any court, judicial inquiry or Royal Commission findings justify such an order—

so that is a very tight caveat on the provision—

or:

... any evidence or findings of coercion or intimidation of members proposing to take protected action makes such an order appropriate.

The second of these criteria appears to only protect the union members who are proposing to take industrial action and not members who might have been coerced or intimidated for opposing such action. In contrast, the government’s legislation clearly protects all members—those who would propose to support the action and those who would prefer not to take action.

In brief, although we respect the fact that the Democrats have tried to come to a compromise position with the government, we believe that the very thing we are trying to protect is the right of an individual union member who may want to express their views in the privacy of a secret ballot to have the opportunity to do so and, by ensuring that that opportunity exists for all his friends and comrades in the workplace, that there can be no coercion or intimidation so that at least, if that were to take place, that person knows they have the protection of the law of the Commonwealth on their side. That is the key principle here that we have sought to address. We do not believe that the Democrat amendments come close enough to the pivotal policy outcome that we are seeking to achieve and therefore unfortunately we will be unable to support those amendments.

Senator Murray (Western Australia) (5.09 p.m.)—Since I can read the tea-leaves, I will not detain the committee but I should point out two misapprehensions. Minister, the Democrat amendment does not overturn sections 135 or 136, and in section 136 the members may still make an application to the Industrial Relations Commission. The second point to make, which might have arisen from my misunderstanding of what you were saying, is that, in the absence of union rules, the IRC would impose the model rules. So no union would be without rules; they would either have to design their own or model rules would be introduced. Anyway, I recognise the outcome before me and I will await the vote.

The Temporary Chairman (Senator Cook)—The question is that Democrat amendments (1), (4), (6) and (8) on sheet 2877 moved by Senator Murray be agreed to.

Question negatived.

Senator Murray (Western Australia) (5.10 p.m.)—The Democrats oppose sched-
ule 1, items 3 to 15, 18, 19, 21 to 23, 26, 27, 31, 32 and 36 in the following terms:

(2) Schedule 1, items 3 to 15, page 3 (line 30) to page 5 (line 8), TO BE OPPOSED.

(3) Schedule 1, items 18 and 19, page 7 (lines 14 to 25), TO BE OPPOSED.

(5) Schedule 1, items 21 to 23, page 8 (line 5) to page 9 (line 7), TO BE OPPOSED.

(7) Schedule 1, items 26 and 27, page 36 (line 19) to page 37 (line 1), TO BE OPPOSED.

(9) Schedule 1, items 31 and 32, page 38 (lines 13 to 19), TO BE OPPOSED.

(10) Schedule 1, item 36, page 39 (line 17) to page 40 (line 7), TO BE OPPOSED.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that schedule 1, items 3 to 15, 18, 19, 21 to 23, 26, 27, 31, 32 and 36 stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.12 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [5.17 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 31

Noes............. 36

Majority........ 5

AYES

Abetz, E. Alston, R.K.R.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferris, J.M. * Heffernan, W.
Humphries, G. Johnston, D.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Patterson, K.C. Payne, M.A.
Santoro, S. Scullion, N.G.
Tchen, T. Tierney, J.W.
Troeth, J.M. Vanstone, A.E.
Watson, J.O.W.

NOES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G. *
Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. Dennan, K.J.
Evans, C.V. Forshaw, M.G.
Greig, B. Harradine, B.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Lees, M.H.
Ludwig, J.W. Landy, K.A.
Marshall, G. McLucas, J.E.
Moore, C. Murphy, S.M.
Murray, A.J.M. Nettle, K.
Ray, R.F. Ridgway, A.D.
Stephens, U. Stott Despoja, N.
Webber, R. Wong, P.

PAIRS

Ferguson, A.B. Faulkner, J.P.
Hill, R.M. O’Brien, K.W.K.
Knowles, S.C. Sherry, N.J.
Minchin, N.H. Mackay, S.M.

* denotes teller

Question negatived.

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

Second Reading

Debate resumed from 3 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (5.21 p.m.)—I rise to speak on the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2]. Of course, the No. 2 tells us that it is a bill that is being put to the Senate again. In fact, it is not the only bill to be put once more, it is the third bill seeking to prohibit the payment of bargaining fees to unions. The first bill failed to pass the Senate in August 2001. The second bill was amended in the Senate but the House of Representatives rejected the Senate amendments, and the government has served up this bill again. Now more than ever before this government has served it up as a politi-
It is clear from the events of today and from the words of the coalition that they see this as another double dissolution trigger. It will become that if the bill fails to pass. But I think, more importantly, it highlights the deep ideological divide on issues of workplace relations between this government and Labor.

Labor has always taken a cooperative, consultative approach to industrial relations. At the microlevel, at the workplace, Labor has encouraged consultation and, at the macro level, Labor has always sought to ensure that there was a broad cooperative approach to industrial relations where possible. The coalition have marked their turn with industrial relations with nothing but a deep-seated difficulty to address some of the issues in a meaningful and practical way and to adopt a pragmatic approach. Rather than take a proactive role in industrial relations, the government has taken a negative role in trying to progress industrial relations. It has added legislative burden to business. It has tried to complicate the legislation in workplace relations, and this is another example of that.

No doubt we will hear much talk about unions from the other side. But it begs the question as to the whole point of the exercise. What is really missing is true political debate on the substance of the bill. We have not heard that on the other workplace relations bills that have come before the Senate and we are unlikely to hear it today. I suspect that what we will hear by and large from the other side is union bashing. The debate on ideas has been left by this government. It does not want to debate ideas in this place. It does not want to debate the philosophy of how you deal with workplace relations.

Mr Abbott, the Minister for Employment and Workplace Relations, has three bills before the Senate which, in my view, can all be categorised as negative in nature and full of many things about what cannot be done in industrial relations rather than what can be done in industrial relations. The Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]—the message that was dealt with earlier—sought to remove the rights of employees in certain circumstances to seek unfair dismissal. It is a negative bill. The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill seeks to impose unworkable arrangements on unions, members and employers in the workplace to undertake protected action. The aim is clear: to effectively stifle the unions’ and workers’ ability to bargain for fair outcomes. Finally, there is the bill to protect the low-paid which has been referred to a committee, so I will talk about that here.

The last in the line of workplace relations bills is designed, briefly, to circumscribe the commission’s powers. When you look at the gamut of legislation proposed by this government, it is all designed to circumvent. The government trumpeted its ability to remove red tape and to simplify issues for small business and to simplify legislation. In fact, what it has done is to complicate and put forward difficult legislative proposals that are unworkable in the extreme. It seems that all this government can do is stifle the commission’s ability to deal with issues. This government does not seem to want to approach the commission with the goodwill with which other governments have in the past addressed the ability of the commission.

It seems that the Liberal government is wedded to the idea of leaving parties to come up with their own arrangements. That was the concept that was put forward by this government, which presented itself as a ‘light touch’ in workplace relations—to use a phrase from another area. This government adopts a self-regulatory approach—to use another phrase out of the corporate world. In this instance, the government has adopted a heavy-handed approach to workplace relations that has failed to persuade anybody of its argument that the bills I have referred to—and particularly the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2]—are required. The government does this, it seems, without any recognition that it is acting inconsistently between the corporate world and workplace relations. This can be easily categorised. In the corporate world, they talk about the ‘light touch’—a euphemism for this government—to ensure that there is a regulatory regime which facilitates the cor-
porate world. In workplace relations, the government seeks to do quite the reverse.

This bill seeks to direct the commission to refuse certified agreements which contain objectionable provisions. Most of the workplace relations bills that this government has sought to introduce start out with that negative attitude—they start out with what the commission is not allowed to do. They start out by saying no, even before you get past chapter 1. If you look at the definition of bargaining services, they are services provided by an industrial association in relation to an agreement or a proposed agreement under part 6. Of course, it does not eliminate all bargaining fees from the Workplace Relations Act. Section 298S(1)(a) makes it clear that the section does not void contract arrangements for the payment of bargaining service fees. Proposed section 298SBA clarifies that the freedom of association provisions do not prevent contracts from being entered into by an industrial association with a person for the provision of bargaining services.

It seems that the government’s argument really is one-sided. It is clearly directed at bargaining fees which, at the moment, are the cause of controversy surrounding those in the workplace. They are being put forward by unions and the commission has now provided a clear view on them. The concept or idea of a bargaining fee seems not to be disputed when you examine that provision. If you say that it is a bargaining fee and recognise bargaining fees, we should be able to have an argument about how they would operate. But you will not do that. You say, on one hand, that you will not deny agents the ability to collect fees but, on the other, that you will deny the unions that ability by utilising this legislation.

The debate is about preventing unions from including bargaining fees in certified agreements. If you examine that argument, you see that it has been substantively dealt with. The commission has ruled that unions cannot include bargaining fees in certified agreements. We argued last time that the debate was occurring early, that we needed to wait for the court’s ruling on this matter. The court has now ruled in respect of this matter and has come to the conclusion that it will not certify agreements that contain such bargaining fees. I have not had time today to check whether or not anything has been filed to appeal that decision but I suspect there will be further proceedings to clarify the position. It is a matter that needs clarification and, in the normal course of events, the matter can be appealed in the commission. What it does not need is for the government to legislate to impose its narrow view at this juncture.

To date, there has been no debate about the rights or wrongs of bargaining fees as a feature of our industrial relations system. The argument that you can have bargaining fees provided they are only for the benefit of assisting employers seems to be the only issue that this government is prepared to make an exception for. The more you look, it is really a mothering role that this government has adopted in relation to workplace relations, rather than that of a fair minded umpire who can ensure that the commission’s role is upheld. It is a far cry from the role stated in the object of the Workplace Relations Act. I remind the Senate that the Workplace Relations Act does provide a description of its role under subsection 3(c):

… enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act ...

That is in the object of this act. The government has run away from the object of its own act. But, notwithstanding the arguments about the bill itself, time has marched on. As
I have said, the full bench of the AIRC now says that certified agreements containing a bargaining agent’s fee cannot be put into agreements to be registered under the Workplace Relations Act. You would imagine then, if you juxtapose the provisions of the object of the act with the decision of the commission, that it might be more meaningful if the government were to sit down and look at the principle itself and argue about how it would ensure it could be dealt with fairly in this act, rather than maintaining the negative role it continues to push and peddle.

Rather than persist with this bill, which is both flawed and, it appears now, unnecessary, the government should acknowledge that, if legislation is required, it is to permit bargaining on this issue to overcome the technical issues the commission has raised. The better course would be for Mr Abbott to talk. He is good at rhetoric, but I think he is short on a consultative approach and the ability to talk to the opposition and to the Democrats and minor parties about how workplace relations is progressed. These issues are not new. He might categorise them as new and extreme, but if you look at some of the great democracies—the US, Canada, Israel and Switzerland—they all have bargaining fees. Bargaining fees are not matters that cannot be included in CAs, and there are significant protections in the bargaining arrangements that currently exist to allow those matters and concepts to be dealt with. The concept behind a bargaining fee is essentially that—to meet some of the costs of bargaining in a workplace. It also prevents non-unionists from free-riding on members. The free-riding issue is an argument that also comes up in the corporate world. The government recognises a free-rider argument when it sees one but chooses to ignore it for consistency’s sake here. Essentially, the government has failed to address the matter in a constructive and fair way.

The case that dealt with the matter on 10 January 2003, which I referred to earlier, it seems supported the observations provided by Justice Merkel in the Federal Court that there exists the possibility that bargaining fees may not pertain to the employment relationship. The AIRC says they do not. It seems clear now that, as far as the commission is concerned, this bill is unnecessary. But this is an opportunity for the bill to be amended. Perhaps the government could take it away and amend it to overcome some of the deficiencies, but I suspect that is not something they will rush to do.

You only have to look at the title of this bill to understand where the government is coming from. It is a misleading impression that bargaining services fees are imposed by trade unions against the will of employees. It would be hardly worth while pointing out that the bill itself does not contain the phrase ‘prohibition of compulsory union fees’. It does not mention it. What it does by device is prohibit making false or misleading representations about a person’s liability to pay a bargaining services fee. It has become repetitive in this instance and in this debate, but necessary, to remind the government how an enterprise agreement is made. Senator Santoro would know how difficult it is sometimes to get certified agreements up in workplaces—to ensure that all parties have been consulted, that they know the provisions and that the parties have been able to come to the decision, vote for the certified agreement and have it registered. Those safeguards in that are not trivial; they are designed to ensure that parties do know what is in a certified agreement and have the ability to vote for it. When you couple that with the objects of the act to allow parties to make their own arrangements, which seems to be the catchcry of this government, one wonders why the government finds it necessary to introduce this bill now.

Of course, the government has claimed that bargaining services fees offend the principle of freedom of association. This appears to be unique to this government. It always seems to me that when the government cannot find an argument to support its claim it will go for the broad approach. It will say, ‘Of course, it offends something or other.’ In this case they say that it offends the principle of freedom of association. It was not able to persuade me of that, nor many others. It has never been able to clearly persuade the US, Switzerland or South Africa that it does. In
fact, it has not even been able to persuade the International Labour Organisation, which is a tripartite body. This government has failed miserably on being able to talk to unions, employers and government representatives in a tripartite way. This government seems to me to be wedded to the reverse. In 1994 the ILO’s Freedom of Association Committee reported that under international law clauses in collective agreements:

... may also require all workers, whether or not they are members of trade unions, to pay union dues, or contributions, without making union membership a condition of employment ... provided that they are the result of free negotiation between workers’ organizations and employers.

This government decides in many instances to avoid the debate on the principle. It does not want to argue the ILO convention; it does not want to argue how these matters can be addressed. What it wants to do is use rhetoric to obscure the real debate in these issues, and this bill is simply another example. It is consistent with international law: bargaining services fees are permitted. This government does not even want to recognise that. I would hope that Senator Santo Santoro would recognise that principle and have a debate on the principle of bargaining fees rather than have the associated rhetoric about union bashing that this government seems to freely do—although I do not put Senator Santoro in that basket. The government argues that it will not prevent employees from making a voluntary contribution to the negotiation of enterprise agreements on their behalf. That is a questionable proposal in itself. The bill itself is technical in its nature and, again, it is clear when you look at the bill that it adds nothing to workplace relations. (Time expired)

Senator MURRAY (Western Australia) (5.41 p.m.)—The Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] was introduced into the Senate on 19 June 2002 and was passed with certain Australian Democrat amendments on 21 August 2002. The key amendments were rejected in the House on 18 September when the bill was laid aside. The government argued that it will not prevent employees from making a voluntary contribution to the negotiation of enterprise agreements on their behalf. That is a questionable proposal in itself. The bill itself is technical in its nature and, again, it is clear when you look at the bill that it adds nothing to workplace relations. (Time expired)

I think I might immodestly claim a little credit for the progression of this particular issue because, when I entered the Senate, fee for service was not a matter that was in the eye of the coalition and had not been in the eye of the Labor Party, either at a state or federal level. I personally—and I persuaded my party, who liked the argument—have long been of the view that employer organisations were badly done down by the way in which non-members rode freely on the services they provided, which were very important services and remain very important services. I had the same view about employee organisations, namely, unions. The difficulty has always been to reconcile principles which we all agree with, despite the remarks of Senator Ludwig about the way in which they are politically perverted at times. Freedom of association, the right to join or not join a union and the right to join or not join an employer organisation have become cornerstones of our system.

I am not so naive as to not realise it was not always thus. Compulsory unionism was a vice and thankfully its days have passed. But the reverse of that does not mean a view that unions and employer organisations do not do a service to the community, and it is in the interests of the community that they do that well and continue to be financed sufficiently to do that. I am thankful that fee for service has become a matter for debate and that we are debating mechanisms by which it should be considered. It is good to see that the bill does allow employer associations and unions to charge bargaining fees where such fees have been arranged under a contract for service. That is an advance in terms of deliberate policy.
There are two ways that free riders can be caught. One is through measures that prevent them receiving the benefits that flow to those who have paid. Currently section 170MDA of the Workplace Relations Act prevents a certified agreement from discriminating between unionists and non-unionists so it is not possible to make an agreement which states that those who do not pay will not receive the pay and conditions improvements in any agreement. That is quite right. It is good coalition policy, and it reflects international practice.

The other way is to require those who receive the benefit to make a contribution to its costs and to allow the levy and collection of a bargaining fee. The challenge is to make this practicable without coercion or compulsory unionism and in a way where the fee and nature of the services are known up-front and the fee set is fair in relation to existing union fees. As noted in previous Senate committee reports on this issue, requiring fees to be agreed on an individual basis in advance by non-members who are advantaged by bargaining—a position which the government does not oppose—will not necessarily overcome the free rider problem as many would still see it in their clear self-interest to refuse to give their consent in advance and to benefit from the labours of others. Allowing workplaces to take a vote on agreements that include provision to charge such a fee and then, where the majority vote in its supports, permit its collection is not out of step with practice in other countries. I should indicate that similar systems exist in the United States and that the International Labour Organisation view bargaining fees as legitimate issues for collective bargaining.

The whole question of bargaining fees only relates to the situation on collective bargaining of an enterprise agreement under federal law. To the best of my knowledge there are still no fee-for-service provisions even in the most recent labour laws such as those in Western Australia. That is a situation of regret. Currently around 37 per cent of employees are covered by both federal and state registered enterprise agreements—so it is only 37 per cent under the federal system. Any provision in relation to a bargaining fee would only apply in the circumstances of a collectively bargained agreement on which all employees—union and non-union—voted. In the United States, where a union has been recognised and an agreement has been reached, all members of the workplace, whether union or non-union, pay a fee to the union or negotiating agent that negotiates an agreement.

In 2000 the Employment Advocate objected to the CEPU—namely, their subdivision the ETU—provisions for the levying of bargaining service fees. The full bench of the Industrial Relations Commission confirmed in October 2001 that the union fee clause was not objectionable. In January 2003 the Industrial Relations Commission full bench determined that bargaining fee provisions should not be included in certified agreements and that they do not pertain to the relationship of employer and employee. Of course, that 'do not' is where it is obliged to be, not where it is agreed to be. Bills Digest No. 101 says that the January 2003 decision: ... in effect supports the government's position on this matter. Therefore the question may be asked as to whether the provisions of this bill are required to prohibit bargaining fees now that the IRC has determined that the fees are non-allowable.

In February-March of this year the Industrial Relations Commission refused to certify over 130 agreements lodged by the CEPU that tried to include $500 bargaining fees. On 5 March 2003 the ACCI said in their press release:

ACCI's successful intervention has prevented unions creating a loophole in the law to avoid earlier commission decisions which had refused certification of agreements containing compulsory union bargaining fees.

Why do I raise the latter issue? There are two competing things I am discussing. The one is my view that we need fee-for-service provisions, which is not the government's view unless they are voluntary. The other is the determination by the Industrial Relations Commission that this bill is much ado about nothing because in effect the law as it stands works effectively. As I understand the government's argument—and they will put it later, I am sure—they simply say they want...
to pass this bill to make absolutely certain the view that is now confirmed by the Industrial Relations Commission.

Not everything in the bill meets with our desire for change or opposition. For instance, the items at 7 and 8 we explicitly support. Those are means of applying the law so that no industrial association or any officer or member of an industrial association should take action to have the effect of prejudicing a person, or of inciting a person to prejudice a person, to take industrial action. Those kinds of provisions legitimately ensure that duress is opposed and is properly dealt with.

We take the view that the challenge is to overcome the problems associated with free riders without coercion or compulsory unionism. We have circulated some amendments on sheet 2874 in which we outline the circumstances in which a fee for service or bargaining services fees, as we have described them, might be permissible. Our proposed amendments provide that the Australian Industrial Relations Commission has the power to ensure that any permissible bargaining fee is fairly pitched; to make sure that employees know that they can access the IRC on that basis; to ensure that any bargaining fee is known in advance; to require that the services provided in exchange for the bargaining fee and the methods of payment are explicit; to require that the fee wins the majority support of all employees in the workplace agreement by means of a secret ballot; and to ensure that the fee cannot be misrepresented without penalty.

Another amendment of ours, dealing with item 10—which is about false or misleading representations about bargaining services fees—actually strengthens the government’s amendment. We are more explicit about, and more determined to prevent, those kinds of misrepresentations. When we addressed this bill last time, the Labor Party indicated—which was a good advance on their previous policy—some support for some of our amendments. We hope we will get the same reaction again and, in that case, we would hope that the coalition would look upon them favourably.

Senator SANTORO (Queensland) (5.53 p.m.)—As the two previous speakers have indicated, the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] has a long history. It has a long history not because of the government’s firm commitment to the principle behind the bill—although that is a substantial and immutable fact—but because the Labor Party has been fighting to protect its union base and its income base within the union movement, because it knows that it is becoming increasingly irrelevant to the electorate and cannot therefore afford to put the unions offside since they are its principal sponsors.

I was interested in the remarks made by the member for Brisbane on this bill when it was introduced in the House of Representatives. When he spoke in the House of Representatives debate on 12 February, he said that only 10 days before that it had been Groundhog Day in the United States. He said there was a strong sense of Groundhog Day—that is, in the sense of the movie of the same name—about this bill, because he did not know how many times it had been before parliament. The member for Brisbane comes out for an airing, does not know what day it is and fails to cast more than the most fleeting of shadows. It seems that Labor’s winter will continue for some time. I would suggest that the honourable member for Brisbane is in fact asleep. The member just could not remember what time or what day of the week it was. He spent a lot of time in his speech quoting the Democrats’ position on the bill. Perhaps they can explain to the member for Brisbane and to the Labor Party why union membership has fallen so significantly in Australia, particularly in the private sector, where the money is made and the economy gets driven along.

When the Minister for Employment and Workplace Relations introduced the bill—or had to reintroduce it because the Labor Party has not woken up to the fact that it is now the 21st century—he said some very good things. The minister said that from time to time it had been alleged by members oppo-
site, as Senator Ludwig alleged just before, that the government are anti-union. At this stage, I would like to acknowledge Senator Ludwig’s generous comments that I am not anti-union. Undoubtedly, Senator Ludwig will recall my railing against irresponsible union leaders and irresponsible union actions, but I am certainly not a union basher. Like Senator Murray before me, and just like the minister, I acknowledge that the unions do have a role to play within our industrial relations system. It can be as strong as they want it to be, particularly if they are driven by principle rather than by often undemocratic pragmatism. The minister said during his contribution to that debate that he would like to refute the terrible smear—that is, that the government are anti-union. He said:

The government are all in favour of unions, but we are definitely opposed to union arrogance, union bullying and union coercion, as indeed we are opposed to arrogance, bullying and coercion by any individual or organisation in our society.

It is a fact that compulsory union levies—or bargaining agents’ fees, as the unions now prefer to call them—amount to a form of industrial conscription. That is offensive to Liberals who believe in free association and in the innate good sense of the Australian worker when it comes to spotting a scam. As the minister made clear in his speech, it is compulsory unionism by the back door. Labor says that it opposes compulsory unionism, but, like a lot of what Labor says, it does not actually mean it. It is another little fiction designed to persuade people that the leopard has really changed its spots and that union bureaucracies are genuinely there to fight for the workers’ pay packets rather than to keep their own.

Unions claim nonmembers unfairly benefit or get a free ride from work that unions do in negotiating certified agreements. That is allegedly because the Workplace Relations Act provides that unions cannot deny nonmembers access to the outcomes of union negotiated agreements, but the fact that a nonmember receives the same entitlements as a member under a union negotiated certified agreement makes the nonmember a free rider. The union is unlikely to have consulted the nonmember during the negotiating process or to have had regard for their interests. The union is responsible only to its members in negotiating that agreement, and that is something that clearly cannot be denied. The nonmember has chosen not to join the union and may not want to be represented by the union as a result of making that choice.

It would be useful to go over a little of the history of this excursion on the part of the union movement into fresh territories for rent seeking. Senator Murray alluded to some of it. In June 2000 the ACTU congress endorsed a policy that member unions may seek to insert a ‘fee for service’ clause in new certified agreements. Under this arrangement, a negotiating fee would be levied on those for whom the union had negotiated a section 170LJ agreement. Section 170LJ agreements are one form of certified agreement permitted under the Workplace Relations Act. Bargaining fees would prevent, in the unions’ argument, non-unionists from free riding on members. Following overseas study tours in the 1990s by members of the unions and the ALP, a number of unions became acquainted with the inclusion of such fees in United States and Canadian collective agreements. Certain unions then sought to recover the expenses involved in enterprise bargaining by charging a fee to nonmembers. In some cases a provision of the agreement itself provided for the payment of the fee, usually by a deduction from pay but sometimes on an invoice basis.

It is, of course, well known by now that the employee advocate’s intervention in 2000 in the certification process of a number of agreements negotiated by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union—CEPU, whose electrical division is the ETU—failed in the Australian Industrial Relations Commission. That argument, or rather the flow-on from it, is still going on. But the bottom line politically is that the government went to the last election with further workplace relations reforms—and that which is contained in this bill is one of those reforms—in its platform. The government is opposed to the use of bargaining fees in certified agreements. It views the use of these fees as de facto compulsory union
membership and believes that unions have adopted this policy as a means of building up union funds which have been hard hit by the fall in union membership.

This bill is a further attempt to bring some elementary justice to the workplace. If, as the member for Brisbane alleged in the House of Representatives last month, we are all caught up in the *Groundhog Day* syndrome, he and his colleagues should reflect on the fact that they are the cause of it. It is interesting to note that the New South Wales government—*I stress, the New South Wales Labor government*—believes that bargaining fees are an industrial matter that should be decided by the parties at the workplace level. I would respectfully suggest to Senator Ludwig that that is some sort of advance on the general position that he and the Labor Party in this parliament are adopting. Those opposite should go away, think this through and accept that in the modern workplace a union has to attract support—financial or otherwise—and can no longer expect employees to meekly acquiesce to grabs at their wallets. This bill before us should be passed, as the will of the House of Representatives and, through it, the will of the Australian people at the last election is plainly apparent. I commend that course of action to the Labor senators opposite and also to the Democrats.

**Senator HOGG (Queensland)** (6.02 p.m.)—I was looking forward to speaking on the *Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002* [No. 2] because, again, this looms as being a double dissolution trigger. I will refer briefly to the report of the Senate Employment, Workplace Relations and Education Legislation Committee of May 2002 on this issue, and specifically the Labor senators’ report at paragraph 1.27 on page 39, which said:

Labor senators condemn the Government for the misleading title of this Bill. It is not a Bill about ‘compulsory union fees’. If that were the case, that phrase could be expected to appear at least once in the text of the Bill. Rather, the Bill refers only to ‘bargaining services fees’, which are defined to specifically exclude union membership dues. Labor senators can only speculate that the motive for such a misleading title is to create an impression within the broader community that unions are engaging in unethical and unlawful practices such as charging compulsory union fees.

That comment by the Labor senators on that committee encapsulates what this debate is about. It highlights that we are talking not about compulsory union fees being charged but about a fee being charged where bargaining is undertaken by a union for and on behalf of its members and other people who are at the place of work as well. If one looks at the second reading speech of this bill this time around, the Minister for Employment and Workplace Relations said:

The government is reintroducing this bill to honour the commitment it made before the 2001 election to ban compulsory union levies. That is a very nice platitude on the part of the government in the second reading speech: to honour a commitment. What short memories the government have in this area. I remember that coming into this place the government had core and non-core promises. The government were quite happy to break non-core promises and even, in some instances, to break core promises. So why are the government holding so tightly and completely to a commitment that they made when it is a commitment to undo something—that is, the payment of a bargaining fee to the unions where bargaining is legitimately and realistically undertaken on behalf of the workforce—which is quite wrong indeed? Why don’t the government wake up to themselves and break this commitment, particularly when it was, in my view, an immoral commitment or promise in the first place?

If one looks at the Labor senators’ report, one finds again the substantial argument that has been used by Labor when this debate has come before this chamber on a number of occasions. Paragraph 1.34 states:

The Government argues that bargaining fees are inconsistent with freedom of association. If this were correct, bargaining fees would be prohibited by the International Labour Office (ILO) principles and standards, which are founded on core principles such as freedom of association.

The Labor senators’ report went quite clearly to the issue that this is not a matter which is outside the province of the principles and standards of the International Labour Or-
ganisation. The Labor senators’ report went on to say:

In contrast, bargaining fees are permitted by the ILO and in countries such as the United States, Canada, Switzerland, Israel and South Africa, which are also known for their adherence to principles of freedom of association.

So we are not looking at something new in the world of industrial relations. We are not looking at a novel idea when it comes to the issue of enterprise bargaining. Obviously, if a union is undertaking bargaining on account of its members—and, of course, in this case other workers as well—then it becomes clear that they are entitled to charge an appropriate fee for the bargaining that takes place. Those workers who might not be members of the union undoubtedly will benefit from and will participate in the processes that will give those particular people the right and the access to the benefits that are obtained for them by the union in its negotiation process.

I want to turn to the views of the SDA—that is, the Shop Distributive and Allied Employees Association—that were put to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee in its inquiry in May 2002. The SDA is Australia’s largest union, which has a large number of enterprise bargaining arrangements because it deals with an industry where there is a diverse range of employers. There are small and large employers alike. There are a number of employees who are not members of the relevant union—in this case, the SDA—and the union undertakes to bargain on behalf of those people, as they must under the Workplace Relations Act, for the same conditions as they would obtain for those people who are members of the union. When one looks at the submission that was put to the committee, it raises a number of key issues. Again, for the sake of getting this debate through this chamber, I will quote directly from that submission. Firstly, the submission of the SDA looked at a decision of Vice-President McIntyre of the commission. The SDA said:

The decision of Vice-President McIntyre makes clear that bargaining agent fees are not objectionable provisions under Section 298Z of the Workplace Relations Act; therefore they are not, and cannot be seen to be, compulsory union fees.

Rather as the nature of the clauses already incorporated in the Certified Agreements considered by VP McIntyre makes clear, the fee that is sought to be paid by a non member to a union is a fee to reimburse the union for the costs of bargaining for and on behalf of all employees.

That is clearly the case. I cannot speak for other unions, but I can speak for the integrity of the way in which the SDA and all unions approach this, in a sense. They are not seeking anything other than to reimburse the union for the costs of bargaining. The SDA submission then goes on—and I think this is important because it looks at the issue of the structure of the Workplace Relations Act:

The structure of the Workplace Relations Act makes very clear that a Certified Agreement made under either Division 2 or Division 3 of Part VIB of the Workplace Relations Act, can be made between an employer and a registered organisation of employees. These agreements, once certified, apply to and bind all persons whose employment is covered by the agreement.

So an agreement made under division 2 or division 3 binds all employees employed by that employer. The submission goes on to say:

Effectively, agreements made with organisations have application to all employees of the employer who are to be covered by the terms of the agreement.

This means therefore, that members and non members alike gain the benefits of an agreement.

That has been my experience of the enterprise bargaining that has taken place in the workplace. Employees who are members of the union and those who are not members of the union, as a result of the enterprise bargaining process, all gain the benefit of the agreement. Further on in their submission, the SDA say:

Employees of employers who are bound to either a Division 2 or a Division 3 agreement will receive the benefits of the agreement whether or not they are members of the union.

They go on to say:

... it follows that workers who make no contribution to the union will gain the benefit of the work undertaken by the union in negotiating and bargaining and concluding an agreement with an employer and having such an agreement certified under the Workplace Relations Act.
Clearly, the act gives employees who are not members of the union the right to the benefits that have been obtained by the union. It is only reasonable and fair-minded that the union be able to recover its costs in those negotiations that have taken place to achieve those benefits. The act further goes on to talk about making it an offence to treat those people differently. Again I will refer to the SDA's submission to that inquiry, because I think it says it very simply and easily and is very much to the point. The SDA say:

Not only do the provisions of Section 170M and 170MA ensure that certified agreements made with registered organisations have application to non members but the Workplace Relations Act goes significantly further in Part XA by making it clear that it is an offence for an employer to treat a union member and a non union member differently.

The requirement is that the employees be treated one and the same, so it is not really possible for the union and the employer to agree that only union members will obtain the benefit of the agreement and they can therefore be treated differently. The SDA submission then states:

It is clear therefore that the structure and purpose of provisions of the Workplace Relations Act is to ensure that a person who is not a member of a union is entitled to receive the same benefits that a member of the union is entitled to.

If we did not have that, a very awkward situation would develop over a period of time. In the final part of its submission, the SDA comes to the conclusion:

If employees have a right to receive any benefit negotiated by a union with an employer then there should be a corresponding obligation on the employee to assist in funding the cost of the bargaining negotiation and representation process necessary to obtain and maintain those benefits.

Again, I say anyone with a fair mind on this matter will see that that is a fair and reasonable approach. I have already mentioned the experience overseas as cited in the report of the Senate Employment, Workplace Relations and Education Legislation Committee. It is quite obvious that there are bargaining fee arrangements—as I cited—operating in other parts of the world. There is no illegality about those bargaining fees operating and, to the best of my knowledge, there is no challenge to them in the United States, Canada, Switzerland, Israel and South Africa, to name just a few.

In their submission to the Senate inquiry, the SDA notes that these bargaining fees as they operate, particularly in the Canadian and United States systems, are based upon the concept of the recognition of mutual obligation. In other words, there is an obligation on the part of employees getting representation from the union to meet some of the costs associated with the improvements—principally in wages. There is an obligation to have those improvements paid for in a fair and reasonable manner by the employees who are gaining the benefit. That seems a reasonable way to go about these things. We are not talking about anything that does not operate or happen elsewhere. We are not talking about the extortion of people in the work force. We are talking about people having a mutual obligation to contribute towards the cost of a benefit that they will receive—a benefit that is not discriminating in any way between those who are union members and those who are not members of the union. To me, that seems a reasonably fair and equitable approach to be used in the industrial relations area.

Whilst the SDA submission is reasonably brief at only six pages, it then went on to look at the issue as it had been determined in the Supreme Court of Canada. The last time that this bill was before this chamber I looked at this very part of the submission—I think it really sums up the whole issue. The submission states:

The key decision in relation to this issue in the Supreme Court of Canada is Lavigne v Ontario Public Service Employees Union (1991) 2 S.C.R. p211-352. Justice McLachlin, part of the majority in this case, said most succinctly: “The whole purpose of the (Rand) formula is to permit a person who does not wish to associate himself or herself with the union to desist from doing so. The individual does this by declining to become a member of the union. The individual thereby dissociates himself or herself from the activities of the union. Fairness dictates that those who benefit from the union’s endeavours must provide funds for the maintenance of the union. But the payment is by the very nature of the formula bereft of any connotation that the payor supports the particular purposes to which the money is put. By the
analogy with government, the payor is paying by reason of an assumed or imposed obligation arising from this employment, just as a taxpayer pays taxes by reason of an assumed or imposed obligation arising from living in this country.”

That is at pages 345 and 346 of the decision. The SDA’s submission finishes in bold print:

The exact same logic compels the total rejection of the current Bill.

As I say, we are seeing here the need for those people who get coverage under the Workplace Relations Act to have the right to the same treatment as union members on whose behalf the union has negotiated conditions of employment. Unions are certainly not about negotiating conditions of employment adversely for the employees; they are about positively improving the work and lifestyle of employees.

Senator McGauran—Righto.

Senator HOGG—That is what it is about, Senator McGauran. You do not have to worry about that.

Senator McGauran—What about the Cole commission?

Senator HOGG—Oh, Senator McGauran, go back to sleep! We are talking here about people who come under the Workplace Relations Act and who are being legitimately represented by the trade union movement. You should not have freeloaders there. No one likes a freeloader, and that is what this is about. It is about creating a range of freeloaders in our society who will absolutely suck out of the trade union movement the benefits in the wages and conditions that are achieved by the trade union movement. This bill needs to be once again rejected by the Senate.

Senator NETTLE (New South Wales) (6.21 p.m.)—I rise to speak on the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] and I concur with those comments from Senator Hogg, the previous speaker, that this bill is about creating opportunities for freeloaders on the trade union movement. This is the third bill, and the second time for this particular bill, in which the government has tried to outlaw certified agreements that contain provisions for unions to charge a bargaining fee for non-union employees who benefit from union negotiated collective agreements. We should be clear at the outset that the conduct the government is seeking to prohibit is not coercive conduct. Under current practice, non-union employees are entitled to vote on the inclusion of such a bargaining fee in the relevant certified agreement. This is a democratic process to which employers and employees have agreed, and hundreds of certified agreements contain such a provision.

While the bill would not prevent unions from charging a bargaining fee under a contract for services, this would prove extremely time consuming and resource intensive for unions. It speaks volumes about the government’s ignorance of the work of unions and its complete disregard for the benefits they provide to members and nonmembers alike that it thinks unions have the time and the resources to engage in drafting and discussing service contracts, issuing invoices and collecting fees from thousands of individuals at the same time as they are engaging in certified agreement negotiations.

The government’s apparent determination to outlaw bargaining fees in certified agreements seems directed at depriving unions of the vital resources required to do their work effectively and efficiently. By making it difficult for unions to charge a bargaining fee, the government no doubt hopes to limit potential revenue to unions. It is plainly reasonable that a majority of employees should have the opportunity to decide whether to include a bargaining fee in a certified agreement that delivers equal benefits to union and non-union members alike. All the evidence shows that unionised employees receive substantially better pay and conditions than workers who are not represented by a union. Employees and employers benefit from union involvement in certified agreement making. Unions bring a wide range of skills and substantial expertise to this process. This reduces delays, which saves everyone time and unnecessary expense.

The benefits of collective representation are acknowledged in the government’s amendments to the bill to ensure that employer organisations can obtain a fee for the
work they do in agreement making and negotiation on behalf of employers. Bargaining fees paid by employees covered by collective agreements but who are not union members are provided for in several comparable countries: the United States, Canada, Switzerland, Israel and South Africa. The International Labour Organisation considers bargaining fees to be a valid issue for collective bargaining, and the Australian Greens support this right in Australia.

Of course, the question of bargaining fees in certified agreements has been before the courts and the Australian Industrial Relations Commission for several years, and there have been conflicting rulings. The most recent was this year when the full bench of the Australian Industrial Relations Commission ruled that it would refuse to certify any enterprise agreement that included bargaining fees. The basis of this decision is a view that a bargaining fee is not a matter that pertains to the employment relationship, as the Workplace Relations Act requires. Just this month, the full bench reaffirmed its position, with the result that dozens of enterprise agreements negotiated by the Communications Electrical and Plumbers Union in Victoria have not been certified.

The Australian Greens disagree with the government's contention, echoed in the interventions in the court and the commission proceedings by the Office of the Employment Advocate, that the inclusion of a bargaining fee in a collective agreement amounts to coercion to join a union. It is quite clear that, contrary to the minister's assertions, bargaining fees are not an attempt to coerce people to join a union. They are means of ensuring that all those who benefit from the work of the unions negotiating better pay and conditions share in the cost of that negotiating work.

A bargaining fee is not a substitute for union membership; it is a fee for a service rendered by a union from which all members of a workplace benefit. In any event, the full bench rulings make this bill irrelevant because the outcome of those rulings is the outcome that the government is seeking with this proposed legislation. Although the matter of bargaining fees is still before the High Court, the government should have waited for the court to deal with this case before bringing this bill back to the Senate. The government earlier rejected Senate amendments that would have permitted bargaining fees with certain conditions. The government knows that the Senate will not pass this bill in its current form and currently the bill is going nowhere.

So what is the government's real purpose in bringing this bill back another time? We can only conclude that it is trying to set up yet another double dissolution trigger, especially when the Manager of Government Business in the Senate puts out a media release to say that these bills are coming back into the Senate for a second time. The government tells us ad nauseam, and the community recognises the baseless claim, that the Senate is obstructionist and is frustrating its mandate. The government claims that everything would be fine if only the Senate would do precisely what the government wanted, regardless of the merits of its proposals. Earlier this month, the Treasurer made a most remarkable claim that the Senate was preventing the official unemployment rate from falling below six per cent. On 13 March this year the Treasurer said:

I think to get the unemployment rate below 6 per cent and to keep it there will require further structural change. It will require the passing of the Government's industrial relations legislation, in particular, the passing of the Government's Budget measures ...

We know precisely what the Treasurer has in mind for structural change, and the Australian Greens will play no part in smoothing the way for this direction. The government is driven, from the Prime Minister down, by an obsession to impose measures that would harm working people and the organisations that represent them. It wants the market to determine the level of wages and the conditions under which people work, without regard to the power imbalances involved in the industrial arena. Worse, it seeks to have this parliament approve measures that undermine protection and regulate a system that, on balance, has served the interests of both working people and employers.
Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator NETTLE—The Australian Chamber of Commerce and Industry, one of the loudest advocates of further structural change to our industrial relations system, complains about the national wage case. It wants to know why Australia is still so far from an ‘internationally competitive minimum wage system’. The Australian Chamber of Commerce and Industry wants the powers of the Industrial Relations Commission to protect workers and unions restricted even further than they have been under this government. It objects to national wage cases because they affect minimum rates of pay in a number of awards. It wants to gut award provisions, which have already been reduced by this government.

These demands echo the calls made by the OECD. In its latest report on Australia, released early this month, the OECD was concerned that Australia’s federal minimum wage, at about half of average weekly earnings, was relatively higher than most other OECD countries. A lower minimum wage might improve the prospects of low-skilled workers in finding work, the report argued. No doubt it might, but people have a right to be paid a living wage and, at around $430 a week, the minimum wage is barely that. The OECD also suggested that the working conditions that may be set out in awards—the allowable matters—be cut back, thereby reducing the benchmark for applying the no disadvantage test for people who sign individual workplace agreements.

The award system still covers one in four workers. It is the floor upon which certified agreements and Australian workplace agreements rest. It is too important to be undermined any further. We have had a decade of economic growth, with major changes to industrial relations—which for the most part have strengthened the hand of employers at the expense of employees—and still we have entrenched unemployment, officially at six per cent but in reality substantially higher, particularly for young and mature aged people, in addition to extensive underemployment. The government’s answer to this unacceptable situation is to focus on workers’ rights and coerce unemployed workers into meaningless activity, under the threat of losing income support. The government decrèes the Senate for standing in its way, but the Greens will continue to defend the rights of workers and the unemployed from being undermined by this government.

A speech last month by the minister who drove the introduction of the Workplace Relations Act, Peter Reith, should leave no-one in any doubt about this government’s intentions and their consequences. Mr Reith told the Australian Mines and Metals Association national conference in Melbourne that unions and tribunals were stopping people from hiring workers who would accept lesser wages and conditions, thereby saving business money. He suggested that ‘a not insignificant proportion’ of those out of work and discouraged from seeking work would obtain a job in a deregulated labour market. But on what terms and conditions? Less than those that our institutions have deemed reasonable? The former minister believes we should find this acceptable, but the Australian Greens do not.

The Prime Minister told the Australian Chamber of Commerce and Industry last November that he strongly supports further labour market deregulation. He said the government has ‘a very deep commitment to private enterprise’ and believes that the foundation of national wealth is private, competitive business activity. Improving the competitiveness of business and generating job opportunities cannot come at the expense of decent wages and conditions for working people. Driving down wages for the lowest paid workers is not something that any country, let alone a wealthy country such as Australia, should contemplate. It is unjust and socially unsustainable. All the government’s actions, including the legislative proposals it brings into this place, demonstrate its commitment to private enterprise in ways that cause hardship to working people. Regulation and protection in industrial relations, as in many other spheres, is not vital for the majority of employers, employees and their representatives who engage in fair dealings, but it is there to protect the vulnerable.
This legislation is unnecessary, untimely and unreasonable. It is nothing more than a further attack on the legitimate role of trade unions in Australian society—an attempt to frustrate their efforts on behalf of working people to secure fair and reasonable wages and working conditions. It is right and proper for this chamber to scrutinise the government’s bills, not to be rushed or bullied into passing anything the government presents. It is barefaced hypocrisy for the government to accuse the Senate of obstructionism while it keeps returning bills that the Senate has already rejected. If the government has some useful contribution to make to improve the industrial relations laws governing this nation or to address chronic unemployment and underemployment, it should introduce them. The fact is the government has nothing imaginative or hopeful to offer this country’s women and men locked out of paid work and all the personal and social benefits that it provides.

Senator ABETZ (Tasmania—Special Minister of State) (7.36 p.m.)—I thank honourable senators for their contribution to this debate on the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2]. I indicate that the government remains firmly committed to its legislation and to the principles that we are trying to put into a legislative framework—that is, the recognition of the right of workers to the freedom to join or not join an industrial association. In recent times that fundamental principle has been offended by union attempts to impose so-called bargaining agents fees. These require non-union members to bear a cost for union negotiations at their workplace and in many cases the fee that is being demanded in these agreements is in fact higher than the actual union fee would be if the nonmembers were members. That clearly puts the fee that is then demanded into the category of being able to be described as premeditated and coercive, with the intent that the people would join the union rather than pay the excessive bargaining fee. Unfortunately, clauses purporting to require payment have already been included in hundreds of federal certified agreements. I know those on the other side would seek to justify that on the basis of a user-pays argument but that, as they know, is a great distortion of the user-pays principle. User pays involves an exchange that is freely entered into by willing and properly informed parties. It is not a situation where, whether you want the service or not, it will be foisted upon you and you will be required to make the payment. I commend the legislation to the Senate and look forward to the committee stage.

Question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

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

Senator COOK (Western Australia) (7.39 p.m.)—I am sure that those who are proposing amendments to the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] will have a view about that, but I want to speak in the debate on the committee stage of this legislation. While some of my remarks might have been more appropriate to the second reading debate, they are nonetheless related to the clauses that are before the chair now. Madam Temporary Chairman McLucas, is this an appropriate point for me to speak or do you want to put the question?

The TEMPORARY CHAIRMAN (Senator McLucas)—I think it is quite appropriate that you speak now.

Senator COOK—This is legislation that this chamber has seen before on more than one occasion. It is legislation that some fanatics in the conservative ranks have pushed consistently over time. It has been brought forward again really as a double dissolution trigger and nothing more. It is hard to believe that the government seriously thinks that this legislation will improve the quality of industrial relations in Australia. Any impartial or fair observer would say that it will not. It will be provocative and, because of its provisos, it may create strife where there is peace.

Perhaps a fair comment to make is that, while the government is very keen in the
present circumstances to honour its alliance under the ANZUS treaty with the United States, this legislation would not stand in the United States, because what the Labor Party has been saying in this entire debate is in fact the practice in the US. The government is proposing to introduce new legislation which in fact aborts that practice. If the government’s view is that the US is the template, then in this legislation it is out to break the template and to do it in the field of industrial relations where the government believes that by stirring up strife it can somehow advance its electoral interest. There is no question but that this legislation is brought forward for the purpose of creating a double dissolution trigger and for no other purpose.

I think that many in the conservative ranks would be shocked if they thought that the standard argument that the government puts to the electorate that there ought to be elections on union ballots—that was in the previous legislation we dealt with and it is an erroneous argument but nonetheless the government puts it almost every time the issue of industrial relations comes up—would somehow resolve things. Just to give the committee an idea of how duplicitous this position is, the provision of elections on ballots before strikes can be provided for and is provided for in the act but it is not necessarily invoked because the purpose of the act is to find a basis for resolving disputes, not creating them. Yet every election the government runs around—as it has done for at least 30 years and maybe even longer than that—and promises that if elected it will introduce secret ballots for union elections. Of course, the government takes more sage and sober advice when it is in office and never does it—but with every election that comes along, up it comes again and makes this promise. Now it has a bill in which it is seeking a double dissolution on this promise. Good luck to it but I do not think that will wash.

I turn now to the legislation that is before the committee, which, in my view, is equally duplicitous because effectively, under the appearance of providing some protection for workers, it actually delivers a considerable injustice. The appearance of protection is that people are not required as individuals to pay for a service that they would receive in the form of a union acting on their behalf in a negotiation. They are required to pay for it only if they agree to pay for it and, as I think Senator Murray was describing in his own eloquent way earlier before dinner, not to pay for it by way of contracting to do so. In respect of that, the government says that that somehow represents some right of an individual.

There are the rights of individuals, and the Labor Party has been foremost in upholding those rights, but there are rights of the community too, and the Labor Party recognises those rights. Otherwise, if there were untrammelled rights of individuals, people could choose on which side of the road to drive or they could choose a number of other things in an expression of their individual rights. That goes against decent and reasonable community organisation. The right that is offended here is the right of the majority in these circumstances and the right to deal with the issue of free riders.

The Liberal Party talks about free riders in corporate law and, in my view, they do that imperfectly. Nonetheless, in an effort to do something about it, it carries legislation to prevent the situation of a free rider. However, it is not proposing to do that here. It knows that, by encouraging free riders, it encourages people to exploit the system and it knows that it breaks down the bargaining power of unions. The ideological objective of this legislation, were it to be carried, is to undermine the ability of unions to properly negotiate on behalf of their members. The impact of this legislation would be that someone could obtain a benefit without contributing to the cost of achieving it. In commercial law, that is regarded as a definition of a free rider—that is, someone who obtains a benefit without contributing to it, who pockets that benefit and benefits materially from it.

The government is now trying to impose such a situation on the Australian workplace. Obviously, that is provocative. Those who achieve the benefit will recognise a free rider has not contributed to it, and that creates dissension and rightful indignation, and some-
times disputes in the workplace. That is something that should be guarded against. Sober judgment in industrial relations would try to remove the basis of friction in the workplace, not create a new basis for friction. The free rider also obtains the benefit of the negotiating clout of the organisation—in this case the union, although it could be with the other party. Conceivably, the free rider, without contributing, could benefit from the work done by an industry association on behalf of a category of employers. Obviously, by doing so, the free riders benefit, which reduces the ability of the majority to negotiate representatively. Although they do not contribute to it, their interests are represented and, therefore, it can easily be argued that that undermines the full achievement of a possible benefit. Free riders do that by taking people out of the system. They lower the advantage of the system to achieve the maximum outcome on behalf of their membership.

It is generally recognised that the principle of free riders should be removed. The American legislation does that, but that is not being proposed in this legislation. In parenthesis, may I say that the ILO—the International Labour Organisation—suffers from being part of the United Nations' constellation of international organisations; it is one of the oldest component parts. It is a tripartite body of employers, government and unions. Therefore, if you like, it is a fair court of appeal to judge what are reasonable industrial relations. But given this government’s attitude to the UN, perhaps the ILO does suffer, but at least the ILO does not regard free riders as something to be protected, yet this government does. Once again, this government is at odds with the international view.

That leaves us to wonder about this government’s motivation. It was said in the media last Friday that with the war with Iraq apparently imminent the Prime Minister had asked ministers to nominate legislation that could come before this chamber as possible double dissolution triggers. Of course, the ASIO bill has come up as one of those items of legislation that could be a double dissolution trigger. The image that would be exploited in terms of that legislation is that the Senate is soft on terrorism. Nothing could be further from the truth; it is not. In dealing with terrorism, we believe that proper laws of justice and fairness that have been applied over millennia in Australia should continue. We do not throw out all of our rights simply to deal with terrorism. Nonetheless, that bill is on the Notice Paper and it is coming up. It is a wedge political issue. It is on the Notice Paper for a trigger for the purposes of a wedge issue in an election. And of course the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] is a wedge issue.

In my view, this is a disgraceful performance by a government. In the present circumstances, one would have thought that healing division in Australian society would have been a significant motivation of the government. If there is a major difference between the major parties about the war, let us find where we can heal divisions and find common causes, so we can confine that as a difference of principle rather than as a division in the community. But, no, the whole idea of wedge politics is to drive divisions even deeper. Hence, we have this bill yet again. Any government that pursues wedge politics to the nth degree—that is the degree to which this government is taking wedge politics in Australia which is to a new level—will, ultimately, pay the penalty at the ballot box.

Senator McGauran—Oh, yes.

Senator COOK—It will. The best advice anyone in the Liberal Party can understand is that that is an elemental truth because Australians are decent people. Australians believe that they ought to get on with one another. Australians believe that tolerance and understanding of one another—‘give everyone a go’—is the sort of decent standard of human conduct. So when a government sets out to divide this country, to set one Australian against another and to find artificial reasons to create division, that government ultimately courts an electoral backlash which will remove it from office. Nothing is more certain than that. The best thing that those people in the Liberal Party can do—if there are any of them left who have principles—is
to back off on this legislation and to try to find a basis for a common view to settle issues in the Australian workplace.

It is in the Australian workplace that the wealth of this country is created. It is in the Australian workplace that Australians should be encouraged to realise the full extent of their talent and ability to contribute to production and to the achievement of that wealth, and have their input recognised and be rewarded materially, properly and fairly, and for the psychological input they make as well, because it is in the Australian workplace that that wealth is created. If you change the balance so that it is unfair and if you set one worker against another or workers against the boss—and that is what this legislation is designed to do—you will create disputes. Governments that do that will wear the responsibility for that.

Already Australians understand that the best party to deal with industrial relations in this country is not the Liberal Party nor the National Party combined in a coalition, but the Labor Party because we have some experience of real life in Australian workplaces. Drawing on that experience, we say that if you divide workplaces in pursuit of an ideological agenda, fanaticism pursued for narrow electoral purposes, and if as a result of that you divide Australians and put them against one another, you deserve to lose office on that alone if nothing else. I note that Minister Abetz is smirking. Well may he smirk because he—through you Madam Temporary Chairman—is one of those ministers who is particularly prominent in pursuing this ideological campaign. This legislation and the amendments that are being proposed and supported by the Labor Party should be accepted by this committee and by this government. I know that that is a faint hope. They will not be accepted because the purpose of this is division for narrow, short-term electoral gain, to the detriment of this nation. But if you are a conservative and if you get another term of office out of it, who cares whether this nation suffers?

Senator MURRAY (Western Australia) (7.54 p.m.)—It depends on how the committee wants to deal with this, but I suggest that the only amendments, as far as I am aware, are on sheet 2874, which has been circulated. There are six items. I think all the items, except amendment (2), can be taken together because they are a coherent whole.

The TEMPORARY CHAIRMAN—I suggest that you first move amendment (1) on sheet 2874 and we will then deal with the result of that decision.

Senator MURRAY—Very well. Can I suggest in turn that I follow that with items 11, 12, 14 and 15, and then move amendment (2) last?

The TEMPORARY CHAIRMAN—Yes. I suggest you move amendment (1) initially. Then the question should be that items 11, 12, 14 and 15 from the substantive bill stand as printed and then we will go on to amendment (2).

Senator MURRAY—I will gladly do that. Do we have a blood rule in the Senate? I have just stabbed myself.

The TEMPORARY CHAIRMAN—I do not think there is a blood bin.

Senator Abetz—It is no wonder with Andrew Bartlett next to you. What are you doing?

Senator MURRAY—We are sharing blood; we are having a little pact here. As you have suggested, Madam Temporary Chairman, I move Democrat amendment (1) on sheet 2874:

(1) Schedule 1, item 9, page 5 (lines 2 to 14), omit section 298SA, substitute:

298SA Permissible bargaining fees

(1) An organisation may charge a permissible bargaining fee:

(a) in connection with an agreement certified under section 170LJ or Division 3 where:

(i) the agreement’s beneficiaries include those who have not made a contribution to the costs of reaching the agreement by means of paying a union membership fee; and

(ii) this permissible bargaining fee is explained in clear language, and in writing, to all employees in advance of the vote on the agreement; and
(iii) details of the permissible bargaining fee, and the services for which it is payable, are set out in the agreement; and

(iv) all employees affected by the agreement are advised, prior to bargaining commencing, whether it is proposed to include a permissible bargaining services fee in the agreement, and that they may make submissions to the AIRC under subparagraph (vii) below in relation to this fee; and

(v) in addition to the requirement in subsection 170LT(5), a valid majority of persons employed at the time, whose employment would be subject to the agreement, have genuinely agreed to the provision; and

(vi) the agreement provides for the method and timing of the fee to be paid; and

(vii) the AIRC is satisfied that the fee is fair and reasonable; and

(viii) the agreement provides that new employees pay the fee only for the pro rata period of the agreement from the time that their employment commences; or

(b) in connection with an agreement certified under section 170LK where:

(i) the employee has agreed to pay for the provision of bargaining services in respect of the certified agreement; and

(ii) the employee has agreed to the total amount to be paid and this total amount covers all the bargaining services that may be provided in relation to the employee in respect of the certified agreement; and

(iii) the agreement was entered into before the bargaining services were provided.

(2) An organisation of employers may charge a bargaining services fee in connection with an agreement certified under section 170LJ or 170LK or Division 3 where:

(a) the employer has agreed to pay for the provision of bargaining services in respect of the certified agreement; and

(b) the employer has agreed to the total amount to be paid and this total amount covers all the bargaining services that may be provided in relation to the employer in respect of the certified agreement; and

(c) the agreement was entered into before the bargaining services were provided.

The second thing I want to say to the committee, and to Senator Abetz and to Senator Ludwig, is that we have had this debate before, and I am essentially repeating amendments that were last dealt with in August 2002. I have the sense that you both know your positions. Unless you really want me to articulate this in full, I would prefer to just move the amendments briefly and then we can come to the decision if you are content with that. On that basis, I briefly indicate that amendment (1) is the nub of our amendments. It indicates the basis on which there would be permissible bargaining fees, both for employee organisations and employer organisations. It indicates what we consider to be a very fair basis on which that is outlined, which includes, of course, the key provision that the Industrial Relations Commission itself has to tick it off. Unless there are questions from the minister or the shadow minister, I will leave it at that.

Senator LUDWIG (Queensland) (7.58 p.m.)—In response, the Labor Party supports the amendment put forward by Senator Murray. The arguments have been articulated before by the person in this chamber who usually deals with workplace relations—namely, Senator Sherry—and, in the other House, by the shadow minister Robert McClelland. I will briefly add that the amendment will allow employers and employees to agree collectively in the workplace on the payment of bargaining fees, with comprehensive safeguards. The opposition supports the approach taken by Senator Murray. It appears to be fair and reasonable and an attempt to clarify the circumstances in which bargaining fees can be charged. It is
disappointing that the government cannot agree to the amendment to ensure that there is a process that is both fair and reasonable. It appears in this respect that the government has chosen to continue to use misleading and scaremongering tactics over bargaining fees. With that statement, I conclude my contribution.

Senator ABETZ (Tasmania—Special Minister of State) (7.59 p.m.)—I will resist the temptation, in the face of that gross provocation by the opposition, to delay the chamber. I will accept Senator Murray's invitation to deal with these amendments as briefly as possible. I do not know if the brevity has been occasioned by Senator Murray accidentally injuring himself; if that is the reason for it, could I invite him to do so on a more regular basis but wish him a speedy recovery.

The government, of course, are opposed to this amendment. I indicate, for the purposes of this debate and future amendments, that we will be seeking a division on this amendment but will be opposing the other amendments simply on the voices so as not to waste too much time. But we should indicate to the chamber that the fact that we will not be calling divisions on the other amendments does not indicate any softening of our approach, just a realistic assessment of the numbers in this place. Despite the great weight of our arguments and the logic on our side, we accept that the numbers are against us.

Senator MURRAY (Western Australia) (8.00 p.m.)—I should report—because I know the chamber will be deeply concerned—that the attendants have provided me with a plaster, so I now only have to fear lockjaw.

Senator Abetz—trust 'user pays' will apply.

Question put:
That the amendment (Senator Murray's) be agreed to.

The committee divided. [8.05 p.m.]
(The Chairman—Senator J.J. Hogg)

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Buckland, G.  Campbell, G.
Cherry, J.C.  Collins, J.M.A.
Conroy, S.M.  Cook, P.F.S.
Crossin, P.M.  Denman, K.J.
Faulkner, J.P.  Forshaw, M.G.
Greig, B.  Harradine, B.
Hogg, J.J.  Hutchins, S.P.
Kirk, L.  Lees, M.H.
Ludwig, J.W.  Lundy, R.A.
Marshall, G.  McLucas, J.E.
Moore, C.  Murphy, S.M.
Murray, A.J.M.  Nettle, K.
Ray, R.F.  Stephens, U.
Stott Despoja, N.  Webber, R.
Wong, P.

NOES

Abetz, E.  Alston, R.K.R.
Barnett, G.  Boswell, R.L.D.
Brandis, G.H.  Calvert, P.H.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.  Ellison, C.M.
Ferris, J.M.  Heffernan, W.
Humphries, G.  Johnston, D.
Kemp, C.R.  Lightfoot, P.R.
Macdonald, I.  Macdonald, J.A.L.
Mason, B.J.  McGauran, J.J.J.
Patterson, K.C.  Payne, M.A.
Santoro, S.  Scullion, N.G.
Tchen, T.  Tierney, J.W.
Troeth, J.M.  Watson, J.O.W.

PAIRS

Bolkus, N.  Knowles, S.C.
Carr, K.J.  Vanstone, A.E.
Evans, C.V.  Minchin, N.H.
Mackay, S.M.  Cooman, H.L.
O'Brien, K.W.K.  Hill, R.M.
Sherry, N.J.  Ferguson, A.B.

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (8.08 p.m.)—The Democrats oppose items 11, 12, 14 and 15 in schedule 1 in the following terms:

(3) Schedule 1, item 11, page 6 (lines 7 to 11), TO BE OPPOSED.

(4) Schedule 1, item 12, page 6 (line 12) to page 7 (line 4), TO BE OPPOSED.

(5) Schedule 1, item 14, page 8 (lines 8 to 11), TO BE OPPOSED.
The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that items 11, 12, 14 and 15 stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (8.09 p.m.)—I move Democrats amendment (2) on sheet 2874:

(2) Schedule 1, item 10, page 6 (lines 1 to 6), omit Division 5A, substitute:

Division 5A—False or misleading representations about bargaining services fees etc.

298SC False or misleading representations about bargaining services fees etc.

A person must not make a false or misleading representation about:

(a) another person’s liability to pay a bargaining services fee; or

(b) another person’s obligation to enter into an agreement to pay a bargaining services fee; or

(c) another person’s obligation to join an industrial association.

As I promised earlier, I will be brief. This amendment merely strengthens the existing provision; it adds to it.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (8.10 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

Second Reading

Debate resumed from 23 October 2002, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator CONROY (Victoria) (8.11 p.m.)—It really is—

Senator Abetz—Will this be as good as your speech on Iraq?

Senator CONROY—All of my speeches are of a similar quality, thank you, Senator Abetz. Where is Senator Alston, the minister in charge of this bill?

Senator Abetz—He is ably represented.

Senator CONROY—It really is great to finally rise to speak on the government’s Broadcasting Services Amendment (Media Ownership) Bill 2002. Now, more than a year after the bill was introduced into parliament, the debate on this insidious bill can begin in the Senate. Despite its various mutations and permutations this bill remains essentially a bad bill. It will lead to too great a concentration of media ownership in Australia; it will see our media market subject to an even greater degree of domination by two or three mass media monoliths. It will threaten media diversity in Australia, a diversity which is so critical to our vibrant flourishing democracy. It is the Labor Party’s firm objective to see this bill comprehensively defeated. We hope that non-government senators will all join us in defeating this bill. The bill has hung around this place for too long. It is long overdue to be put out of its misery.

Let us consider the history of this bill because I think it is a story worth recalling. Senator Alston will probably want to be reminded of all the gory details. It reads like a political studies textbook on how not to manage a bill. We need to take ourselves back to just March last year when the whole Senator Alston inspired shambles unfolded. During that week the bill failed at its first hurdle in the coalition party room. Where were you, Senator Abetz? When Senator Alston was under attack in the party room, where were you to help him out? Coalition members were offended that Senator Alston had spent months traipsing around the boardrooms of Sydney and Melbourne, having lunches with media barons and talking about the bill while forgetting the basics: to consult his own parliamentary colleagues. How embarrassing.

Senator Alston was rolled by his own backbench. Senator Alston then had to con-
vene a further meeting later that week to shoehorn his backbench colleagues into supporting the bill. Even National Party Leader John Anderson expressed reservations about the bill’s effects on media diversity. He smelled a rat then. Having belatedly secured party room support for the bill, Senator Alston then forgot to put the bill on the House of Representatives Notice Paper. This meant that the House of Representatives standing orders had to be suspended to enable the bill to be introduced in the House on that week. Can you believe it? He actually forgot to list it! It was a devastating week for Senator Alston. It is a pity that at that time of the year he did not have his Telstra digital plasma TV to go home to to watch his beloved Pies—and, equally, my beloved Pies. After that week, crawling in front of such a TV might have provided much needed relief for the poor old senator or, as he is known affectionately to all now, ‘Plasma Dick’. What is worse than Senator Alston’s appalling handling of this bill—

Senator Ferris—Madam Acting Deputy President. I rise on a point of order. That was an unparliamentary statement and I would ask you to direct Senator Conroy to withdraw it.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—I think it might be appropriate that you do withdraw it, Senator Conroy.

Senator CONROY—I am shocked to hear that Senator Ferris feels it is unparliamentary, but I would not want to offend her delicate sensibilities so I will withdraw. What is worse than Senator Alston’s appalling handling of this bill is the actual bill itself and the malignant effect it would have on Australian society if it were ever enacted. Under the current cross-media ownership laws enacted by the former Labor government no one proprietor can control any more than one of a major newspaper, television station or radio station in the one market. In the words of the then Prime Minister, Paul Keating, media proprietors could either be ‘queens of the screen or princes of print’.

These laws have served Australia well. They have guaranteed a decent level of media diversity within Australia. From the outset it needs to be made clear that Labor are not indulging in blanket oppositionalism with regard to this bill. We oppose the bill because it is bad public policy. Labor have consistently stated that we will only consider new media ownership laws on the condition that they maintain reasonable levels of diversity in media ownership. This bill is not a reform of our cross-media ownership laws; it is a repeal of them.

Labor have also said that we are comfortable with relaxing foreign ownership media controls, although we do not accept the carte blanche repeal proposed by the government in this bill—there must be some safeguards. The government has, however, said that it is not interested in splitting the bill’s cross- and foreign media ownership provisions. So, again, because of the government’s arrogance and obstinacy, the opportunity for greater diversity and investment in Australia’s media through more relaxed foreign investment settings appears to be lost. Let it be known for the record that this is no fault of Labor’s. The government is clearly not interested in diversity; it is only interested in giving free kicks to its local media mates.

But what changes have there been in the media landscape since the cross-media laws came into force in 1992? According to the government, pay TV and the Internet have opened up a whole new layer of media diversity. But our own pay TV industry is now dominated by Foxtel, which is partly owned by two of our largest media companies, News Corporation and PBL, and Telstra. In terms of the Internet the only large-scale local news services comparable with our mainstream media are coming from the existing news organisations such as News Limited, PBL, Fairfax and the ABC. There are specialist sites such as Crikey.com.au, which are well read in the corridors of power up here, but these are in a very early stage. While the Internet does have the possibility to provide for greater media diversity, that stage has not yet been reached and may never been reached. We cannot legislate on the basis that somehow giant Australian media companies capable of competing with News Limited, PBL and Fairfax will soon emerge on the Internet. We just do not know whether that is
going to happen. It may never happen. It is just as likely that existing media companies will use their market power and expertise to dominate the Internet in the same way that they dominate more established forms of media.

The other argument the government puts in favour of this bill is that it is journalists, not proprietors, who determine the flavour of the news. I am sure that Senator Brown would love to comment on that, and possibly will in his contribution later. The fallacy of this argument was exposed by former Can- West journalist Stephen Kimber, who submitted evidence to the Senate inquiry into this bill of the blatant editorial interference he experienced under similar laws in Canada. Even Professor Flint’s Australian Broadcasting Authority produced some landmark research entitled Sources of news and current affairs which showed ownership is crucial in determining a news producer’s outlook. The report found that ownership was a factor that influenced news producers in their work beyond the basic newsworthiness of an item. The fact is that media owners do influence news and opinion in their media outlets. They can and do appoint staff who share their particular world view.

Just recently we had an example here in Canberra. The much vaunted ABC decided to dump all its regular planning and show in full John Howard, the Prime Minister, speaking in parliament about the war. Then when it came to a choice between televising the response by the Leader of the Opposition, Simon Crean, and another program, the ABC cut to Playschool. So it happens everywhere. They can and do use their powers to push their particular interests or beliefs within their media outlets. To legislate on the basis that owners do not shape the news and opinion making output of the media they control is both wrong and dangerous. Cross-media rules exist because we accept that media owners exert control.

The government also argues that the Trade Practices Act would still apply as an ultimate guarantee against undue market concentration in the media. But we know this is a furphy as well. Professor Fels, Chairman of the Australian Competition and Consumer Commission, has stated several times that for the purposes of the Trade Practices Act newspapers, television and radio are separate markets. Therefore a television giant taking over a newspaper giant is perfectly reasonable and acceptable under the existing Trade Practices Act.

The government has also stated that the United Kingdom is reforming its cross-media rules and that opposition to the Howard government’s media ownership bill is somehow reactionary. But, unlike the government’s bill, the Blair government’s media reforms do not repeal cross-media ownership restrictions in the UK. As my colleague Senator Cherry has pointed out just recently, the UK reforms maintain restrictions on the cross-media ownership of national newspapers and regional television licences. Under the Howard government’s bill, the cross-media ownership of newspapers and television stations is allowed in cities and regions. There is no way we can compare the UK reforms with the Australian reforms. They are chalk and cheese. The UK reforms seek to maintain media diversity. The UK reforms need to be considered in the context of a powerful and heavily funded BBC, a liberal digital television regime and a competitive newspaper market.

With regard to television broadcasting policy in Australia, the government has ensured that the tremendous possibilities of digital television and its potential to increase diversity will not be realised in the immediate future. The government also appears, at least this week, to be opposed to opening up our digital spectrum to the possibilities of widespread multichannelling. Again, Senator Alston was rolled. Labor has said repeatedly, ‘Why are we considering changes to the cross-media ownership rules when we don’t even know how many television licences there will be in 2006?’ This critical threshold question needs to be resolved before we consider cross-media issues. It is vital. The number of television licences to be made available post-2006 is absolutely fundamental to the whole cross-media debate.

Let us now consider what would be the practical effects of this bill if it were enacted. This bill would allow our existing large-scale
media companies to go on a buying spree and to further consolidate their market power and concentration. Here is one possible scenario, just for Sydney, if this bill is passed: PBL buys Fairfax and Macquarie Radio Network, including 2GB; News Limited buys Channel 10 and Southern Cross Broadcasting, including 2UE; and Channel 7 buys Austereo’s radio stations. Suddenly, under this bill, we could see a media market consisting of six or seven major commercial media players shrink to just three. There would effectively be two media giants and one medium-sized player based around our three commercial television licences. Media diversity would be effectively halved just in the Sydney market if this bill were passed.

An even scarier possibility is that the telecommunications gorilla, Telstra, could use its large cash reserves that it has not blown in Asia to be one of those dominant media companies. Telstra’s massive market power could extend beyond telecommunications and into the media. Market theorists have stated that the existence of three or four major players is an acceptable outcome for a market and guarantees a reasonable level of competition for consumers. Professor Hilmer, CEO of Fairfax, put this neat theory to the inquiry that we held into the bill. But the media is not just another market. Because the media is such a powerful and important social institution and so critical to our democratic way of life, its regulation can never be based solely on market and competition theory. There are key social considerations involved in regulating the media, which is why we have the Broadcasting Services Act and the Australian Broadcasting Authority.

Diversity of opinion and news making is fundamental to modern democracies. In particular, it is the diversity of media ownership that guarantees overall diversity. We need diverse media ownership to ensure that the various voices and opinions in our community are heard. A key problem in allowing the emergence of just three major media companies is that the possibility for stories to get a proper airing effectively shrinks. For instance, one might see deals between the small number of dominant media proprietors to ensure that their business interests do not receive unfavourable media coverage. Suddenly the diversity of voice and opinion is threatened. This is not acceptable to Labor. We are absolutely committed to the maintenance of media diversity through diverse media ownership holdings. We see this as fundamental to our democracy.

Let us now come to the provisions of the bill itself. The bill amends the Broadcasting Services Act 1992 to effectively repeal foreign and cross-media ownership restrictions in major markets. So the first problem with the bill is that it contradicts objective 3(1)(c) of the original act, which is ‘to encourage diversity in control of the more influential broadcasting services’. Oddly, the bill does not repeal this objective from the act, despite the fact that the cross-media amendments are blatantly at odds with it.

What are the cross-media amendments in this bill? The bill effectively repeals cross-media ownership restrictions in major metropolitan markets. It allows a person to exercise control of a major newspaper, television station and radio station in the same metropolitan market, provided they obtain cross-media ownership exemption certificates from that tiger of broadcasting that has done such a good job in policing the debacle known as ‘cash for comment’, the Australian Broadcasting Authority—a real tiger in protecting journalistic values. Cross-media ownership certificates will be granted if the holder of the certificate can demonstrate separate editorial policies, appropriate organisational charts and separate editorial news management, news compilation processes and news gathering and interpretation capabilities. It is the old Chinese Wall argument. We have seen the old Chinese Wall argument work so well in the financial services industry; let us give it a run in the telecommunications and media industry. Resource sharing and other forms of cooperation are also allowed between the cross-media owned entities. This is code for cost cutting and job losses.

Labor believes the so-called editorial separation provisions are a smokescreen. These provisions effectively repeal the cross-media ownership restrictions. Effectively, a proprietor just needs to write up an editorial policy that sounds vaguely separate, cut and
paste their organisational chart, have a few different staff in the various entities and send this information to the Australian Broadcasting Authority. Having completed this rather simple, if somewhat bureaucratic, exercise, a single entity can then own any Australian city’s largest television station, newspaper and radio station if they so choose. The ABA will be able to conveniently ignore the fact that the various media outlets are owned by the same interest.

These provisions are a joke. They are laughable. No-one takes them seriously. The government’s intention is to create some minor red tape for the ABA to administer to make it appear that there is still some integrity in our cross-media laws and that section 3(1)(c) of the Broadcasting Services Act—the diversity clause—still has some meaning. The government would have been much more intellectually honest if they had simply repealed the cross-media ownership laws entirely, because that is the effect of the editorial separation provisions. I ask Senator Alston: why bother with all this red tape? Who are the government trying to kid?

The editorial provisions do have some more concerning effects which the government did not envisage. At last year’s Senate committee inquiry into the bill, Professor Ken McKinnon, Chairman of the Australian Press Council, expressed grave concerns that the editorial separation provisions of the bill represented an unwarranted intrusion into the freedom of the press. These are real concerns. Any significant potential for the government to interfere with and monitor the actual operations of newsrooms needs to be treated with the utmost scepticism. Professor McKinnon was right to point out that these provisions could have serious unintended consequences that could undermine the freedom of the press in Australia.

It is not just these sinister aspects of the editorial separation provisions of the bill that are of concern. There is also the question of the constitutionality of these particular provisions. Counsel for Fairfax, Gail Hambly, questioned the constitutionality of these provisions during the Senate inquiry into the bill. There is a strong possibility that the editorial separation provisions of this bill will be challenged in the High Court, as their application to newspapers extends well beyond the Commonwealth’s broadcasting powers. So we see that the editorial separation provisions are not only a fig leaf for the government’s ulterior motive of abolishing the cross-media laws; they also represent a dangerous threat to the freedom of the press and are also quite possibly unconstitutional. So here we have one of the central mechanisms of this bill, the editorial separation test, exposed as a complete policy shambles. No reasonably minded senator could vote for these provisions. (Time expired)

Senator CHERRY (Queensland) (8.31 p.m.)—The Democrats are very disappointed that the government has brought on the Broadcasting Services Amendment (Media Ownership) Bill 2002 tonight, because at this point in time we do not know what the final version of this bill will look like. We have not been told by the Minister for Communications, Information Technology and the Arts or by other people in this place exactly what the final form of this bill may end up being. For the record, I wish to state that the Democrats oppose this bill as it stands as introduced by the government.

We view the diversity of media content as fundamental to a robust and pluralistic democracy. Diversity of media content is obviously linked to diversity of ownership and it has been for a very long time. The recent British communications white paper, which argued in favour of maintaining restrictions on media ownership, stated:

For the time being, however, most people continue to rely on terrestrial TV, radio and newspapers. Cross-media consolidations which are desirable on economic grounds may tend to reduce the plurality of viewpoints and the sources of information available.

That report went on to argue that restrictions on ownership were essential to ensure that a robust democracy was defended. It pointed out that, while most European countries recognise the importance of media, there are specific rules enhanced in law to prevent the dominance of various players. Indeed, the Senate inquiry into this bill was given expert evidence on what happened in Canada when cross-media laws were reduced and on the
enormous dominance of the newspaper and media industries that developed as a result of the removal of cross-media ownership laws.

The minister told the Melbourne Press Club only a couple of weeks ago that our cross-media laws encourage mediocrity in reporting. The Democrats expressly reject this point of view. In fact, we argue that more voices are far more likely to produce competition in voices and that, even under liberal market theory, competition should produce better words. We are concerned that if we move to more concentrated and consolidated ownership we will see a reduction in that diversity and a reduction in the standard of our journalism as newspapers and media organisations are turned into little more than cost centres rather than centres of excellence.

The cross-media ownership restrictions have been a critical feature of our current legislative framework. We do not believe that there are compelling grounds presented by this government to water them down to the extent that they have proposed. Indeed, I have heard some discussion that a two out of three rule might be all right. The Democrats are very concerned about this because, if you look at the particular levels of media, obviously television and newspapers are incredibly dominant—they have around 80 per cent of all advertising. You can see the power that those mediums create. You are talking about a situation where up to 80 per cent of the advertising dollar in a market could conceivably be open to consolidation. You are looking at a situation where the main media voices would be open to consolidation.

We are told that the public broadcasters will be able to provide the competition needed to ensure alternative voices. Again, people point to Britain and say, ‘They are deregulating their media ownership to a degree.’ But the key point which was made by Russell Balding in his speech to the National Press Club a few weeks ago was that the BBC is funded around eight to nine times more per annum than the ABC is here. That is extraordinary. To bring the ABC up to the funding level that the BBC currently has would be a financial commitment beyond anything which this government could probably come up with. That means that the ABC in our country—the public broadcasters—cannot provide the counterpoint to the commercial media companies that is provided in Britain. This highlights the fact that the role that the public broadcasters are playing in Australia, as important and as crucial as it is, cannot be a substitute for ensuring the diversity of commercial operations as well.

The Democrats also cannot understand the urgency of bringing on this bill. The most important report on media ownership, which will be coming out in the very near future, is the ACCC’s report on the ownership structure of Foxtel. That report is expected to be released in the next month or two. We await that report with great interest, because the whole notion of Foxtel—who owns it and its role in the competitive market between free-to-air television and pay television—is not considered by this bill. For some odd reason Foxtel, or pay television, is not regarded as being part of this media question. For some reason when we talk about two out of three, we are assuming that pay TV is somehow not part of the media industry. There is no talk of two out of four, or even ensuring that the relationship between Foxtel and the existing media proprietors does not create problems.

The Democrats have called for a legislative access regime to ensure that Foxtel actually encourages diversity as it digitises, rather than acting as a further constraint on the growth of the free-to-air networks and the smaller newspaper companies. However, the government has not taken that issue up. In fact, I am disappointed to say that the ACCC has not taken that issue up, that the access regime proposed by the ACCC for Foxtel in our view falls short of the legislative requirements that are needed to ensure that genuine diversity comes out of a digitised pay TV platform. Also, in terms of the ownership structure, the involvement of the dominant telecommunications carrier obviously creates other issues in terms of competition law. We await that report with interest, because I believe it has enormous ramifications for this debate. Bringing on these bills tonight is in our view premature and, without the information from the ACCC report, cer-
tainly this debate will be at all times inadequate.

We have heard the argument from government that the change in technologies in terms of online technology will in fact create diversity and encourage diversity. The Democrats reject that argument. True, an increasing proportion of Australians are getting their information about media and about journalism from the Internet. However, there has not been an increase in the number of voices as a result of that. The most popular providers of online news content in Australia are PBL’s ninemsn, Fairfax’s F2 and the ABC’s abc.net.au—and coming in fourth would presumably be News.

Senator Conroy—Don’t forget Crikey!

Senator CHERRY—You are trying to incite me into a free subscription, aren’t you? The point that I am trying to make is that, whilst we have seen an increase in the number of outlets providing the information, the information is not coming from an increased number of sources. From that point of view, whilst the Internet has provided a different platform for the existing media organisations to put out their message, it has not actually provided an increase in the number of providers. Let us not be seduced by the whole notion of these surface issues—that online access and the growth of the Internet will actually increase diversity—because, at the end of the day, the important part of all this is the production of content. Technology, new or traditional, is irrelevant to ensuring diversity if that content originates from the same source.

This particular bill also proposes changes to the foreign ownership arrangements for Australian media. The Democrats are not opposed to foreign participation for the media sector per se. However, what we are concerned about is ensuring that Australian media remains controlled by Australian companies. We believe that is important from the point of view of ensuring that there is an Australian aspect to what is presented in our media. It is also important in the longer term in terms of defending things like the local content rules and defending the notion of our own independent sources of news and information. However, we are prepared to talk to the government—if they are prepared to talk to us—about some liberalising of the foreign ownership rules while still ensuring that control remains in Australian hands.

But what really falls short in the government’s proposals is their failure to recognise the relationship between ownership and regulation on the one hand and the quality of what is being presented and content on the other. The British system of media regulation—and I gave a speech on this in the Senate on 5 March—which is proposing some liberalisation, probably beyond where we are, is also balanced by a very strong system of regulation of content in terms of impartiality, plurality, fairness and decent standards in respect of privacy. The new OFCOM, which is being established as the regulator in Britain, has far greater powers than our Broadcasting Authority has in this country. Those are powers that the British government proposes to expand further. For example, where a company breaches a standard set by OFCOM or by the Broadcasting Services Commission in the UK, that company is actually up for the most extraordinary fines. The fines can be up to five per cent of their revenue or up to £250,000. That would probably be sufficient to ensure that some of our radio megaphones in this country actually checked the fairness and the correctness of their statements before they brought them on board. It would provide some sort of decent support to ensure that we get some standards in broadcasting—some impartiality and some actual diversity of views.

But our regulations in this country fall well short of what they have in Britain and what they have in an awful lot of other countries and well short of what the standards should be. These issues were actually addressed to some extent in the ABA’s report on the cash for comments affair in August 2000. In that report, the ABA explored a range of approaches which picked up some of the ideas from the British experience and suggested that we should consider them in this particular country. Some of those proposals which the Democrats actually support were strengthening the ABA’s power to enforce codes of conduct by requiring the
findings of ABA reports to be broadcast and inaccuracies corrected. Amazingly, under Australian broadcasting law, if the ABC makes a mistake it can be ordered by the ABA to correct it, but if Channel 9 or Channel 7 makes a mistake they cannot be directed to do so.

The second approach was imposing civil fines for breaching licence conditions—the ‘five per cent of turnover’ rule that the UK has. We would also urge the government to consider the ABA’s suggestion that compliance with codes of conduct should become a statutory licence condition. That would then bring into play, as a statutory licence condition, impartiality, respect for privacy, decency and standards. Also, we propose giving the ABA the powers to seek injunctions to prevent further breaches of codes of practice or licence conditions, instead of having to go through the incredibly cumbersome process we saw with the cash for comments affair of having to change the licence before there could actually be an enforcement of it. These are very important issues, and they are very important because, if we are going to have any sort of consolidation of media in this country, if this bill in any form is going to get through, then the only protection we will have is the quality of the regulation of the standards in terms of the content, because it is the content that is all important. It is the content that has to ensure that democracy is being fed with decent diversity of views and decent standards in terms of accuracy and impartiality.

But the government has not brought this stuff forward. Senator Conroy referred to the government’s incredibly questionable proposal about editorial separation as the government’s proposal to try to provide some sort of diversity. Editorial separation is a Chinese paper wall. It is not going to provide anything other than enormous amounts of cumbersome bureaucracy and red tape for the companies involved. At the end of the day it will still be the electronic media, presumably, reading out in their bulletin what their print media put into their paper that morning, or vice versa. If this bill goes to committee, the Democrats will be moving amendments to deal with the issues of journalistic independence and broadcasting standards. If a bill is to come out of this, we believe it has to do the hard yards—as the British have done in their bill—of making sure the content is of a higher quality, if the content is going to be consolidated in terms of who owns it. That is something I hope we do not get to in this debate because, from our point of view, this bill should not proceed. The government has not made a case for further consolidation.

The other thing that the government has failed to properly address, as I mentioned earlier, is the role of the public broadcasters. The public broadcasters in the UK are a fundamental part of ensuring that there is diversity and that there actually is equality in terms of a depth of reporting and a depth of current affairs, and also a depth of local independent production. In our country, the ABC and SBS have been struggling with underfunding for some considerable time. It is also holding back the government’s policy in terms of the promotion of digital television. At the moment, the ABC and SBS—thanks to a Democrat amendment—are the only free-to-air broadcasters allowed to broadcast multichannel and in digital television. The provision of the ABC and SBS multichannels has been an important part in the take-up of digital tuners and the promotion of digital TV in this country. Yet both the ABC and SBS have made it quite clear that, without additional funding, they cannot continue those initiatives to the extent they have been pursuing them. They have pulled money out of their existing funding to get those services on the air, and that effort cannot be sustained in the long term. Yet I read quite regularly in the paper unnamed Liberal sources indicating that there will be no money for the ABC in this budget. There will probably be a new Liberal director, but there will be no money for the ABC in this budget because the government just does not like the ABC.

The government does not understand that the fundamental role the ABC plays in its own digital television policy. If the ABC and SBS are forced to close down or scale back their multichannelling operations, rest assured that the take-up of digital TV in this
country will slow quite significantly. The other thing that I am disappointed about, in terms of the government’s approach to public broadcasting funding, particularly in dealing with a bill that is about consolidation of ownership, is the failure to provide the funding to expand the radio coverage of ABC and SBS radio. At the moment, 3.4 million people around Australia do not get the benefit of NewsRadio and its incredibly scintillating parliamentary broadcasts. Around 1.2 million people do not get Triple J and its wonderfully idiosyncratic new services. One million people do not get Classic FM and, outside the capital cities, very few get access to SBS’s radio service. It would not take that much to actually expand these radio services to cover the vast bulk of the Australian population. I think the cost would be about $18 million to extend the ABC’s five networks to all regional centres with populations of over 10,000 people, and about $12 million to provide additional radio services for ethnic language groups in Sydney and Melbourne.

These are the sorts of things that public broadcasting should be about. If we are talking about the notion of consolidating or reducing the number of owners, the government has to come up with the money to ensure the public broadcasters can do their job of providing the alternative voices. But we do not hear that in this debate. We do not hear about the role of community broadcasting. Since this government took office in 1996, the number of community broadcasters has increased exponentially. There are now about 453 community broadcasters in Australia—70 per cent of them in regional areas. Yet average core funding per station is 40 per cent lower than it was in 1996. That has put enormous stress on our community broadcasters around Australia. The notion of 70 per cent of community broadcasters and radio being in the country is very important because country content on commercial radio has all but disappeared in this country due to networking. The amount of programs that are now being networked out of the cities and into the country is, I think, about 60 per cent. According to a recent ABA survey, just 32 per cent of programs and seven per cent of news are now produced locally in small regional radio stations. Just 60 per cent is produced locally in medium and large regions. That figure shows that in country Australia we are losing diversity—we are losing voices—even as we speak. The failure to ensure that the ABC can pick up that role, which has been dropped by the commercial broadcasters, highlights the lack of commitment this government genuinely has to ensuring there is diversity.

I wish to make it clear that the Democrats will not be supporting this bill at its second reading because we do not think an argument has been made for the consolidation of media ownership. We do not think the government has actually thought through all of the ramifications of the policies that will be needed to support consolidation of media ownership. The work has not been done on ensuring the broadcasting standards are brought up to speed, as has been done in Britain. The work has not been done in ensuring the public broadcasters have adequate funding to provide a decent alternative viewpoint. The work has not been done on editorial separation. The work has not been done on the flow-on effects of increasing foreign control. Until that work is done, the cross-media laws as we have them—as idiosyncratic as they are—should be retained in their current form and a decent comprehensive media policy that looks at pay, at public, at standards and at regional broadcasting should then be considered as a whole.

Senator MACKAY (Tasmania) (8.51 p.m.)—I would like to congratulate Senator Cherry and his assistants—whatever assistance he got in the preparation of it—on a very good speech; it was excellent. The Labor Party will not be supporting the Broadcasting Services Amendment (Media Ownership) Bill 2002 because it is a deeply flawed bill that, if passed, would lead to the wholesale carve-up of Australia’s media outlets between the big media moguls Kerry Packer, Rupert Murdoch, Kerry Stokes and Fairfax. Small independent media companies, particularly in regional areas such as my own state of Tasmania, would be a thing of the past, as would many local journalism jobs in these areas—jobs which are already rapidly deteriorating.
If passed in its current form, the bill would have dire consequences for media diversity and media jobs and would also add enormous complexity and red tape to the media industry. There are no public interest criteria whatsoever that would be served by the passing of this bill. It is a fundamentally bad media policy that would see an even further concentration in an already, I would submit, unacceptably concentrated media industry. We therefore do not believe this bill deserves support.

The media business is clearly different from other industries. This is because the media play an important role in our social and political system. We in the Labor Party believe that media diversity is inextricably linked to who owns our media outlets—that is, who owns our newspapers and our television and radio stations. We believe that the more media owners there are the more chance there is of different stories being reported, different people expressing their views and different ideas being discussed and written about. It is a fact of life that our democratic system relies in part on the dissemination of news and information to inform the Australian public about what is happening in their federal parliament and the world around them.

We are a country of diverse political and social groups, which means that one size does not necessarily fit all when it comes to sources of information. We need a diversity of media sources to support and inform this diversity. It is important that as many people as possible have their voices heard and their views reflected in the media they consume. We do not want our news and information to be controlled by an increasingly smaller number of corporate interests. It is therefore important that there be a broad choice of sources of news and information, and diversity of ownership is the only certain guarantee of diversity of opinion.

When we talk about media diversity and how important it is to protect it, we are talking about something that is fundamental to democracy. We can already see ample evidence in this country of the power of media proprietors. With regard to the situation in Iraq, we have seen the power and influence of Rupert Murdoch at work. Mr Murdoch declared his support for George Bush Jr and Tony Blair and gave the war against Iraq his full backing in an interview in the Bulletin in mid-February. The reason? He said that cheap oil would be bigger than any tax cut and would fuel an economic boom. That is right; whilst most pundits have been getting stuck into the Labor Party for alleging that oil had anything to do with it, Mr Murdoch was quoted in the Sydney Morning Herald as being unequivocal about the war with Iraq. He said:

- We can’t back down now. I think Bush is acting very morally, very correctly and I think he is going to go on with it.

Mr Murdoch then went on to say:

The price of oil would be one of the war’s main benefits. The greatest thing to come out of this for the world economy, if you could put it that way, would be $US20 a barrel for oil. That’s bigger than any tax cut in any country.

Out of the mouths of babes and media proprietors! Ever since then, all we have seen—and I would not call it a coincidence—in newspapers like the Australian and the Daily Telegraph are articles supporting the Bush administration’s and John Howard’s position on the war in Iraq. The coverage is enormously one-sided on this issue. Punters picking up a Murdoch paper may or may not be aware of the political position that the newspaper owner has taken. This factor does not necessarily mean that, where a media outlet’s political opinion points, public opinion will necessarily follow. What it does show is that media proprietors like Rupert Murdoch are prepared to use the media outlets they own to push a particular point of view. Inevitably, that point of view comes to dominate the contents of their outlet. This shows that the media do play a role in any political debate and that it is often not about providing balanced information. In fact, I noticed in the news that Donald Rumsfeld had asked networks in the United States not to carry particular footage, and most of them had agreed to that.

It also shows that these days media companies are about big business. These days, journalists cannot fail to be aware that their proprietors have investments in other indus-
tries they are reporting on—such as casinos, mining, rugby league competitions and so on—and that they care about the price of oil. Mr Murdoch does not need to send a memo to his editors about what to put in his newspapers. Any smart editor or journalist either knows or will learn pretty quickly that the slant of their stories will need to concur with their boss’s political line, or else who knows what will happen to them in relation to their career prospects.

We heard about self-censorship in our inquiry into this bill and we know that it can be an issue in media coverage—unfortunately, it does happen. The coalition’s support for this bill demonstrates that they represent big business and do not respect or value the importance of diversity of opinion. The government may argue that new media are the answer to the question of diversity, but what we are seeing is that the traditional media are on-selling their content to new media platforms. It is the same information being disseminated but it is just through different mediums. That is not diversity. The continued dominance of the traditional media means that it will be a very long time until so-called ‘always on’ Internet access is commonplace and computers are in every home in Australia, particularly in the regions. Until then, we have to manage our media interests as best we can to ensure that diversity is maintained.

As a Tasmanian senator it was of particular concern to me to hear about the fears of small, independent, mainly regional media companies during the Senate committee hearing into this bill in May last year. These are companies that fear being overrun by their big city competitors if this bill is passed. Even government members of our committee who sat with us and heard the very same evidence could not bring themselves to endorse the likely effects this bill would have on regional media. So the government members went back to the Minister for Communications, Information Technology and the Arts and got him to change the bill and put in a form of cross-media ownership restriction in regional areas so that only two out of three media were owned by the one proprietor.

As any political representative who spends any time in a region knows, the regional media are a very small group. Does anybody in this Senate seriously want to slash the amount of local content in the media in their area? Do they really want newspapers and television and radio programs in their areas filled with content supplied by journalists from the big city major media outlets? Do they think local stories are important to local areas? Do they want outsiders or local journalists who know the area they are living in and know the issues in that area? Finally, what are the outlets for dissenting voices if there are fewer avenues to get your message out if you do not agree with the status quo?

Despite six months of negotiation with the crossbenchers, it does not at this point seem that Richard Alston, the minister for communications, has been able to convince anyone of the merits of this bill, which is really about media moguls getting richer. I notice Senator Harradine is also on the speakers list. I will come to Senator Harradine in a moment. Senator Murphy, a fellow Tasmanian, well understands the implications of this bill for regional media. He is right when he says that the existing trade practices law is not tough enough to prevent the mass consolidation of media assets if the current ownership limits are lifted. As Senator Conroy has said, Mr Allan Fels from the ACCC gave the Senate communications committee the same opinion when he gave evidence at the inquiry into this bill last year. Indeed, this factor exposes the true position of the government.

If they wanted real diversity, they would strengthen the Trade Practices Act. That was one of the key recommendations of the extensive Productivity Commission investigation of the year 2000 into the media industry. Senator Murphy, from what I have read, recognises that the Trade Practices Act could be a key element in ensuring media takeovers were allowed only if some sort of public interest criteria were met. If the government were prepared to consider that option, many of the crossbenchers’ concerns—from what I have read—would go some way towards being allayed. But to date, at least, while the
minister and the government have been quite unequivocal, they are not prepared to negotiate on this point. However limited it may be, the current model of cross-media limits has worked to preserve some key elements of diversity and to stem the push towards greater concentration, but this is now under attack. No other model has yet been put forward which can reconcile the media owner’s quest for greater dominance and the public interest objectives in the current legislation. It is worth making that point.

The reality about this legislation, if it were to get through, is that it is subliminal. Most people would not realise that this legislation, if it were to get through, had in fact gone through. That is the experience in other countries when they have reduced the issue of diversity. That is why it is up to us, as we are here to represent the people of Australia, to ensure that this bill does not get through, because most people would not realise that they were seeing the same media, the same spin and the same line over and over again. This is the appropriate place for this to be rejected, at the second reading.

Senator Harradine, also a fellow Tasmanian, is right when he says that one of the final outcomes of this legislation, if passed, would be to reduce the number of independent sources of news and current affairs and, once this happens, we would not be able to undo our mistake. This places all senators here in a grave position when it comes to voting on this bill. I know the Independents, crossbenchers and minors have approached their task in a thoughtful and conscientious manner. Again, the local situation for media ownership in Tasmania—which is effectively a regional microcosm—demonstrates the risk that this bill would be to regional media. As Senator Harradine and Senator Murphy both well know, our television station owners all live in mainland capitals. They would be the likely buyers of some of the local newspapers or radio stations which remain in local ownership, such as they are these days. I do not think you could argue that this would not have implications for the coverage of local issues or the commitment to local media.

From what I have read, I think that Senator Harradine also understands well that there is a fundamental conflict between the commercial interests of media businesses that would seek to minimise their costs and grow their businesses, which is fair enough—they are in the business of making money; nobody is criticising that—and the public interest requirement of consumers and the rest of society, and that is our business. The current cross-media regulatory regime seeks to reconcile this conflict and find a balance between the two competing interests.

Labor’s position reflects the view that we do not want to see the balance tipped so far towards the business interests of the big media companies that we lose our local identity in states like Tasmania or in regional areas and across the country. Having travelled extensively in regional Australia, I think this would have a major impact—in fact, I know it would. I know that Senator Lees, who is here in the chamber, has worked hard on this bill. It is true, as she has said, that reform of the laws regulating media offer many challenges to legislators. You could easily mount a case for extending the reach of the current cross-media ownership regime beyond the traditional media to include the emergent media, such as Internet, pay TV, magazines and so on. However, this bill before us now is about reducing that diversity of ownership that currently exists and increasing the concentration.

There is much merit in some of the proposals that Senator Lees has put forward to the government. I know that the UK model—known as the ‘share of voice’ model—which mandates the minimum number of commercial players in a market, has been attractive to her. However, this model works in the UK because the media market is enormous compared to that in Australia. Many of our smaller capital cities could not commercially support the increased minimum number of players—it is just a question of economies of scale. These are basically business decisions and we have to be careful as to how far we extend our regulatory reach into the commercial decisions of these companies.

It is true that massively increasing the funding for the ABC and opening up the current foreign investment restrictions would
assist, I suppose, in respect of ensuring diversity. But somehow I am not sure—and I could be proven wrong—whether Peter Costello, the Treasurer, is going to cough up the millions in extra funding over and above the triennial funding request that would be needed to meet this challenge. Senator Harris apparently now wants the British model to be adapted to the Australian media industry. As I said previously, I cannot see how that could be done without a huge upheaval in our communications regulatory regime, which I doubt Senator Alston has the stomach for now.

Just to reiterate, Senator Alston, as I am aware—and things are emerging daily in respect of this—has rejected calls from the crossbenchers in respect of looking at the Trade Practices Act and the establishment of a public interest test, contestable or policed, if you like, by the ACCC. It is early days—it is only Monday. It may well be that the government comes back with substantial amendments to this bill between now and the end of the week. That is not within our purview—I wish it were, because it would not happen if it were—that is within the purview of the crossbenchers. I welcome the fact that Senator Lees and Senator Harradine are on the speakers list in respect of that.

As Senator Cherry said, however desirable the UK model is, it ignores the fact that our communications system is culturally different from that of the United Kingdom. The tradition of independent broadcasting is far more firmly entrenched in the United Kingdom than it is in Australia. Not only that but digital and pay TV offer viable alternatives to free-to-air television, another failure of the Australian Minister for Communications, Information Technology and the Arts—there are a few and that is another one of them.

Finally, you have to ask yourself: why is this bill being brought forward now? Where is the clamour coming from to invest the government’s time and energy in trying to get this bill passed? Where is the urgency in respect of this? Where are the Australian people saying, ‘We want to reduce media diversity in Australia and we want it now?’ They are not saying that, particularly in the current environment. Who in the community wants this bill passed? Needless to say, the communications minister is not here—he rarely is, even for divisions—but if he were here, I would be able to ask: ‘Senator Alston, who in the community actually wants this bill passed? Is there any public policy benefit if this bill becomes law? If this bill were to be passed, how would that benefit the average Australian? Why now? Who is asking for it? Who will it benefit? Will the Australian people be served by fewer larger media companies?’ I do not think so; I think the answer is no. Are local independent media companies important or is big business the only consideration?

In conclusion, I would like to say that for me as a Tasmanian—and, as I said before, Tasmania is a regional microcosm—the regional issue is absolutely critical and, irrespective of the well-meaning efforts of government members on the committee that I am on, it is simply bizarre: you have a duopoly of regimes in relation to cross-media ownership, and that is not going to work. This is one of those bits of legislation that is almost subliminal in its impact, and it may take a long time before people wake up to the fact that all of a sudden they are not getting it. However, if they have not woken up now to some extent, maybe they never will wake up to it.

This is a critical piece of legislation for us, as legislators in the House of Representatives, and particularly in the Senate, where the will of the government of the day is not necessarily reflected and can be changed. That is extremely important. Whatever happens with this legislation, if you are in a position to have an impact on what the government do in this respect—which we in the Labor Party are not—you really have to ask yourself why are they doing this, who wants this legislation, what is the impact of it and who does it benefit in terms of the people that we are here to represent—the people of Australia and Australian society?

I would like to reiterate that I think the wrong and outrageous war in Iraq and what has happened to the media in the reporting of it serve to really illustrate what we in the Labor Party are saying. Just imagine, if there were even less diversity in Australia than
there is now, the kind of reporting we would be getting on what is happening in Iraq. So I think the Iraq situation highlights that this is a subliminal issue and that this is something that we, as the guardians and representatives of the Australian people, need to protect. I think that the coverage of Iraq serves to illustrate the point very nicely, backed up, as I indicated earlier, by Rupert Murdoch’s comments about how getting their hands on the Iraqi oil will be bigger than any tax cut. That serves to make the case for Labor and the Democrats in their opposition to this bill.

Senator LEES (South Australia) (9.11 p.m.)—As we consider changes to Australia’s 15-year-old media laws through the Broadcasting Services Amendment (Media Ownership) Bill 2002, the main question we need to ask is: why bother and why change? Why? There is, I believe, room and a need for some improvement. I am interested in changing the rules because change, properly considered and implemented, can increase the range of news and opinions available to Australians right across this country. Change can also encourage the exploration of new technology and investment in our media, and that is in investment from Australian sources as well as from overseas ones. This can in turn lead to jobs growth in the industry. In fact, our current media environment is already undergoing change, and this is actually taking us backwards. News and current affairs services are being lost, particularly in commercial radio and commercial TV. In addition, many Australians have access to only one local daily paper, ABC news radio services are not broadcast across most of rural Australia and indeed there are some large gaps in TV broadcasting across Australia.

The media’s role in maintaining the strength of our democracy cannot be underestimated, making this a very important piece of legislation, and change is not to be undertaken lightly. However, at the outset let me make my position very clear: in essence, I am arguing for the upgrading or modification of our media ownership laws rather than simply for their abolition. A careful and staged approach with safeguards built in to protect diversity is a better way of dealing with these issues than either the wholesale change advocated by the government or outright rejection advocated by the opposition. It has been made clear to me by a number of sources that the opposition have made it clear to some of the stakeholders that they would only support change to our media laws from the treasury bench, not while in opposition.

I have consulted widely as to what the government’s original bill might mean, particularly for my home state of South Australia. In all of the issues raised with me, interestingly there was very little opposition to the lifting of ownership restrictions. The only hesitation—indeed the only concern—was if those rules should be changed without the cross-media changes being done at the same time. News media services—print, broadcast and online—are big-ticket items that a relatively shallow pool of Australian investment funds cannot sustain. As a nation, we actively seek overseas investment in other industries, so why not in this one? With the appropriate safeguards in place, why would we not at least look at investment in our media and our communications industries from other sources? This is of particular significance in Adelaide and also in Perth and Brisbane. I recently met with a company that is very keen to invest in new newspapers, particularly in my home state capital of Adelaide and then to move on to other markets. Thus far, in going through the processes, this company has been discouraged from doing so by the current foreign ownership restrictions. Why would a company invest millions of dollars in starting up a newspaper, only to have to divest itself of most of it in five years? And that would be at firesale prices as the existing laws and rules would still be there.

I am surprised and disappointed at the government’s haste in bringing this bill on tonight. The government is well aware that Independent senators have been canvassing various views and ideas with the minister and looking through this legislation in detail. I want to place on record my view that the passage of sensible media legislation is not helped by bringing on the debate when people are still in the process of researching,
consulting and determining their position. The fact that, apparently, the government hopes to hammer out the many amendments required on the floor in the Senate leads me to suspect that the government really is not all that keen on actually seeing this bill succeed.

I now wish to address the cross-media ownership restrictions and, again, I stress that the status quo is far from ideal. I will begin by looking at some issues for television. It is sad but true that much of regional Australia does not currently have access to local news and current affairs because the commercial broadcasters have centralised news services—basically to cut costs. There is a real danger that commercial TV news will go the same way in the smaller capital cities such as Adelaide, and there is already a drift in that direction, particularly on weekends. This concentration of sourcing and production has serious consequences for journalists, the technical crew and the support crew, not to mention the viewers who actually want decent local news services in those other capital cities.

The ABA is setting minimum levels for broadcasters of local news and current affairs in regional Australia. I will be moving amendments, if this bill does get as far as the committee stage, to ensure that the ABA sets similar minimum levels everywhere. This is basically to ensure that Adelaide, Perth, Brisbane and Hobart all have these standards enshrined in legislation. Any changes to Australia’s media laws need to take account of the capacity of both the ABC and the SBS to enhance diversity. They need to get the support to be able to actually deliver comprehensive and independent news and current affairs services. They are a very important part of Australia’s media landscape. Even today, large parts of Australia do not have access to ABC NewsRadio and, as has been mentioned, Triple J and Radio National. In particular, the people of Northern Queensland, who make up some 10 per cent of that state’s population, do not have a local TV news service. My support for legislative change will be contingent on the government funding the ABC for the extension of NewsRadio services out into rural and regional Australia—to centres of more than 10,000 people and there are some 62 sites that fall within this definition—for the recommisioning of the ABC studio in Townsville and also support for digital TV.

A concern which has been repeatedly expressed to me throughout my consultations has been with regard to the potential consolidation and concentration of ownership to just one or two dominant players. This has been mentioned again in this chamber tonight and this is something we obviously have to avoid. Along with my Independent colleagues in the Senate, I have discussed with the minister a range of ways in which a balance can be struck between preserving the level of media diversity while still allowing enough flexibility for media companies to grow, invest and compete in a global industry. The concept of a media specific public interest test, which would prevent any major media mergers deemed by the ACCC to be against the public interest, is a fabulous idea in theory but has proven absolutely impossible to implement. The UK tried it but has already abandoned it because it was too subjective and did not provide enough certainty in the industry. The government agrees that it is important to enforce the two out of three restriction in regional areas so why not everywhere? It is clear to me that unless we extend the two out of three rule to metropolitan areas, consumers may well be faced with what has been described as two dominant players.

I propose a second safeguard, as well as the one I have already mentioned, for the public interest test. In addition to the two out of three rule, it would be a minimum voices rule, similar to that being adopted by Britain but by no means the same. This would mean that in regional areas, no media mergers would be allowed to take place where there were four or fewer independently owned commercial voices. The minimum number of voices would need to be at least five commercial ones for the major metropolitan areas. Of course, in most of those areas, in the cities at least, we have the ABC and SBS and through other measures we will need to ensure that that stretches out into rural areas so they would have four plus two. This mini-
mum number of commercial voices would be absolutely essential. I think that, as we look at other options such as national newspapers that are not counted as a local newspaper, pay TV and the Internet, there would be considerable diversity available.

I intend to make it a condition of my support for this bill that there be a statutory review required after three years to see where we are at as far as cross-media provisions are concerned. It is important to remember that some of the constraints on ownership already in place will not be lifted. A proprietor will continue to be restricted to one TV licence and to two radio licences in any licence area. The 75 per cent maximum coverage rule for any commercial TV network will also remain. Other than when an existing newspaper wants to start another newspaper in a market, ownership must be limited to one newspaper per market. Together with the measures I have outlined, I believe diversity of ownership and services would be preserved.

I also want to emphasise that I do believe some sort of regulation to preserve journalistic independence and editorial integrity is needed. It is important to address the issue of undue or improper influence on the part of a proprietor or senior executive. This pressure can be easily brought to bear on senior executives as well as journalists. In the pursuit of journalistic independence, there are three key issues to address: appointments, tenure and dismissals or demotions. With regard to tenure and dismissals, section 170CE of the Workplace Relations Act affords employees protection against unjust or unreasonable dismissal. Demotion has been deemed to be dismissal for the purposes of the act.

I propose that a clause be inserted in the existing certified agreements or AWAs to draw specific attention to editorial independence and to trigger the wrongful dismissal provisions of the act. For example, this trigger could apply to an editor sacked by a board, a journalist sacked by an editor or an editor or a journalist who has been demoted. It would be a matter for the commissioner as to whether he deems an action to be harsh, unjust or unreasonable. Though the definition is found in the act, reference could be made to the CA or AWA to buttress the definition. I shall also propose that the necessary amendments to the CAs or AWAs be a condition of securing an exemption certificate.

Vital in the pursuit of media diversity is the success of digital TV and datacasting. The current datacasting trial is certainly a step in the right direction and has the potential to deliver improved information services and Internet carriage, particularly for people in regional areas. In rural and remote Australia, it provides tremendous potential for people to get far better services than those they enjoy at the moment—or try to enjoy. However, the regulatory restrictions placed on datacasting prevent the full exploration of this new technology. This is an area where we have asked the minister to look at changing some of these conditions and, indeed, to consider relaxing some of the restrictions so that we can take the lid off datacasting and really see what that new technology is capable of doing.

I also argue that if the government genuinely wishes to encourage the take-up of digital TV, its first step has to be resourcing the public broadcasters to provide an interesting and attractive range of content. It is widely accepted that most consumers will not invest in a digital TV. They are not even going to worry about a set-top box if they do not have anything to watch and if we do not have some good quality, reliable services—services, for example, such as those being provided now by the ABC Kids channel and the SBS foreign news service. If people do not have something worth watching and worth spending their money on, they simply will not spend their money and digital TV will never get off the ground in this country.

So I call on the minister to look at the funding submissions from both SBS and the ABC to ensure that they can provide quality digital services that will encourage people to start looking at this new technology.

To conclude, I stress that doing nothing is not my preferred option. However, doing nothing is better than the original bill and what the minister has proposed in this legislation. Between those two extremes there is an enormous amount of opportunity. There is the opportunity, for example, to have another
newspaper in Adelaide. I believe this company when it says it has every intention of providing a new newspaper service in both Brisbane and Perth. We have an opportunity to ensure that watchers of nightly commercial TV news are assured of interesting local content, whether they live in Adelaide or Brisbane, or in Mount Gambier or Bendigo. At the moment, at least two of our commercial stations in Adelaide are putting material together in Melbourne or Sydney and then rebroadcasting it back to our home state. We do need protection to make sure that what is happening at the weekends, when we rarely see an Adelaide story, does not spread to the five working days of the week.

There are opportunities for ABC TV and ABC Radio news to be heard or seen across far more of Australia, particularly regional Australia. It is absolutely essential that money is spent on NewsRadio to give other Australians access to that service. There are opportunities to see what datacasting can deliver, particularly if some of those restrictions are relaxed and they are able to look at regional sport—sport that nobody else wants and that no-one else is contracted to provide. If that were able to be provided through some of the datacasting trials, it would add further interest for those people interested in providing the trials. There are opportunities for more jobs, but finding the balance will not be easy. This is why I am very disappointed that this legislation has been brought on at this stage tonight, when there is no agreement and we are still in the process of discussion and debate and when it is still a matter of looking at what options might be viable, what options might fit together, what options preclude other options, what will basically work and what will not work, what will achieve for us some new and interesting services—such as an extra paper in Adelaide—and what will help to strengthen existing services so we do not see any further loss, particularly of local news content.

The fact that it is difficult does not mean that we should not try, especially in the knowledge that what we try will be measured and reviewed and that we will have an opportunity to review in three years time how this is all working. So I say to the minister: ‘If you put the bill to a vote tonight, it will be lost. How about we take this away? Let’s hear the rest of the speeches in the second reading debate and then spend some time really looking at the options and involving everyone in the process to see whether we can get some changes that are workable and do what all of us want.’

Senator MARSHALL (Victoria) (9.27 p.m.)—I rise today to speak to the Broadcasting Services Amendment (Media Ownership) Bill 2002. In doing so, I wish to express from the outset that I firmly disagree with numerous aspects of the bill and I, like my colleagues and all who wish to see a truly diverse media landscape in Australia, will vote to reject this amendment bill.

The Howard government has talked up changes to the laws governing the Australian media for some years now. Considering this, it strikes me as somewhat strange that this particular bill, touted as the government’s major package of reforms with respect to the Australian media, has sat idle for many months before finally making its way into the Senate for debate. For a while there, I had thought that the government had seen the imminent dangers of proceeding with this bill and had decided to shelve it. Unfortunately I was wrong.

The bill this government has put before us today is an appalling and dangerous attempt to reform the Australian media. Yet again, like so many pieces of legislation we are dealing with these days, it is driven by ideology rather than by sensible and calculated policy making. The successful passage of the bill before us today would bring about a monumental change in the way Australians access news, information and entertainment through media such as television and newspapers. What is at stake is the health of our democracy. The reason I make this point is that the nature of the democracy we all treasure in Australia is inextricably linked to the access we enjoy to a range of views and opinions from the media around us. The bill before us, if passed, would inevitably lead to a greater concentration of ownership of Australian media and thereby a diminished number of differing viewpoints within our community.
The dissenting report, delivered by senators on the Senate Environment, Communications, Information Technology and the Arts Legislation Committee considering the bill, stated that diversity of media content is directly linked to the diversity of media ownership. Members noted that the Australian media is already very concentrated and that any further concentration of media ownership is not consistent with the plurality of information sources essential in a modern democratic political system. In Minister Peter McGauran’s second reading speech, he argues:

The Government is committed to the need for ongoing diversity of opinion and information in the Australian media. It does not believe that diversity of ownership is necessary to achieve this.

I simply do not agree with the minister’s assertion in that regard. To argue such a line is to assume that journalists are free to report the news and express opinions in a free manner and in a way of their choosing. This is simply not the case. It is more than obvious that the major viewpoints expressed within Australia’s mass media are dictated, whether directly or otherwise, by the owners of the relevant networks, publications and broadcasters. Many journalists are either directed by an owner to express a particular viewpoint or conduct self-censoring in order to express a viewpoint known to be that of the owner. Journalists are not always free to write the news or express views of their own or for themselves. To do this they may risk their jobs.

While proponents of the bill, like the government, argue that changes would ‘improve access to capital, increase the pool of potential media owners and act as a safeguard on media concentration’, there is widespread opinion that this will not occur and that an unacceptable level of concentration of ownership and therefore content is inevitable under such a proposal. Even Fairfax recognises this to some extent. According to its submission to the Senate committee considering the bill, Fairfax conceded:

Under any scenario of industry consolidation and restructuring that will follow waivers or repeal of the cross media and foreign investment rules, Australia will have at least four major media entities with significant scale to provide quality media services to the public: at least three commercial media companies, and the public broadcasting services provided by the ABC and SBS.

I would suggest that even this is an ambitious hope. The Media Entertainment and Arts Alliance is much more sceptical. Its Senate submission remarks:

If the cross media rules are removed, those five—current—commercial voices will quickly be diminished to two dominant groups.

It would seem to me that this is a much more likely scenario. I think my colleague in the other place Lindsay Tanner sums up the potential situation quite well. To quote his speech in the second reading debate:

News Ltd, which makes no secret of its ambitions to own a TV station, acquires Channel 7 and maybe a few more radio networks ... Telstra, which has sought to buy Channel 9 in the past, buys the Nine Network, buys Fairfax—which is another ambition which has been speculated upon in the business media recently—and, again, however many radio stations you like. If we end up with those two giant conglomerates, all that would be left is a small isolated Channel 10 amongst the existing media players, and a Channel 10 that is significantly less involved in public affairs, in politics and in the information market than the other two TV networks.

This situation is not one that will stimulate Australian democracy. It will, in fact, inevitably choke it. The last thing Australian democracy needs is for it to be totally dominated or duopolised by individuals such as Murdoch and Packer alone. Such a situation would hinder the way society scrutinises government and holds it to account.

The government’s proposal to deal with this is far from satisfactory. Its proposal would fail in its undertaking, but of even more concern is that, in the process, it would bring about a very unhealthy relationship between government and the media. To be granted a cross-media exemption certificate, the government requires that a cross-media organisation must have separate editorial decision making processes. According to the bill’s explanatory memorandum, the word ‘editorial’ is intended to apply to the selection, interpretation and presentation of news
Three mandatory tests are prescribed for the objective of editorial separation to be met. They are the existence of: (a) separate editorial policies; (b) appropriate organisational charts; and (c) separate editorial news management, news compilation processes and news gathering and interpretation capabilities. These tests are useless. Which among them will ensure diversity of opinion? How would a differing editorial policy statement available on the Internet affect the day-to-day news being disseminated by a cross-media organisation? What is an appropriate organisational chart? And how would that have any effect on the information being disseminated into the community? The third test is nothing more than rhetoric. What it means and what effect it would have on news gathering and distribution is highly questionable at the least. The major problem I see with respect to all of them is that whether these requirements are fulfilled or not is entirely up to the government agency granting the cross-media exemption certificate.

Jock Given, Senior Research Fellow at Swinburne University of Technology’s Institute for Social Research, argues that this requirement would bring about an ‘unacceptable level of government intervention in the day-to-day operations of media organisations’. With this I have to agree: the proposal is totally unsatisfactory. According to the government, it recognises a need to ensure that media owners do not exploit their co-ownership of media organisations in a way which prevents those organisations from exercising separate editorial judgments. The requirements it proposes to this end simply will not address the issue. If the government were serious about this position, the bill in its current form would not be on the table before us.

The government argues that the nature of media is changing and people are accessing their news and current affairs via new modes of communication, namely the Internet. For some reason the government argues that this makes the current rules relating to cross-media ownership anachronistic. However, in reality, around 88 per cent of people use free-to-air television as a source of news, 76 per cent use newspapers and the same percentage use radio as a source of news. Compare this with only 10 per cent of people using pay television and 11 per cent using the Internet. This hardly makes the system something out of a past age. If anything, the current rules are more important now than ever before.

Another ridiculous and useless aspect of this bill is the requirement upon the Australian Broadcasting Authority to maintain a register of active cross-media exemption certificates that must be made available for inspection on the Internet. The question has to be asked: what effect would this have on the media landscape or the cross-media organisations listed? I would suggest absolutely none.

Alongside these requirements there are additional obligations upon organisations that deliver local news and information via commercial television and radio to communities in non-metropolitan licence areas and whose operations are the subject of an active cross-media exemption certificate. These obligations relate to minimum service standards for local news, local community service announcements and emergency warnings. For example, the bill defines that a minimum standard for local news is that at least five local news and weather bulletins are broadcast during ‘prime-time hours’ on different days of the week.

In addition, after a cross-media certificate becomes active, regional licensees would be subject to an ABA review of their operations over the preceding 52 weeks in order to ascertain whether the operation had fulfilled minimum service standard requirements under the act. It should be noted that if an applicant was exceeding the minimum service standard for local news they would be required to continue to do so. If an applicant failed to meet the minimum standard they would be obliged to do so in the future after a six-month grace period. While the intention behind this provision is seemingly virtuous, there is one major problem associated with it. While organisations would be required to provide regional communities with five news and weather bulletins, no specific lengths of
time have been specified or guaranteed for these bulletins. Without such provisions, the regime would be abused and rural and regional communities could, and undoubtedly would, end up suffering. As it is, there has been an enormous amount of industry consolidation in rural and regional media over the past few years. To enable more extensive concentration in these areas is a serious issue and it must not be encouraged. To pass this bill would seriously threaten the integrity of rural and regional media and it would hinder the access people of these communities would have to, in most cases, more than one viewpoint.

The experiences of the past decade or so in respect of rural and regional media serve as a clear warning as to what the likely effects would be if this bill passed the Senate. The detrimental effects felt by regional Australians would be extended right around the country and in every state. Rural and regional Australians, along with losing numerous television and radio stations and services, and also newspapers, have been further adversely affected by massive losses of employment in the media industry. To seriously suggest that jobs will not be lost due to the successful passage of this bill would be to seriously kid oneself. It is inevitable. Media companies will seek to minimise their production costs by reducing staff and consolidating their news collection and editorial functions. There is no doubt about that. The higher the concentration of ownership and the existence of foreign ownership, the more likely it is that Australian media sector jobs will be lost.

So far as foreign investment in Australia's media is concerned, as it stands foreign persons must not be in a position to control a commercial television broadcasting licence—defined as a 15 per cent holding—and total foreign interests must not exceed 20 per cent. Where subscription television broadcasting licences are concerned, a foreign person must not have company interests exceeding 20 per cent and the total of foreign company interests in any licence must not exceed 35 per cent. The maximum permitted aggregate foreign non-portfolio interest in national and metropolitan newspapers is 30 per cent with a 25 per cent limit on any single foreign shareholder. The aggregate non-portfolio limit for provincial and suburban newspapers is 50 per cent. There are currently no restrictions on foreign investment in broadcast radio.

The bill before us outlines that, akin to current commercial radio licences, which are not subject to foreign ownership restrictions, any foreign ownership of commercial interests would be subject to the Trade Practices Act and the Foreign Acquisitions and Takeovers Act. While Labor is supportive in principle of provisions in the bill to ease foreign ownership restrictions, it would do so only on the proviso that national interest considerations remained and provisions were made to ensure that Australian editorial processes would not simply be absorbed by foreign companies. For example, Labor would be very concerned if Australian correspondents reporting for Australian newspapers were scrapped and replaced by syndicated reports from overseas parent newspapers. It would also be of some concern if Australian media organisations became merely the Australian branch of CNN, for instance. I have to agree with the comments made by the Australian Democrats in their dissenting report to the Senate committee report, which stated that changes to the foreign media rules must not decrease Australian control of our media or jobs in the Australian media sector. Australian media companies must not become local outlets for global media conglomerates.

In assessing and identifying the need for change, it is important that we examine the current set of rules that this bill seeks to amend. Since 1992, the Australian media has been governed by laws that place necessary restrictions on who may own what media around Australia and where. Under the legislation, with respect to television:

A person must not control television broadcasting licences whose combined licence area exceeds 75 per cent of the population of Australia, or more than one licence within a licence area.

In the domain of radio broadcasting:

A person must not be in a position to control more than two licences in the same licence area.

There are no such restrictions so far as newspapers are concerned. With respect to
broader cross-media control, a person must not be in a position to control:
- a commercial television broadcasting licence and a commercial radio broadcasting licence having the same licence area
- a commercial television broadcasting licence and newspaper associated with that licence area, or
- a commercial radio broadcasting licence and newspaper associated with that licence area.

To quote former Prime Minister Keating, these rules enabled a person to be ‘queen of the screen or a prince of print’, but one could not be both. The rationale behind this decision was calculated and smart. Public opinion on matters of public affairs are undoubtedly influenced by the media, which propel such issues into the public sphere. It is therefore important that the commentary on these issues is as varying and diverse as possible. The only way to ensure greater diversity of opinion within the Australian media is by ensuring a wider variety of owners of its networks and newspapers. The Keating regime, while not perfect, has the virtue of being observable, measurable, objective and relatively easy to enforce. It should be maintained until a better media ownership regulation framework can be constructed—one that will benefit consumers and the entire Australian community. I recommend that the Senate reject this bill.

Senator LUNDY (Australian Capital Territory) (9.44 p.m.)—I rise tonight to add my comments to Labor’s opposition to the Broadcasting Services Amendment (Media Ownership) Bill 2002. I would like to start by articulating the ideal situation for media policy. What we aspire to and what we would like in this country is quality diverse content. The higher the quality and the more diverse the content that Australians have access to, the stronger our democracy, and the greater the impact on our society, the greater opportunity we are afforded as a community by having access to that quality and diverse material.

What we have here is a government that has managed to lurch from policy disaster to policy disaster in the area of cross-media ownership and in the area of media policy generally, whether it is the complete debacle of digital television and the suppression of datacasting and interactive content in a further converging environment or whether it is this bill, another example of a quite insidious move backwards from where we actually need to go. The government is walking away from diversity and providing a framework of consolidation of media interests in this country.

I would like to try to keep my comments focused on the issue of new technologies. I was astounded to see the government raise the spectre of new technologies as somehow being an argument as to how convergence is delivering greater diversity. In fact, not only has that not happened but the government has played an active hand in suppressing the new technologies—I mentioned datacasting earlier. Also, the issue of the Internet is raised in this bill as somehow a competing force. It became very clear in the course of the Senate inquiry into this issue that it is the major media outlets that are attracting a lot of the traffic to those Internet sites anyway. Because of the conduct particularly of Telstra and their attempts to try to secure the content online market as well through their ISP and creating verticals in the Internet space, there has been a further consolidation.

I think that really is the whole point. This government does not understand the impact of digital technologies. It certainly does not understand the incredible importance of getting the policy settings around convergence of digital technologies right in society. Every attempt it has made to legislate in this area has ended up a disaster, like this bill, or in the suppression of the development of new content industries like datacasting or, indeed, in an upside down Luddite world, as we have seen with the interactive gambling and online services bills in the past where the government is more obsessed with identifying issues that are problems with the Internet rather than actually putting policies in place to exploit the opportunity that exists in closing the digital divide. Even though we have had some growth with respect to Internet usage, it is still marginally over 50 per cent of the population. Most people who have the Internet are in city areas and most people who have the Internet are still far better off
than those who do not. To argue that the Internet is a competitive force is a bit of a joke, although I would like to think that one day it would be a competitive force.

The bottom line, particularly for rural and regional Australia, of this bill is that it would probably force a lot of small players out of business. This bill was designed to ensure that the smaller companies that do provide diversity and a lot of high-quality local content in rural and regional Australia would in fact become takeover targets and allow further consolidation. I would like to refer to the Labor dissenting report and to Mr Kevin Blyton of the Australian Association of Independent Radio Broadcasters. He claimed that the bill would benefit large companies only—and I will finish my comments tonight with his statement:

It seems to me that this bill benefits about 12 companies in Australia. It is about allowing them to grow. The only way that they can grow is to either increase their revenue or reduce their costs. The pie is only so big for advertising in Cooma, or Goulburn, in Bega or anywhere else. We work hard. We maximise that pie of advertising dollars. It is not going to increase because of changes to this bill. The only way to achieve the economies that they want to achieve is to cut costs, and that has to be cutting staff.

That means jobs. It is that sort of restriction in diversity and ultimate suppression of diversity that this bill will lead to if it is passed.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Abraham, Mr Eric

Senator BRANDIS (Queensland) (9.50 p.m.)—This evening I want to pay a tribute to the late Eric Abraham, who died on 20 March, at the Pinjarra Hills Nursing Home in Brisbane, just a month short of his 105th birthday. As honourable senators will know, Eric Abraham was one of the last surviving diggers of the Great War. With his passing there are only nine others surviving in Australia including only one in my state of Queensland: the redoubtable Ted Smout. Eric Abraham will be honoured by a state funeral at St John’s Cathedral in Brisbane on Wednesday.

I had the honour of meeting Eric Abraham only once, at last year’s Anzac Day parade in Brisbane. It was an occasion which he never missed, and which I will never forget. Notwithstanding his great age, he was cheerful, alert and full of life. One could see the wisdom in the furrow of his brow and the innate good humour in the twinkle of his eyes. He was a delightful person.

Eric Abraham was born on 20 April, 1898, the third of five boys. He grew up on a farm outside the town of Boonah in south-eastern Queensland. When war broke out in August 1914, Eric was just 16 and the epic events in Europe were literally a world away. But the next year he was to become a part of that history. The events leading to his recruitment to the AIF are themselves now part of Australian folklore.

In November 1915, in response to the call by the Hughes government for volunteers to join the AIF and go to Europe to fight for the Empire, a group of young men gathered in the Queensland town of Warwick and staged their own recruiting March. They walked for 270 kilometres from Warwick to Brisbane, recruiting other young men along the way. They were kitted out in dungarees, hence the nickname by which they have always since been known, the ‘Dungaree Diggers’. When they reached Eric’s town of Boonah he answered the call. Although he was only 17 at the time, the legend has it that he falsely claimed to have reached the statutory age of 18. If he misrepresented his age in order to join up, he would have been one of the many fervent young Australians who did so in both wars.

One can but imagine the thoughts that went through the mind of the 17-year-old farm boy at the time: the lure of faraway places, the romance of high adventure, the excitement of great events and the enticement of heroic deeds. He was not to know then the horror which he would face in the fields of France. Twenty-eight young men had begun the march from Warwick. By the time they reached Brisbane their numbers...
had swelled to 125. Eric and his mates sailed from Sydney to Cairo in 1916. He shipped to France, where he was assigned to the 5th Division Signals Company. He saw service at Villers-Bretonneux, Morlancourt, the Battle of Amiens and in the advance to Peronne. Evacuated to England in 1917 for treatment for bronchitis and pleurisy, he returned to the front in 1918 and was gassed during the Battle of the Somme.

Whatever romantic notions he may have entertained when he joined the march from Warwick to Brisbane, Eric Abraham, like all soldiers, came away with a deep loathing and detestation for war.

‘Wars are a terrible waste of human life,’ he said more than once. But, like those who had seen service and made the sacrifice, he also knew that war is a sometimes necessary evil. The words of those who have seen war’s horrors resonate with so much more conviction than the glib moral posturing of those for whom war is but a word, whose horror at the thought of suffering is buffered by the comfortable knowledge that it will never happen to them.

When Eric Abraham returned to Australia, he resumed life in the quiet pastoral environment of Boonah, where he was first a clerk at the local post office and subsequently had a career in the Public Service. He recorded his experience of the war in a memoir named, appropriately, A Dungaree Digger. Having spared him in the trenches, God vouchsafed to Eric Abraham a long and happy life. In 1923 he married Enid Ruth Hunter. They were together for 58 years until her death in 1981. The marriage produced two daughters and subsequently seven grandchildren and 13 great-grandchildren. Eric lived to a vigorous old age. He played golf until 1999, when he was in his 101st year. In 1998 he participated in the commemorative journey of World War I veterans to Villers-Bretonneux, on which occasion he was among those awarded the Legion d’Honneur by the government of France. He was also the recipient of the 80th Anniversary Armistice Remembrance Medal.

The Australia in which Eric Abraham came to manhood might seem remote from us now in time, but we would be wrong to think it is remote from us in many of its essential respects. More than at any other time in Australian history—more, even, than the events leading to Federation—the sacrifice of the Anzacs during the Great War, both at Gallipoli and on the Western Front, forged the Australian character, in particular the icon of mateship, as it bound together for the first time the disparate regions of the new federation.

As C.E.W. Bean, the great historian of Australia’s participation in that war and the father of Australian war correspondents, has written of those men:

Their very distance from the centre of the struggle made more distinct the idealism of their motives. The emotion which stirred them was purged of the local pettiness of the days before the war. For the first time Australians of all States in the Commonwealth, and of all sections in those States, were a united and unanimous people ...

Remote though the conflict was, so completely did it absorb the people’s energies, so completely concentrate and unify their effort, that it is possible for those who lived among the events to say that in those days Australia became fully conscious of itself as a nation.

Eric Abraham was one of those men who forged that great tradition. There are but nine others left among us. In paying a tribute of respect and gratitude to his memory today, we must be very careful not to make the error—which he himself never made—of romanticising war. But, equally, we must take care not to make the opposite error, to which some among us are all too prone in a cynical and comfortable age, of mocking heroism or depreciating military sacrifice. Eric Abraham was one of the heroes whose sacrifice in a foreign land forged the Australia we know today. Let us be humbled by his example as we salute his memory.

Small Business: Predatory Pricing

Senator CONROY (Victoria) (9.57 p.m.)—I rise tonight to call upon the government to swiftly respond to the recent decision of the High Court in Boral Besser Masonry Ltd (now Boral Masonry Ltd) v. Australian Competition and Consumer Commission and to strengthen the protection that the Trade Practices Act gives to small business and consumers. The focus of the Boral case was section 46 of the Trade Practices Act, which is essentially about fair trading. It
prohibits companies with substantial market power from taking advantage of their position to eliminate a competitor, to prevent entry to any market or to deter or prevent competitive conduct in any market. The section recognises the vital role played by Australia’s 1.1 million small businesses in ensuring that competition delivers lower prices and better quality products to consumers.

The ACCC alleged that Boral had engaged in what economists call predatory pricing by reducing the prices at which it offered to supply concrete masonry products in Melbourne below the cost of production in order to drive out a new operator, C and M Brick Pty Ltd. The TPA does not explicitly prohibit predatory pricing, and the ACCC had to satisfy the court that all the elements of section 46 had been made out. There was ample evidence that Boral was pricing below the cost of production, and the ACCC produced internal Boral documents which showed an intention to employ tactics to ‘remove the ability of minor players to survive’. Justice Kirby remarked that Boral’s conduct reduced the number of market players effectively to three. His Honour summed up the case against Boral in the following terms:

Short-term pricing sacrifices were made for long-term economic rewards. Inevitably, these would come at a probable cost to consumers. This is precisely the type of market conduct s 46 of the Act forbids.

However, by a majority of six to one, the court upheld Boral’s appeal, holding that the company did not have substantial market power because it was subject to competitive pressure as one of three companies with a market share of 20 to 30 per cent.

For the majority of the court, market power was held to be the capacity to make pricing and output decisions without being constrained by competitors or customers in the market. The majority also suggested that the financial strength of Boral—that is, its ability to survive a price-cutting war—was not evidence of market power. Labor firmly believes that this interpretation of the meaning of substantial market power is unacceptably narrow. It effectively means that section 46 will only be relevant in dealing with monopolists. In our view, the protection afforded to small business by section 46 was intended to apply to the oligopolistic markets which exist in many sectors of the Australian economy.

Small businesses have been greatly alarmed by the Boral decision. Many are now of the view that the Trade Practices Act provides them with no protection against predatory behaviour by big business. The ACCC has admitted that they have been effectively disarmed. In February, the commission told Senate estimates that it would terminate a number of investigations that are already under way and will be cautious about initiating others. One of the most disappointing aspects of the decision is the fact that the parliament made its intention clear some 17 years ago on the issue that is at the heart of the Boral case. When section 46 was first enacted in 1974 it was entitled ‘monopolisation’. The section then only applied to firms that were in a position ‘substantially to control a market for goods or services’. In 1986 the Hawke Labor government broadened the scope of section 46 to ensure that more small businesses were given protection from the predatory actions of powerful competitors. In introducing the amendments, the then Attorney-General, Lionel Bowen, commented that section 46 had proved to be of ‘quite limited effectiveness’ because it applied ‘only to monopolists or those with overwhelming market dominance’. He stated:

The test for the application of the section is to be reduced from that of a corporation being in a position substantially to control a market to a test of whether a corporation has a substantial degree of market power.

As well as monopolists, section 46 will now apply to major participants in an oligopolistic market and in some cases, to a leading firm in a less concentrated market.

It is difficult to imagine how the will of the parliament could have been made clearer. Regrettably, with the exception of Justice Michael Kirby, the High Court seems to have failed to give sufficient weight to parliamentary intention.

Since the Boral decision several commentators, some of them lawyers on the big
business payroll, have defended the Boral decision. They argue that consumers benefit from the sort of price-cutting seen in the Boral case and that consumers could suffer if big business was deterred from competing aggressively by a stronger section 46. Labor acknowledges that section 46 seeks to distinguish between tough but legitimate competition that benefits the consumer and conduct which damages the competitive process. In our view, predatory pricing is clearly conduct which is not only unfair to small business but also detrimental to the long-term interests of consumers. A tougher misuse of market power provision would still leave big business with many legitimate ways to compete and win market share. A firm may be more efficient—that is, it may produce more output at lower cost, produce a better quality product or be more innovative. All these things deliver improvements to consumers but none require the misuse of market power. Predatory pricing provides consumers with lower prices in the short run, but in the long run higher prices may eventuate once competition is deterred or removed.

Senator Boswell—It will.

Senator CONROY—If you look at Qantas and Ansett, I certainly have to agree with you, Senator Boswell. It certainly led to that. Preventing the elimination of competitors is fundamental to ensuring that competition delivers better outcomes to consumers in the form of lower prices and better products over time. The Boral decision is yet another addition to the disappointing litigation record of the ACCC on section 46. Professor Fels has recently remarked that in the last 12 years the commission has won only one case under section 46, and even that case is subject to appeal. It defies belief that there have not been many more instances of big business acting in an uncompetitive manner towards a smaller rival over this period. Even prior to Boral, section 46 was widely considered to be flawed because of the difficulties in proving that a company was acting for an improper purpose.

The ACCC’s submission to the Dawson committee gives an indication of the evidential obstacles confronted by the commission. The ACCC said that since 1994 it had investigated 593 cases for a breach of section 46 but commenced proceedings on only nine occasions. In the wake of Boral it must be admitted that, in practice, section 46 is failing to adequately protect small business and needs to be amended or replaced. What is the government doing in the face of small business concern about this issue? The answer at this stage is nothing. Despite the best efforts of Senator Boswell and despite Senator Brandis taking up the issue, we have had only equivocation from Minister Hockey, who assures small business that the government will take the Boral decision into account in its response to the Dawson committee. The Treasurer has had the report of the Dawson committee since 31 January. It is not good enough for the government to prevaricate on this issue. Small business urgently requires a signal from the government that the narrow construction given to market power in the Boral case will not be permitted to stand.

In a recent interview ACCC chairman, Allan Fels, called for ‘more parliamentary guidance on what is meant by market power’. Labor is willing to embrace this task as are, I am sure, my colleagues Senator Murray, Senator Boswell and perhaps even Senator Brandis, but is the Treasurer? The precise means by which protection for small business should be enhanced may be a matter for debate and analysis. However, the direction of policy should be clear. When will the government stop hiding behind the Dawson committee report and give a commitment to strengthen the Trade Practices Act to ensure that small business is protected against predatory pricing?

Youth: Croc Eisteddfod Festivals

Senator RIDGEWAY (New South Wales) (10.06 p.m.)—I rise tonight to remind the chamber of a very successful and ongoing reconciliation initiative—the Croc festivals, which I am sure many senators here have attended. There are probably some who are not acquainted with the festivals, but it is something that I think is worth recording in the Hansard, particularly in terms of the work these festivals have been doing over many years. In recent times, the many day-to-day activities of Australians working to-
wards achieving reconciliation between Indigenous and non-Indigenous Australians have been overshadowed by the overwhelming issues of international war and peace. However, while our government and our media may have abandoned their interest in reconciliation, tonight I do want to draw attention to one very positive effort in this ongoing process: the highly successful Croc festivals.

These annual two-day gatherings of Indigenous and non-Indigenous kids have been running for several years now. They have gained positive support from rural and remote communities and look set to continue growing in scale and popularity as something that does enjoy widespread support out there in rural and regional Australia. The festivals are similar to what are well known as the rock eisteddfods, but in this case they allow young people from rural and remote communities to express themselves through performance. They also feature a wide range of social initiatives, including career guidance, health awareness and sporting opportunities. More than anything else, Croc festivals provide Indigenous and non-Indigenous youth with a sense of cohesive community in an enjoyable, drug-free environment.

The first of these festivals took place in 1998 in Weipa in far North Queensland. That festival attracted 350 students from schools in Cape York and the Torres Strait Islands. It was opened by the then Governor-General, Sir William Deane, who described it as 'reconciliation in action'. I was personally involved in opening the first Croc festival in New South Wales in Moree in September 1999. The theme for that year was 'Respect yourself, respect your culture'. The festival saw about 1,000 kids—some from as far as Wilcannia and Condobolin, and mainly from throughout the north-west—travelling to Moree to be a part of the Croc festival. Last year, a total of 9,610 students attended the seven festivals that were held across Australia in Moree, Swan Hill, Kununurra, Kalgoorlie, Nhulunbuy, Port Augusta and Weipa. The final performances attracted a total of 40,000 people and brought significant media interest to towns and communities not usually visited by journalists.

Performances in a variety of styles took place, from American rap to pop and traditional dance, all executed with enthusiasm and lots of talent. Like at the city based rock eisteddfods, performing to appreciative audiences is an enormous boost to the self-esteem and vitality of young people. As the organisers of the festival put it, for many performers the thrill of being on stage is a powerful and healthy high. Although the singing and dancing will always pull a crowd, what I would like to highlight here tonight is the festival’s constructive approach to education and opening up future opportunities for young people.

It does go without saying that the event is completely tobacco, alcohol and drug free, and the teachers and facilitators are asked to refrain from indulging in any of those vices during the time they attend. The focus is on education rather than intimidation, with young people encouraged to develop responsible attitudes toward alcohol and drugs, with a focus on the concrete benefits of a healthy lifestyle rather than a 'just say no' approach. Throughout the festival, young people are treated intelligently and they are encouraged to engage in a positive way with the teachers, the guides and the health workers that are present.

One of the best ways to beat drugs is eliminating boredom, a prime cause of substance abuse. With often hundreds of young people in attendance, the organisers of the festival recognise the importance of keeping their young entertainers entertained. I will not list all the activities available to the students, but it is sufficient to say that an A to Z listing starts with aerobics and ends with yoga—something that I am sure Senator Hutchins would be interested in. It also goes to sheepshearing, visual art and Kamilaroi language classes in between, just to name a few.

Senator Hutchins—Sheepshearing sounds like something Julian would like to know about!

Senator RIDGEWAY—It is certainly something that Senator McGauran could get involved with as well. The festivals themselves also provide opportunities for young people to become involved in getting expo-
sure to the careers market, where potential employers and government departments provide young people with information about what opportunities are available. Centrelink is usually present. Information about the Australian Coastguard and the AFL Sports Ready traineeships are some of the many things that are put on display, all with the aim of trying to provide encouragement for young people to get motivated and find satisfying work when they leave school. Working in close conjunction with the career market is a goal-setting workshop, a new and highly regarded addition to the Croc festival itself. I believe that the workshops provide an opportunity for young people to talk to role models about their lives, their successes and their setbacks. People like Ernie Dingo, Yvonne Goolagong Cawley, Cathy Freeman and Mandawuy Yunupingu are some of the role models who have worked with these young kids at the Croc festivals.

It does have an overwhelmingly positive effect on students, and those who have attended feel that they have come away with complete success. Teachers say that their students demonstrate an improved sense of commitment and willingness to work hard for their goals, with many also showing an improved understanding of local and cultural history. School attendance improves dramatically due to the influence of the festivals, and perhaps one of the most important results is that many of the kids become more involved with local community activities, and likewise with their families, as a direct result of the festival. I think that, if anything, the very positive stories about these festivals forming a bond or a sense of kindred spirit between members of the community are probably one of the most important outcomes, as it is through closer bonds to history, family and community that many of the problems faced by Indigenous and non-Indigenous rural youth may be alleviated.

Croc eisteddfod festivals are positive and empowering experiences for these young people, who previously may have felt marginalised by their remote locations and the perceived lack of opportunities out there in the bush. I think it is also a strong rebuke to those who complain of the so-called victim mentality amongst Indigenous Australians. The enthusiasm and certainly the energy of these young people is positive proof that, if opportunities are provided, they will be taken.

What most impresses me about these festivals, however, is what they represent for the future of reconciliation in Australia. Certainly the young people who have attended are all encouraged to understand their history and to be aware of all its triumphs and pitfalls. But, even more, they are shown that the only way to get anywhere is to go forward. They are encouraged to develop their own strength and motivation for a better society. I think that it says something about what the future is going to be like if that is the sort of value system that we are instilling in our young people. I am reassured that, despite the debates about our clouded past and our disengaged present, there does still exist the opportunity for young people to see their full potential and to be encouraged to embrace the potential of what I would like to see—that is, a fully reconciled Australia.

Health: Mental Illness

Senator TIERNEY (New South Wales) (10.15 p.m.)—I rise to bring to the attention of the Senate the poor treatment of forensic mental health patients in my state of New South Wales. When mental illness was portrayed in movies in the fifties, a team of at least four men in white coats would come to the door to take the mentally ill person to an institution built for that purpose. What happens in such a situation today? Due to the lack of funding for mental health in New South Wales, the team is often only one or two people. It usually happens between the hours of nine and five—in the daytime—because such teams rarely go out at night. After dark, it is now the police who come out when there is a mental health episode. The mentally ill person is then often placed in a lockup, initially in the short term. A proportion of these people, because of their actions, end up in the legal system and in prison. In New South Wales there are 259 inmates in prisons who are forensic patients. By ‘forensic patients’, I refer to those deemed not guilty for reasons of mental illness or unfit to stand trial for reasons of mental illness.
One-third of the people in New South Wales prisons have a mental illness. They are locked up in bare cells, often for up to 11 hours a day, dressed in prison clothes and fed prison food. There are as many as 800 mentally ill inmates in New South Wales jails. They are suffering from a variety of conditions, including psychoses, hallucinations or delusion, changes to behaviour or impaired judgment, and serious mental disorders by which patients can lose contact with reality. That is as many as 800 inmates who are never receiving sufficient treatment for their acute conditions, in comparison with Victoria and Queensland, where they are not locked up, can wear their own clothes and cook their own food. This is a blight on the record of the Carr government in New South Wales. Psychiatrists working in the system estimate that, of the 800 inmates suffering from mental illness, about 20 are severely mentally ill and kept in so-called safe cells. These cells are designed to prevent suicide. Reports that prisoners are often stripped to their underwear and locked in these cells for up to 23 hours a day are not uncommon. While most inmates receive medication, they lack human contact and psychiatric support services crucial to the important elements of the recovery process.

In January this year, following 1½ years of inquiry, there was a final mental health forum, chaired by the Hon. Brian Pezzutti MLC. The committee he chaired had terms of reference to inquire into and report on mental health services in New South Wales, with particular reference to the impact of changes in psychiatric hospitalisation and/or asylums; the levels and method of funding of mental health services in New South Wales, including comparisons with other states; and staffing levels in the New South Wales mental health system. The inquiry’s recommendations reflected concern at the imprisonment of people who are found not guilty of an offence because of mental health. Many people found not guilty or unfit to plead by reason of mental illness are sent to jail anyway. The parliamentary committee recommended that, as a matter of urgency, the New South Wales Health Department build a maximum and medium security forensic mental health unit outside prison for forensic patients. In 2001 there were 259 forensic patients in the correctional system in New South Wales.

In terms of the law, forensic patients are not guilty; hence they are not deemed prisoners and should be treated in psychiatric hospitals and by professional health personnel, not by corrective service officers. The current problems with mental health and the jailing of patients stems from the deinstitutionalisation of mental health that began in the 1970s and accelerated after the Richmond scheme reforms 20 years ago. The deinstitutionalisation of mental health services has meant that the institutional care model has changed to a focus on home care. Relying on home care is deficient when you consider the high percentage of homeless people with a mental illness. No-one could deny that the adequate treatment and care of people with mental illness in the community requires sustained funding, staff skill mixes and adequate facilities. By the way that the Carr government has implemented the Richmond scheme in New South Wales, these are all grossly deficient. As a matter of fact, New South Wales has the most poorly funded mental health system in Australia.

If you think the mentally ill are getting the facilities, staff and funding required for adequate treatment, think again. This state government consistently fails in its provision of mental health services. Its budget spends 26 per cent below the national average on mental health. At the recent election, Bob Carr promised to set up an office of mental health in the Premier’s Department. This would mean that mental health issues would no longer be a health department issue. This is just a gimmick that would lead to confusion across departments and to the establishment of more bureaucracy when what are needed are real services. Bob Carr really needs to put actual dollars back into the mental health budget to bring it up to at least the national average. The Richmond report had a vision that involved community group care, but under the Carr regime it has become a recipe for ripping funds out of the mental health system as institutions were sold off and the money returned to the state Treasury. In reality, only 10 per cent of the funds recovered
have gone back to supporting people with mental illness under the Richmond scheme. The rest went back to Treasury. Acute care beds have been scaled back extensively in New South Wales and, as a result of deinstitutionalisation, New South Wales has only about half of the acute care beds that it needs. This means that, when it comes to forensic beds, there is a drastic shortage.

New South Wales has just one high-security forensic hospital, located at Long Bay jail. Because of the shortage of places, many inmates with acute mental illness face a wait of up to three weeks to get in. Even inmates deemed lucky enough to get a place in the Long Bay hospital are locked in prison cells overnight, wear prison green, are guarded by officers and are subject to prison discipline. This a far cry from the treatment needed. As the forensic hospital is within the grounds of Long Bay it is seen and treated as a part of the prison and not, as it should be, treated as a stand-alone psychiatric facility.

In other states in Australia and, indeed, in other countries the separation of forensic facilities from prisons is a standard practice. This makes perfect sense. We are dealing with people who are actually ill. Our police lockups and jails are currently bulging with prisoners suffering mental illness—as I said before, one-third of the system—most of whom are not being treated for their condition or are being inadequately treated for their condition. There is no justice and no dignity in this state of affairs. For this reason it is imperative that mental health services meet the same standards as those of general health. What is needed is an increase in the number of medium- to long-term psychiatric beds, specialised facilities for forensic patients outside of prisons and a greater recognition of mental health nurses.

The trend toward de-institutionalisation, in conjunction with the inadequate provision to the community sector and service gaps, has resulted in the inappropriate incarceration of people with a mental health condition. The fact remains that New South Wales is the only mainland state in Australia and one of few Western democracies that incarcerates forensic patients. Too many people with mental illnesses are coming into contact with the criminal justice system when they should not be. The locking up of mentally ill people in such large numbers in such isolating conditions is a gross failure in public policy by Bob Carr’s ALP government in New South Wales.

**Anderson, Mr Jim**

Senator HUTCHINS (New South Wales) (10.24 p.m.)—Last Saturday was a great day for the Labor Party in New South Wales. We had significant swings to us at the election and, in fact, it is probably bad news for the coalition in that it may be two or three elections before they will get a chance to sniff power.

It was also a sad day in that, not long before the polling booths opened on Saturday, the Labor member for Londonderry, Jim Anderson, passed away. Jim Anderson was a great local member of parliament, and New South Wales people would have seen Premier Carr dedicate the Labor Party’s victory on Saturday to the memory of Jim Anderson. In fact, during the day the New South Wales Leader of the Opposition, John Brogden, also paid a similar tribute to Jim Anderson in a show of magnanimity that is sometimes unexpected in politics.

Jim’s death was particularly shocking for people who live in his Western Sydney electorate. Jim passed away just over an hour before the booths opened, so people were going to the booths expecting to vote. I am told that, as people were advised that they could not vote because the member had passed away, men and women, old and young, were literally in tears. That is a mark of Jim’s impact and his relationship with his electorate.

I had known Jim for over 20 years. I knew him as a branch activist; I knew him as a councillor on the Blacktown City Council; I knew him as a member, first, for St Marys and then for Londonderry. I have had a chance to speak to a number of his colleagues in the west, and Jim was regarded as a man of great principle and courage and one who never lost sight of the roots from which he came. Jim was from Belfast, where he worked at the shipyards. I am advised by
some of his colleagues in the state parliament that Jim did not care what religion or background people came from; he treated them similarly. When he was approached on the docks in Belfast by people who said, ‘Jim, we don’t have your lodge number,’ he had to advise them that he did not have one because he was a Catholic. As I understand it—and Jim used to tell this tale—that sort of prejudice encouraged him to come a country that did not encourage or indulge in prejudice, and that was Australia.

He came to Australia with his wife, Kathleen, and his children, subsequently, and started work at Commonwealth Engineering as a sheet metal worker. From there, as I have said, he became active in the party. As I said, I had a chance to speak to some of Jim’s colleagues this afternoon, particularly his former deputy mayor, Charlie Lowles. Charlie Lowles told me that we will probably never know about the things that Jim did for his electorate, because it is an electorate that has had, and still has, severe unemployment; it is an electorate where there has been, and still is, severe social dislocation. It is in an area of Sydney that has been classified as needing particular assistance, particularly Mount Druitt, Rooty Hill and other suburbs out there, which is being attended to. Jim was always out there doing his bit for everybody. Charlie told me that when people malign politicians they are doing a disservice to Jim Anderson. Jim never forgot where he came from. He always reminded people of an Irish saying: ‘Always dance with the lady who brought you.’ That was the way Jim played his politics and his life. His faith was very important to him, as was his family. I offer my condolences to Jim’s wife and lifelong partner, Kathleen, to their two children, Robert and Rhona, and their families, and to his many friends.

Senate adjourned at 10.29 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


Defence Act—Determination under section—

58B—Defence Determination 2003/7.


Financial Sector (Collection of Data) Act—Determination of reporting standards—

ARS 231.1a, ARS 231.1b, ARS 231.2, ARS 231.3a and ARS 231.3b.

RRS 231.1a, RRS 231.1b, RRS 231.2, RRS 231.3a and RRS 231.3b.

Migration Act—Statement for period 1 July to 31 December 2002 under section 252A.

Indexed Lists of Files

The following document was 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 Veterans’ Affairs.

Departmental and Agency Contracts

The following documents were 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—2003 autumn sittings—

Health and Ageing portfolio.

Prime Minister and Cabinet portfolio agencies—

Australian National Audit Office.

Australian Public Service.

Department of the Prime Minister and Cabinet.

Office of National Assessments.

Office of the Commonwealth Ombudsman.

Office of the Inspector-General of Intelligence and Security [nil return].

Office of the Official Secretary to the Governor-General.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Gippsland Electorate: Programs and Grants
(Question No. 1099)

Senator O'Brien asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 17 January 2003:

(1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Gippsland.

(2) When did the delivery of these programs and/or grants commence.

(3) What funding was provided through these programs and/or grants for the people of Gippsland in each of the following financial years: (a) 1999-2000; (b) 2000-01; and (c) 2001-02.

(4) What funding has been appropriated for these programs and/or grants in the 2002-03 financial year.

(5) What funding has been appropriated and/or approved under these programs and/or grants to assist organisations and individuals in the electorate of Gippsland in the 2002-03 financial year.

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

(1) and (2) The following national programs are available (the list includes non-ongoing programs):

Natural Heritage Trust Programs
- Clean Seas Program (CSP) – commenced 1997-1998
- Coastal Monitoring Program (MOP) – commenced 1997-1998
- Coast care Program (CCP) – commenced 1997-1998
- Endangered Species Program (ESP) – commenced 1989-1990
- National Reserves Program (NRP) – commenced 1993-1994
- Natural Heritage Trust Bushcare One-Stop-Shop Grants (BCC) – commenced 1996-1997
- Water watch (WWP) – commenced 1993-1994

Natural Heritage Trust II
The second phase of the Natural Heritage Trust is directly assisting the people of Gippsland through the Australian Government Envirofund. This program commenced in 2002. The regional component of the Natural Heritage Trust is dependent on the accreditation of regional plans. It is anticipated that the East and West Gippsland Catchment Management plans will come to the Government for accreditation in the middle of this calendar year.
- Envirofund Bushcare (EBC) – commenced 2002-2003
- Envirofund Coastcare (ECC) – commenced 2002-2003

Other Programs
- Commemoration of Historic Events and Famous Persons Grant-in-Aid Program (CHEFP) - commenced 1978-79
- Cultural Heritage Projects Program (CHPP) – commenced 1999-2000
- Grants to Voluntary Environment and Heritage Organisations (GVEHO) – commenced 1999-2000
- Rural and Regional Historic Hotels Program (RHHHP) – provided grant funding during 2001-2002.
(3) and (5)

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<tr>
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<td>RRHHHP</td>
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<tr>
<td>WWP</td>
<td>$173,600</td>
<td>$173,600</td>
<td>$173,600</td>
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</table>

(4)
- CHEFP - $20,000
- CHPP - $2.7m
- GVEHO - $1.5m
- Natural Heritage Trust. The Trust provides funding for environmental activities at three levels: national/state, regional and local community. Each level of funding is comprised of four programs – Bushcare, Coastcare, Landcare and Rivercare. The overall budget for the Natural Heritage Trust in 2002-03 is $250 million. Estimates approved for expenditure in 2002-2003, by program, are:
  - Bushcare - $70.2 m
  - Coastcare - $38.0 m
  - Landcare - $70.4 m
  - Rivercare - $65.5 m
- Air Pollution in major cities - $4.4 m
- Waste Management Awareness - $1.5 m
- Envirofund: The Commonwealth Government Envirofund has allocated $20 million across Australia in 2002-03 to date. Individual allocations are not made to electorates. A further $10 million has been allocated under the special Drought Recovery Envirofund round in 2002-2003. Under the regional component of the Natural Heritage Trust the Government is currently considering interim funding for all Victorian Catchment Management Authorities to the value of $22.5 million. Following accreditation of plans a further $10.83million will be made available to Victorian regions in 2003-2004.

Gippsland Electorate: Programs and Grants

(Question Nos 1101 and 1114)

Senator O’Brien asked the Minister for Finance and Administration, and the Special Minister of State, upon notice, on 17 January 2003:

(1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Gippsland.

(2) When did the delivery of these programs and/or grants commence.

(3) What funding was provided through these programs and/or grants for the people of Gippsland in each of the following financial years: (a) 1999-2000; (b) 2000-01; and (c) 2001-02.

(4) What funding has been appropriated for these programs and/or grants in the 2002-03 financial year.
(5) What funding has been appropriated and/or approved under these programs and/or grants to assist organisations and individuals in the electorate of Gippsland in the 2002-03 financial year.

Senator Minchin—The answer to the honourable senator’s question is as follows:

Department of Finance and Administration

(1) None.
(2) Not applicable.
(3) Not applicable.
(4) Not applicable.
(5) Not applicable.

Gippsland Electorate: Programs and Grants

(Question No. 1104)

Senator O’Brien asked the Minister representing the Minister for Education, Science and Training, upon notice, on 17 January 2003:

(1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Gippsland.
(2) When did the delivery of these programs and/or grants commence.
(3) What funding was provided through these programs and/or grants for the people of Gippsland in each of the following financial years: (a) 1999-2000; (b) 2000-01; and (c) 2001-02.
(4) What funding has been appropriated for these programs and/or grants in the 2002-03 financial year.
(5) What funding has been appropriated and/or approved under these programs and/or grants to assist organisations and individuals in the electorate of Gippsland in the 2002-03 financial year.

Senator Alston—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

(1) Vocational Education and Training

New Apprenticeships Incentives Programme
The New Apprenticeships Incentives Programme encourages employers, through financial incentives, to open up genuine opportunities for employees to undertake genuine skills-based training.

New Apprenticeships Access Programme (NAAP)
NAAP assists eligible job seekers into New Apprenticeships, employment or further education and training. DEST has contracted SkillsPlus (Peninsula) Inc to manage NAAP in Gippsland.

Group Training
Under current arrangements for the funding of New Apprenticeships through Group Training, Commonwealth contributions under the Joint Group Training Programme Policy Funding match those of the State/Territories on a dollar for dollar basis. The Commonwealth provides funds, through the Australian National Training Authority Agreement, to Group Training Organisations (GTOs).

Group Training New Apprenticeships Targeted Initiatives Programme (TIP)
Additionally, the Commonwealth administers TIP. This programme is designed to assist GTOs establish sustainable markets and provide additional New Apprenticeships opportunities in areas that have been identified by the Commonwealth and State/Territory Governments as critical, challenging and under serviced.

Workplace English Language and Literacy (WELL) Programme
The WELL Programme provides funds to assist enterprises (or training providers that have obtained enterprise support) to provide workers with English language and literacy skills to help them meet their current and future employment and training needs. It particularly targets workers who are at risk of losing their jobs because of their low literacy skills. An employer contribution to the costs of the training is required. Some funds are also used for development of training resources and projects to encourage industry to become involved in language, literacy and numeracy.
**Language, Literacy and Numeracy Programme (LLNP)**

From 1998 to 2001, the Literacy and Numeracy Programme offered literacy and numeracy training to eligible jobseekers across the country. The Advanced English for Migrants Programme offered training for eligible migrants in need of further English language training, often in vocationally specific areas or in preparation for further study.

The Literacy and Numeracy Programme and the Advanced English for Migrants Programme were combined in January 2002 to form the Language, Literacy and Numeracy Programme (LLNP). The LLNP provides more choice and flexibility for eligible job seekers, offering three streams of training: basic English language, advanced English language, and literacy and numeracy. Basic language is a new stream which was not available under the previous programmes.

The training is designed to lead to a measurable improvement in participants’ language, literacy and numeracy competencies, thereby making them more competitive in the labour market, or enabling them to continue with further education or training. Training can also lead to partial recognition of overseas-earned qualifications for migrant participants.

Each participant is allocated between 120 and 400 hours of training, extending over a period of 20 to 52 weeks. Training can be undertaken on a part time or full time basis at between 6 and 20 hours a week. Up to 25 hours of the training allocation can be delivered in a one-to-one or small group situation (up to three clients) to help ease job seekers into a group or class situation or to give them a head start.

Face to face training is available throughout Australia in friendly groups. It is also available through distance education anywhere in Australia, for those job seekers who have carer responsibilities or do not have easy access to a face to face training site.

All participants’ language, literacy and numeracy needs are professionally assessed before they are considered for training. If a job seeker is assessed as suitable for training, an individual training plan is developed for them and they are referred to training.

A competitive tender was conducted in late 2001 to select contracted providers to deliver assessment and training services under the new programme. The successful tenderers for the Gippsland electorate in 2002/03 were:

<table>
<thead>
<tr>
<th>Service provider name</th>
<th>Training streams</th>
<th>Delivery site address</th>
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<tbody>
<tr>
<td>East Gippsland Institute of TAFE</td>
<td>English Language and Literacy and Numeracy</td>
<td>Flexible Learning Centre Cnr De Sally and Cunningham Streets SALE VIC 3850 ACES (Inc) 55 Raymond Street SALE VIC 3850 48 Main Street BAINSDALE VIC 3875 BACE Inc Dalmahoy Street BAINSDALE VIC 3875 Leongatha Campus Nerrena Road LEONGATHA VIC 3853</td>
</tr>
</tbody>
</table>

The Open Training and Education Network (OTEN) distance delivery arm of TAFE NSW provides all three streams of training (basic and advanced language and literacy and numeracy) by distance education throughout the electorate.

**Disability Coordination Officer (DCO) Programme**

As part of the Australians Working Together package, the 2001-02 Commonwealth Budget established a Disability Coordination Officer (DCO) Programme. The DCOs will provide information, coordination and referral services for people with a disability interested in, or enrolled in post-school education and training. Two part-time DCOs have been allocated to cover the area of Victoria which includes the electorate of Gippsland. Central Gippsland Institute of TAFE has been contracted to provide DCO services in the area and details will be announced shortly. As part of the Australians Working To-
together package, over $1 million has been allocated to Victoria for 2003 to provide more training places for people with a disability.

**Schools**

The majority of schools programmes could provide assistance to the people in the electorate of Gippsland. These include programmes such as General Recurrent Grants, Establishment Grants, Capital Grants, Schools Short Term Emergency Assistance, Strategic Assistance for Improving Student Outcomes, Enterprise and Career Education, Country Areas, English as a Second Language – New Arrivals, Languages Other Than English, Job Pathways, Partnership Outreach Education Model (POEM) Pilot, Career and Transition (CAT) Pilot and Discovering Democracy. However, under programme administrative arrangements with the States, Territories and non-government education authorities, the Commonwealth only collects data by electorate for certain programmes. Information on these programmes is set out in reply to question 3.

**Higher Education**

The programmes funding the higher education sector under the Higher Education Funding Act 1988 and the Australian Research Council Act 2001 assist the people of Gippsland through the presence of the Royal Melbourne Institute of Technology (RMIT) jointly with the East Gippsland TAFE and at various research facilities in and around the electorate. The main programmes are:

- operating grants for institutions;
- other operating resources (including funding for equity and capital development purposes);
- block funding for research and research training; and
- competitive research funding through the Australian Research Council.

Eligible individuals in the electorate are able to access the Higher Education Contribution Scheme (HECS), the Open Learning Deferred Payment Scheme (OLDPS), the Postgraduate Education Loans Scheme (PELS) and the Bridging for Overseas Trained Professional Loans Scheme.

In addition to people studying on-campus within the electorate, a number of people from the electorate would be accessing higher education institutions elsewhere.

**International**

DEST administers the Australian University Mobility in Asia and the Pacific (UMAP) Programme. Under the Programme, Australian higher education institutions compete annually for flat rate subsidies to subsidise the costs of their negotiating and monitoring, and of Australian students’ participation in, student exchanges with specific characteristics with higher education institutions in Asia and the Pacific. The student exchanges are required to be reciprocal, that is, include both in-coming and out-going students, involve tuition fee waiver and, under the exchanges, participating students receive credit towards their home university degrees for successful completion of overseas study.

**Indigenous Education**

Assistance is available to people living in the federal electorate of Gippsland under all the Indigenous programmes administered by the Department of Education, Science and Training. These programmes include the Indigenous Education Strategic Initiatives Programme (IESIP) and the Indigenous Education Direct Assistance (IEDA) programme.

The aim of IESIP is to improve educational outcomes for Indigenous students. IESIP provides funding under five discrete elements: Supplementary Recurrent Assistance (SRA); Targeted Outcomes Programme (TOPs); English as a Second Language – Indigenous Language Speaking Students (ESL – ILSS); and IESIP Away-from-base. IESIP also provides funding to progress the objectives of the National Indigenous English Literacy and Numeracy Strategy (NIELNS).

The IEDA programme has three elements and does not directly provide funding to schools. The elements of the programme are:

1. The Aboriginal Student Support and Parent Awareness (ASSPA) programme funds parent committees in preschools and schools to undertake activities to improve education outcomes for Indigenous students and to increase the participation of the parents of Indigenous students in their children’s education;
2. The Aboriginal Tutorial Assistance Scheme (ATAS) provides supplementary tuition and other study assistance to Indigenous students in primary and secondary schools, TAFE, University and formal training programmes; and
3. The Vocational and Educational Guidance for Aboriginals Scheme (VEGAS) funds projects on career information and study options, and projects which foster positive attitudes about participation in education for Indigenous school students.

Secondary and tertiary students may also be eligible for assistance under ABSTUDY, which is administered by Centrelink.

(2) Vocational Education and Training

**New Apprenticeships Incentives Programme**
Commenced on 1 May 1998.

**New Apprenticeships Access Programme (NAAP)**
The delivery of NAAP commenced in January 1997.

**Group Training**
Commonwealth contributions under Joint Group Training Programme Policy Funding, has been in place in some form since 1980.

**Group Training New Apprenticeships Targeted Initiatives Programme (TIP)**
Contract was signed in April 2001 with Eastern Victorian Group Training.

**Workplace English Language and Literacy (WELL) Programme**
Service delivery under the WELL Programme commenced in 1994.

**Language, Literacy and Numeracy Programme (LLNP)**
Service delivery under the Advanced English for Migrants Programme commenced in the early 1990’s; under the Literacy and Numeracy Programme in 1998; and under the LNNP in January 2002.

**Disability Coordination Officer (DCO) Programme**
DCO Programme funds became available in July 2002, and it is anticipated that the contracted organisation will have the two DCOs in place in March 2003.

**Schools**
The Department can only provide this information for certain programmes as shown in the table below:

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<tr>
<th>Programme</th>
<th>Commencement</th>
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<tbody>
<tr>
<td>Capital Grants</td>
<td>1964</td>
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<tr>
<td>General Recurrent Grants to non-government schools</td>
<td>1970</td>
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<tr>
<td>General Recurrent Grants to government schools</td>
<td>1974</td>
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<tr>
<td>Country Areas</td>
<td>1977</td>
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<tr>
<td>Job Pathways</td>
<td>1996</td>
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<tr>
<td>Enterprise and Career Education Foundation</td>
<td>1997</td>
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<tr>
<td>National Literacy and Numeracy Strategies and Projects</td>
<td>1997</td>
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<tr>
<td>Enterprise and Career Education Establishment Grants</td>
<td>2000</td>
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<tr>
<td>Strategic Assistance for Improving Student Outcomes</td>
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<td>Languages Other Than English</td>
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<tr>
<td>English as a Second Language – New Arrivals</td>
<td>2001</td>
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<tr>
<td>Partnership Outreach Education Model</td>
<td>2002</td>
</tr>
<tr>
<td>Career and Transition</td>
<td>2002</td>
</tr>
</tbody>
</table>

**Higher Education**
In general terms the current arrangements for supporting the higher education sector commenced in 1989.

**International**
DEST has provided funding for the Australian UMAP Programme annually since 1993.
Indigenous Education
The Indigenous Education Direct Assistance (IEDA) programmes commenced in 1990 under the name of the Aboriginal Education Direct Assistance (AEDA) programme. The Indigenous Education Strategic Initiatives Programme (then known as the Aboriginal Education Strategic Initiatives Programme) also began in 1990. These programmes grew out of existing initiatives. ABSTUDY commenced in 1969 for tertiary students and was extended to secondary school students in 1970.

(3) Vocational Education and Training
Funding provided:

New Apprenticeships Incentives Programme
1999-00  $2,726,432
2000-01  $3,717,795
2001-02  $4,760,589

New Apprenticeships Access Programme (NAAP)
1999-00  $131,250.00
2000-01  $40,625.00
2000-02  $228,125.00

Group Training
Commonwealth contributions under the Joint Group Training Programme Policy Funding were provided to Eastern Victorian Group Training Inc:
1999-00  $81,852.00
2000-01  $103,792.50
2001-02  $93,404.00
and Gippsland Group Training:
1999-00  $151,135.50
2000-01  $175,707.50
2001-02  $212,713.00

Group Training New Apprenticeships Targeted Initiatives Programme (TIP)
Eastern Victorian Group Training Inc:
1999-00  Nil
2000-01  $43,693.65
2001-02  $54,056.48

Workplace English Language and Literacy (WELL) Programme
1999-00:

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Worksite</th>
<th>Industry Category</th>
<th>Industry Sub Category</th>
<th>Total Project Funds (GST Excl)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult</td>
<td>East Region, Parks VIC</td>
<td>Agriculture, Forestry</td>
<td>Agriculture</td>
<td>$38,700.00</td>
</tr>
</tbody>
</table>

2000-01: Nil
2001-02:

<table>
<thead>
<tr>
<th>Registered Name</th>
<th>Worksite</th>
<th>Industry Category</th>
<th>Industry Sub Category</th>
<th>Total Project Funds (GST Excl)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Footscray Club Ltd t/a Western Bulldogs</td>
<td>Bung Yarnda Community Development Employment Programme (CDEP) Co-operative</td>
<td>Agriculture, Forestry</td>
<td>Agriculture</td>
<td>$81,735.00</td>
</tr>
<tr>
<td>Footscray Club Ltd t/a Western Bulldogs</td>
<td>East Gippsland CDEP</td>
<td>Agriculture, Forestry</td>
<td>Agriculture</td>
<td>$126,930.00</td>
</tr>
</tbody>
</table>
Language, Literacy and Numeracy Programme (LLNP)

The Literacy and Numeracy Programme made the following payments to the East Gippsland Institute of TAFE, the contracted provider in the Gippsland electorate:

1999-00 $92,114.40
2000-01 $70,320.80
2001-02 $78,559.70

Funding for the Advanced English for Migrants Programme was provided, on a calendar year basis, as a specific purpose payment to each State and Territory. The majority of courses were provided in metropolitan areas. No courses were provided in the electorate of Gippsland during the years 1999-00 to 2001-02.

Disability Coordination Officer (DCO) Programme

There was no DCOP prior to 2002.

Schools

The following table provides funding for the electorate of Gippsland. Figures are reported on programme calendar year as it is not possible to provide these by financial year.

<table>
<thead>
<tr>
<th>PROGRAMME</th>
<th>1999</th>
<th>2000</th>
<th>2001*</th>
<th>2002*</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Recurrent Grants Programme for non-government schools</td>
<td>15,363,825</td>
<td>16,658,748</td>
<td>18,316,768</td>
<td>19,254,176</td>
<td>69,593,517</td>
</tr>
<tr>
<td>Establishment Grant Programme for non-government schools</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>16,353</td>
<td>16,353</td>
</tr>
<tr>
<td>Capital Grant Programme for non-government schools</td>
<td>1,397,651</td>
<td>97,000</td>
<td>0</td>
<td>1,215,137</td>
<td>2,709,788</td>
</tr>
<tr>
<td>Capital Grant Programme for government schools</td>
<td>1,974,000</td>
<td>475,000</td>
<td>800,000</td>
<td>2,100,000</td>
<td>5,349,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>18,735,476</td>
<td>17,230,748</td>
<td>19,116,768</td>
<td>22,585,666</td>
<td>77,668,658</td>
</tr>
</tbody>
</table>

*Estimates only, not final figures.

Commonwealth funding for government schools is distributed by the State and Territory Government and the Commonwealth does not collect information on the allocation to individual electorates.

The following table provides funding for the electorate of Gippsland by financial year.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise and Career Education</td>
<td>Nil</td>
<td>Up to $22,000</td>
<td>Up to $22,000</td>
</tr>
<tr>
<td>Enterprise and Career Education Foundation</td>
<td>$188,700</td>
<td>$169,000</td>
<td>$166,616</td>
</tr>
</tbody>
</table>

Higher Education

Funding under these programmes is provided to institutions as a whole. It is the responsibility of the institution to allocate it to campuses and activities. It is therefore not possible to provide this information at the electorate level. On a calendar year basis RMIT received the following funding through DEST:

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$177,373m</td>
<td>$183,971m</td>
<td>$191,081m</td>
<td>$196,994m</td>
</tr>
</tbody>
</table>
Information on recipients of HECS, OLDPS and PELS is not available at the level of electorates.

**International**

As advised earlier, RMIT University received funding under the Australian UMAP Programme as follows:

(a) in the 1999-2000 financial year (the 2000 round of the Programme) - $77,300 to support four projects;

(b) in the 2000-01 financial year (the 2001 round of the Programme) - $167,500 to support five projects;

(c) in the 2001-02 financial year (the 2002 round of the Programme) - $84,500 to support four projects.

As previously advised, the only project that can be related to nursing and therefore is for students studying at the Gippsland campus of RMIT University is one of the projects supported in the 2002 round of the Programme. It is described in more detail below:

**Korea**

Funding totalling $32,000 to cover the following:

- six undergraduate student nurses to undertake a 12 weeks in-country programme at the counterpart institution: Kyung-Hee University, Korea, with the programme to include concurrent language training and four weeks supervised, accredited clinical practice in the affiliated teaching hospital; and
- a staff visit to the counterpart institution to negotiate details of the student exchange and/or to monitor arrangements while the students are studying in-country.

**Indigenous Education**

Information on funding is not available at the electorate level.

**Vocational Education and Training**

**New Apprenticeships Incentives Programme**

For Incentives and Personal Benefits $424.2 million with a further $30.8 million from Additional Estimates.

**New Apprenticeships Access Programme (NAAP)**

$8,814 million.

**Group Training**

Figures not available.

**Group Training New Apprenticeships Targeted Initiatives Programme (TIP)**

$29,113.87.

**Workplace English Language and Literacy (WELL) Programme**

$12.2 million.

**Language, Literacy and Numeracy Programme (LLNP)**

$34.4 million

**Disability Coordination Officer (DCO) Programme**

$1.228 million.

**Schools**

Below is a summary table of funding for Commonwealth programmes for schools in the 2003 programme year (extract from the Quadrennial Administrative Guidelines - 2001 to 2004). Where the legislation provides for per capita amounts, an estimated level of funding has been provided. It is not possible to provide these figures by financial year.

<table>
<thead>
<tr>
<th>Sector/Programme</th>
<th>2003 ($) 000</th>
</tr>
</thead>
<tbody>
<tr>
<td>States Grants (Primary and Secondary Education Assistance) Act 2000 Government schools General Recurrent</td>
<td>1,400,278</td>
</tr>
<tr>
<td>Capital</td>
<td>232,548</td>
</tr>
<tr>
<td>Strategic Assistance for Improving Student Outcomes (Recurrent Element)</td>
<td>219,606</td>
</tr>
<tr>
<td>Sector/Programme</td>
<td>2003</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Strategic Assistance for Improving Student Outcomes (Per Capita Element)</td>
<td>10,989</td>
</tr>
<tr>
<td>ESL-New Arrivals</td>
<td>39,363</td>
</tr>
<tr>
<td>Country Areas</td>
<td>18,679</td>
</tr>
<tr>
<td>Languages Other Than English (LOTE) Element</td>
<td>12,228</td>
</tr>
<tr>
<td>Total Government Sector</td>
<td>1,933,691</td>
</tr>
<tr>
<td>Non-government schools</td>
<td></td>
</tr>
<tr>
<td>General Recurrent</td>
<td>3,521,045</td>
</tr>
<tr>
<td>Establishment Assistance</td>
<td>2,557</td>
</tr>
<tr>
<td>Schools Transitional Emergency Assistance</td>
<td>768</td>
</tr>
<tr>
<td>Capital</td>
<td>91,421</td>
</tr>
<tr>
<td>Strategic Assistance for Improving Student Outcomes (Recurrent Element)</td>
<td>97,090</td>
</tr>
<tr>
<td>Strategic Assistance for Improving Student Outcomes (Compensation Element)</td>
<td>4,334</td>
</tr>
<tr>
<td>Strategic Assistance for Improving Student Outcomes (Per Capita Element)</td>
<td>12,803</td>
</tr>
<tr>
<td>ESL New Arrivals</td>
<td>5,172</td>
</tr>
<tr>
<td>Country Areas</td>
<td>3,503</td>
</tr>
<tr>
<td>Languages Other Than English (LOTE) Element</td>
<td>9,423</td>
</tr>
<tr>
<td>Total Non-government Sector</td>
<td>3,748,116</td>
</tr>
<tr>
<td>Non-government centres</td>
<td></td>
</tr>
<tr>
<td>Special Education Non-government Centre Support</td>
<td>26,835</td>
</tr>
<tr>
<td>Total Non-Government Centres</td>
<td>26,835</td>
</tr>
<tr>
<td>Joint Sectors</td>
<td></td>
</tr>
<tr>
<td>National Literacy and Numeracy Strategies and Projects Programme</td>
<td>4,738</td>
</tr>
<tr>
<td>Total Joint Sectors</td>
<td>4,738</td>
</tr>
<tr>
<td>Total (States Grants (Primary and Secondary Education Assistance) Act 2000)</td>
<td>5,713,380</td>
</tr>
<tr>
<td>Annual Appropriation Programmes (excluding Indigenous Programmes)</td>
<td></td>
</tr>
<tr>
<td>2002-03</td>
<td>($'000)</td>
</tr>
<tr>
<td>Grants and Awards</td>
<td>3,500</td>
</tr>
<tr>
<td>Quality Outcomes</td>
<td>46,300</td>
</tr>
<tr>
<td>Enterprise and Career Education Programme</td>
<td>6,400</td>
</tr>
<tr>
<td>Children’s Literacy</td>
<td>600</td>
</tr>
<tr>
<td>On-line Curriculum Content for Australian Schools Initiative</td>
<td>6,400</td>
</tr>
<tr>
<td>Jobs Pathway Programme</td>
<td>23,000</td>
</tr>
<tr>
<td>Total Annual Appropriation Programmes</td>
<td>86,200</td>
</tr>
<tr>
<td>Indigenous Education Student Programmes</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>Indigenous Education (Targeted Assistance) Act 2000</td>
<td></td>
</tr>
<tr>
<td>Indigenous Education Strategic Initiatives Programme</td>
<td>138,393</td>
</tr>
<tr>
<td>Away from Base Assistance</td>
<td>22,189</td>
</tr>
<tr>
<td>Total (Indigenous Education (Targeted Assistance) Act 2000)</td>
<td>160,582</td>
</tr>
<tr>
<td>Other Indigenous Programmes</td>
<td></td>
</tr>
<tr>
<td>2002-03</td>
<td>($'000)</td>
</tr>
<tr>
<td>Aboriginal Student Support and Parent Awareness (1)</td>
<td>19,356</td>
</tr>
<tr>
<td>Aboriginal Tutorial Assistance Scheme (1)</td>
<td>38,950</td>
</tr>
<tr>
<td>Vocational and Educational Guidance for Aboriginals Scheme (1)</td>
<td>6,623</td>
</tr>
<tr>
<td>ABSTUDY (Secondary) (2)</td>
<td>83,473</td>
</tr>
<tr>
<td>Total Other Indigenous Programmes</td>
<td>148,402</td>
</tr>
</tbody>
</table>
(1) Funding appropriated through the Annual Appropriation Act No. 1
(2) ABSTUDY - a direct student assistance programme and funding is received by individual students rather than schools or systems

<table>
<thead>
<tr>
<th>Sector/Programme</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Annual Appropriation Act No. 1)</td>
<td></td>
</tr>
<tr>
<td>Grants to Primary School Libraries</td>
<td>7,400</td>
</tr>
<tr>
<td>Total Appropriation (Supplementary Measures) Act (No. 1) 1999</td>
<td>7,400</td>
</tr>
<tr>
<td>Student Assistance Act 1973</td>
<td>2002-03</td>
</tr>
<tr>
<td>Assistance for Isolated Children</td>
<td>38,594</td>
</tr>
<tr>
<td>Total Student Assistance Act 1973</td>
<td>38,594</td>
</tr>
<tr>
<td>GRAND TOTAL</td>
<td>6,154,558</td>
</tr>
</tbody>
</table>

**Higher Education**

Higher Education Funding Act 1988 and Australian Research Council Act 2001 appropriations are on a calendar year basis. The current total appropriations under the Acts for 2002 and 2003 are:

<table>
<thead>
<tr>
<th>HEFA</th>
<th></th>
<th>ARCA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$4,028.5 million</td>
<td>2002</td>
<td>$272.4 million</td>
<td>2003</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>2003</td>
<td></td>
<td>$356.7 million</td>
</tr>
</tbody>
</table>

Total actual Commonwealth funding to higher education through the EST portfolio (including HEFA appropriations, ARCA appropriations, HECS and annual appropriations) is $6176.9 m in 2002 and $6417.2 m in 2003.

Note: This does not include funding from programmes such as Cooperative Research Centres Programmes and the Major National Research Facilities Programme.

**International**

$1.4 million has been appropriated for the Australian UMAP Programme in 2002-03 financial year.

**Indigenous Education**

The nationally appropriated funding for the Indigenous Education Strategic Initiatives Programme (IESIP) for 2003 is $138,393,000. The nationally appropriated funding for the Indigenous Education Direct Assistance (IEDA) programme for 2002-03 is $64,929,000. The nationally appropriated funding for ABSTUDY for 2002-03 is $83,473,000.

**Vocational Education and Training**

**New Apprenticeships Incentives Programme**

No limit has been set for the electorate of Gippsland – all employers of New Apprenticeships in the region has access to the funds appropriated for the programme if eligible under the New Apprenticeships Incentives Programme Guidelines (1 September 2000).

**New Apprenticeships Access Programme (NAAP)**

A maximum of $144,250 has been appropriated and approved for the electorate of Gippsland in 2002-03 for NAAP.

**Group Training**

Figure not available.

**Group Training New Apprenticeships Targeted Initiatives Programme (TIP)**

$29,113.87 has been allocated to the electorate of Gippsland in 2002-03.

**Workplace English Language and Literacy (WELL) Programme**

No WELL funds have been allocated in the Gippsland electorate in 2002-03.
Language Literacy and Numeracy Programme (LLNP)
There are two contracted service providers in the electorate: East Gippsland Institute of TAFE and Central Gippsland Institute of TAFE. Monies are paid to providers as services are delivered and, therefore, dependent on demand from job seekers. So far this financial year, over $76,000 has been paid to face to face providers in the electorate.

Disability Coordination Officer (DCO) Programme
DCOP funding for 2002-03 was $80,000 (GST exclusive).

Schools
The following table provides appropriated funding for the electorate of Gippsland based on 2003 programme year. It is not possible to provide these figures by financial year.

<table>
<thead>
<tr>
<th>PROGRAMME</th>
<th>2003* $</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Recurrent Grants Programme for non-government schools</td>
<td>19,288,602</td>
</tr>
<tr>
<td>Establishment Grant Programme for non-government schools</td>
<td>9,050</td>
</tr>
<tr>
<td>Capital Grant Programme for non-government schools</td>
<td>1,498,662</td>
</tr>
<tr>
<td>Capital Grant Programme for government schools</td>
<td>2,900,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>23,696,314</td>
</tr>
</tbody>
</table>

*Estimates only, not final figures.

The following table provides programme funding appropriated in the electorate of Gippsland in 2002-03.

<table>
<thead>
<tr>
<th>PROGRAMME</th>
<th>2002-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise and Career Education</td>
<td>Up to $22,000</td>
</tr>
<tr>
<td>Enterprise and Career Education Foundation</td>
<td>$195,665</td>
</tr>
</tbody>
</table>

Higher Education
It is not possible to provide this information at the electorate level.

International
RMIT University has applied for funding under the 2003 round of the Australian UMAP Programme (the 2002-03 financial year). Selection outcomes are expected to be available shortly.

Indigenous Education
Information on funding is not available at the electorate level.

Immigration: Detention Centres
(Question No. 1139)

Senator Brown asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 24 January 2003:

1. Do detention centres situated around Australia have on site doctors to supervise detainees in isolation; if so, for how many days will a doctor monitor a detainee.
2. Is there a limit to the length of time Australasian Correctional Management (ACM) can put people in isolation.
3. What percentage of detainees are on medication for mental illness.
4. Are doctors required to give medication for the purpose of chemical restraint.
5. Do staff of ACM give out medication without reference to doctors.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

1. Detainees are not put in ‘isolation’. Doctors are present in each centre on a regular basis, usually daily, and are on call at all times. Detainees are monitored by these doctors through the centre nursing staff.
2. From time to time detainees may be separated administratively for behaviour management purposes. This is to enable detailed personalised management plans to be developed and implemented. The case management plans are developed and reviewed by psychologists, welfare offi-
cers in consultation with case managers and medical staff. The case management plans are designed so that the detainee is kept separate for a minimum amount of time.

(3) Medication is assessed on a day to day basis between the doctor and the patient. Statistics collected from our detention services provider from all centres at the end of January show that an average of 2.9% of detainees are on medication for a diagnosed psychiatric mental illness. Mental illness in this instance does not include depression.

(4) Any use of medication in detention facilities must be prescribed by appropriate medical professionals in accordance with the relevant Australian medical and legal requirements and the immigration detention standards.

(5) There are provisions in the registration of nurses whereby they can administer certain medications without reference to a doctor. There is a policy with strict guidelines attached to these provisions, which includes reference to a doctor at specific stages in treatment.

All medication, other than nurse-initiated medication, is prescribed by a qualified medical practitioner, and is administered by registered nurses in accordance with standard practice. Where 24 hour nursing is not available Detention Officers, under the strict guidance of Health Procedures, are able to issue Panadol.

Rural and Regional Australia: Gene Technology
(Question No. 1167)

Senator O’Brien asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 17 February 2003:

(1) On what date was the last regional forum about gene technology for farmers and regional communities conducted by Biotechnology Australia.
(2) Where was the forum held.
(3) How many members of the public attended this forum.
(4) With reference to each of the eight rural forums conducted: (a) how much did each cost; (b) how many members of the public attended; and (c) on what basis were the locations selected.
(5) What programs is Biotechnology Australia currently undertaking to advise farmers and regional communities about the potential implications of gene technology on the Australian rural sector.
(6) What was the cost of these programs over the 2001-02 financial year.
(7) What programs is Biotechnology Australia developing to advise farmers and regional communities about the potential implications of gene technology on the Australian rural sector.
(8) What is the budget and estimated expenditure to date for these programs over the 2002-03 financial year.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(1) 4 March 2003.
(2) The forum was held in Horsham, Victoria.
(3) Approximately 160 people attended this forum.
(4) (a) Biotechnology Australia conducted a series of seven forums during 2000 in contract with Turnbull Porter Novelli at a cost of approximately $25000 per forum, including travel, accommodation, venue hire and advertising. BA, partnering with the Queensland Government, has also conducted rural forums in Townsville and Emerald at a cost of $21,116.00 for both. A further forum has been held in Launceston by BA and partner agencies at a cost of approximately $10 000. Costs for the recent 4 March 2003 Horsham forum and related Field Days totalled approximately $10 000.
(b) Forums conducted in contract with Turnbull Porter Novelli:
   Naracoorte - 65 people
   Echuca/Moama - 40 people
   Horsham - 80 people
   Muresk - 41 people
Katanning - 38 people
Wagga Wagga – 86 people
Tamworth - 27 people

Forums conducted through BA and Queensland Government partnership:

Townsville – 70 people
Emerald - 80 people

Forums conducted by BA and partner agencies:

Launceston – 100 people

(c) Locations were selected through liaison by Biotechnology Australia with State partners and farmers’ organisations, taking into account the type of farming and key issues of gene technology and biotechnology in the region.

(5) Biotechnology Australia programs currently involve

a. Regional forums/trade show participation
b. Providing speakers for existing rural forums
c. Rural media strategy to get balanced and factual information on gene technology into the rural media

Biotechnology Australia also undertakes a number of strategies and activities as agreed by the rural communications group, comprising Commonwealth and State Government partners and agencies working with biotechnology issues in regional Australia. These include:

1. Developing networks and sharing information with partner bodies
2. Working with the media - continuing to monitor media coverage of biotechnology issues, generating factual and relevant media coverage, and where necessary rapidly responding to and counteracting media falsehoods, both via the media and by direct communication with rural communities.

Activities include:

• Preparation and distribution of media releases which are regionally-based, tailored to highlight their local relevance to regional communities;
• Using the media to promote speakers and events, value-adding to speaking engagements and event management; and
• Background briefings for rural industry journalists and communication managers working in rural/biotechnology sector.

3. Continue to provide information to local governments in regional areas.

4. Identify key rural concerns and use information readily available from reports or studies, to produce fact sheets, publications and web-based materials for best effect of information distribution. Issues include:

• gene flow;
• crop segregation;
• herbicide tolerant crops;
• liability issues; and
• market access.

5. Speaking opportunities database.

6. Rural Radio Programs.

7. Rural Exhibitions and Displays.

8. Calendar of Events.

9. CSIRO Gene Technology Workshops.

10. Broadening the views past food/crops where appropriate.

11. Developing a contact list for rural journalists.

12. Leverage on positive stories and survey findings.
13. Media training for key spokespersons.
14. MP Briefings.
15. Recruit credible champions.

(6) Biotechnology Australia programs undertaken in 2001-02 were not directed solely at farmers and regional communities; but impacted more widely across Australia. However, an estimate of between $50 000 and $80 000 may be attributed to the rural sector.

(7) Biotechnology Australia has established the Rural Communications Group, which meets twice a year to consider the effectiveness, amendment and implementation of different strategies. Future programs will be developed within this group.

(8) Biotechnology Australia funding is not easily classified into regional activities. However, the estimated expenditure for regional activities for 2002-03 is between $50 000 and $80 000.

**Trade: Beef Sales to Japan**

(Question No. 1195)

Senator O’Brien asked the Minister representing the Minister for Trade, upon notice, on 24 February 2003:

(1) Since October 2001, what briefings has the Australian Trade Commission (Austrade) provided to the Minister for Agriculture, Fisheries and Forestry on the imposition of the ‘snap-back’ provision whereby Japan will impose an increased tariff on imported Australian beef.

(2) Were the briefings written or oral.

(3) In the case of oral briefings: (a) when did these briefings occur; (b) who attended each briefing; and (c) what records were kept of each briefing.

(4) If the advice was written, can a copy be provided.

(5) Since October 2001, what briefings has Austrade provided to the Department of Agriculture, Fisheries and Forestry on the imposition of the snap-back.

(6) Were the briefings written or oral.

(7) In the case of oral briefings: (a) when did these briefings occur; (b) who attended each briefing; and (c) what records were kept of each briefing.

(8) If the advice was written, can a copy be provided.

(9) Since October 2001, what advice has Austrade provided to members of the Australian beef industry, beef producer peak bodies or beef exporters in relation to the snap-back.

(10) Was the advice written or oral.

(11) In the case of written advice, can a copy of the advice be provided.

(12) In the case of oral advice: (a) when was the advice given; and (b) was the advice delivered face to face or by telephone or some other means.

(13) In the case of face-to-face advice: (a) who attended each meeting; and (b) what records were kept of each meeting.

(14) In the case of advice delivered by telephone or by some other means: (a) when was this advice given; (b) to whom was this advice given; and (c) what records were kept of each briefing.

(15) Since October 2001, has Austrade met with officials from the United States of America, Canada, or New Zealand with a view to acting in conjunction with these nations in attempting to prevent the imposition by Japan of the snap-back.

(16) (a) When were these meetings conducted; (b) where were these meetings conducted; (c) what was the cost to the Commonwealth of these meetings; (d) what specifically was discussed at each meeting; (e) what was the outcome of each meeting; and (f) what records were kept of each meeting.

(17) Since October 2001, has the Minister met with his counterparts from America, Canada, or New Zealand with a view to acting in conjunction with these nations in attempting to prevent the imposition by Japan of the snap-back.
(18) (a) When were these meetings conducted; (b) where were these meetings conducted; (c) what was the cost to the Commonwealth of these meetings; (d) what specifically was discussed at each meeting; (e) what was the outcome of each meeting; and (f) what records were kept of each meeting.

(19) Since October 2001, has Austrade offered any briefing to the Minister for Agriculture, Fisheries and Forestry which was not accepted; if so, what was the reason given by the Minister for Agriculture, Fisheries and Forestry.

(20) Since October 2001, has the Minister offered any briefing to the Minister for Agriculture, Fisheries and Forestry which was not accepted; if so, what was the reason given by the Minister for Agriculture, Fisheries and Forestry.

**Senator Hill**—The Minister for Trade has provided the following answer to the honourable senator’s question:

1. Austrade has not provided any briefings to the Minister for Agriculture, Fisheries and Forestry (AFFA) on this issue.
2. No briefings have been provided.
3. Not applicable.
4. Not applicable.
5. Austrade has not provided any briefings to the Department of AFFA on this issue.
6. Not applicable.
7. Not applicable.
8. Not applicable.
9. Austrade has not provided any briefings to the Australian beef industry, beef producer peak bodies or beef exporters in relation to snapback.
10. Not applicable.
11. Not applicable.
12. Not applicable.
13. Austrade has not provided any face-to-face advice.
14. Austrade has not delivered any advice by telephone or other means in relation to snapback.
15. Austrade have not discussed snapback with officials of the United States of America, Canada or New Zealand.
16. Not applicable.
17. See answer to QON 1252 provided by DFAT.
18. See answer to QON 1252 provided by DFAT.
19. Austrade has not provided any briefings to any Minister on this issue.
20. See answer to QON 1252 provided by DFAT.

**Immigration: Asylum Seekers**

**(Question No. 1222)**

**Senator Brown** asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 27 February 2003:

1. When persons who have been detained on the island of Nauru have been persuaded to return voluntarily to Afghanistan, have they been promised that they may safely do so.
2. Has any effort been made to ensure the safety of those returning to Afghanistan, or to determine whether they have been able to successfully resettle; if so, can the Minister attest that most have safely and successfully returned to Afghanistan.
3. Have those returning to Afghanistan been provided with any warm clothing and footwear, particularly when being returned in the Northern Hemisphere winter.

**Senator Ellison**—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:
(1) Asylum seekers in Nauru are accommodated in processing centres under the respective laws of both countries. The centres are managed by the International Organization for Migration (IOM) which is internationally recognised for their care and management of asylum seekers and refugees. Before failed asylum seekers have made a decision to return they have been provided with information by IOM. That advice includes information from the United Nations High Commissioner for Refugees (UNHCR) and other agencies on current conditions in their respective homelands. In the case of Afghanistan, the UNHCR has strongly supported the voluntary return of Afghan nationals and some two million Afghan nationals have returned home under UNHCR auspices in recent months. As at 13 March 2003, there have been 367 voluntary returns from Nauru, including 335 Afghans. More returns are planned and there are a further 144 Afghans on Nauru who have accepted the package and are currently awaiting either travel documents or the finalisation of transport arrangements.

(2) Returns to Afghanistan from the processing centre in Nauru have been voluntary under the auspices of the IOM. All returnees are met by IOM staff on arrival in Kabul and are provided transportation to their home region, town or village as appropriate. IOM advice is that all returnees have been safely returned.

(3) Yes – returnees are provided with appropriate clothing. All persons who returned during the Northern Hemisphere winter were provided with heavy-duty shirts and trousers, a winter jacket, a pullover, thermal underwear, heavy-duty socks and leather elastic-sided boots.