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Wednesday, 26 March 2003

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

TRANSPORT SAFETY INVESTIGATION BILL 2002

TRANSPORT SAFETY INVESTIGATION (CONSEQUENTIAL AMENDMENTS) BILL 2002

Second Reading

Debate resumed from 25 March, on motion by Senator Abetz:

That these bills be now read a second time.

Senator HARRIS (Queensland) (9.31 a.m.)—I rise to speak on the Transport Safety Investigation Bill 2002 and to place on the record some of the concerns conveyed to me by the industry. I will be very explicit: the majority of my contact in relation to this legislation has been with the sector of the industry that we would term light aircraft—commercial pilots and those who fly freighters and carry goods both around Australia and internationally. In speaking briefly with representatives of the aviation industry involved with the larger commercial sector, they indicated that they are largely in support of the government’s position, provided the amendments proposed by the government are passed and also those amendments circulated by Senator Lees.

The amendments I propose to the bill take into account what I believe is an anomaly in this piece of legislation that is structured to be effective for all transport—that is, all land based transport, including rail, trucking companies, cars and taxis, and sea transport. It is a very wide-ranging piece of legislation. Because of that, several sections of the legislation that cover all of those broad aspects will have impacts on the aircraft industry in a way that the industry believes is not in its best interests. It is not in the best interests of safety and it will not provide the industry with a secure position to work from.

An aircraft travelling around Australia and internationally has certain safety requirements that are specific to that aircraft. You would not expect the same requirements in relation to the maintenance of your motor vehicle that you drive on the ground as you would for an aircraft flying between 10,000 and 30,000 feet. Therefore, it is very difficult to have this broad-brush legislation that will cover cars, buses, trucks, trains, ships and aircraft structured in such a way that it does not impact individually on any one of those specific areas.

The purpose of my amendment is to amend the wide and intrusive powers of investigation contained in the bill, particularly in relation to private aircraft, when compared with the balanced approach taken in part 2A inserted in 1995 into the Air Navigation Act 1920 in relation to the investigation of accidents. The Senate Standing Committee for the Scrutiny of Bills has already commented on one such aspect—namely, the power to enter special premises without a warrant and without the occupant’s consent in relation to its open-ended application to vehicles. So we have a situation where a person who has had powers delegated to them could stop and enter a vehicle without a warrant and without the person’s consent.

The Transport Safety Investigation (Consequential Amendments) Bill 2002 follows this bill—and I am sure the Acting Deputy President will notify the Senate whether these bills are to be run concurrently or separately; I seek his advice on that issue—and I will speak briefly to both of the bills during my introductory remarks.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Senator Harris, I am advised by the Clerk that the bills will be dealt with separately in the committee stage.

Senator HARRIS—Thank you, Mr Acting Deputy President. I will then confine my remarks on the access to vehicles to the debate on the consequential bill. We have a situation where the statements made during interrogation by a person involved in or associated with an incident cannot be used against them in a court of law but can be used against any other person they happen to comment upon. Let us look at a situation where we have a pilot and a copilot who have returned from an aircraft, locked it down and secured it. They hop into a vehicle to drive home and immediately find them-
selves intercepted without a warrant. They are then taken off for interrogation. They have no right to remain silent; they must answer the questions. The evidence that they give cannot be used against them, but, if the pilot inadvertently makes a comment about the actions of the copilot, that information can be used in court against the copilot. Conversely, if during conversation the copilot makes a statement about an action of the pilot, that evidence, although it cannot be used against the copilot, can be used against the pilot.

Where the government intends to remove the right to remain silent from legislation, the onus is upon the government to ensure that that cannot be misused. It could be misused by a person maliciously making a statement and creating an enormous mischief against somebody within an organisation whom they particularly did not like. Through you, Mr Acting Deputy President, I direct a question to Senator Boswell: how does the government intend to ensure that its proposal for a person to lose their right to remain silent—they will be required to answer questions—cannot be used maliciously against another person? Because, as sure as night follows day, in the aviation industry—and in any transport industry, for that matter—there will be those who wish to adversely use this section that the government is proposing.

One of the amendments I will move in relation to access to aircraft would restrict that access to a situation where there has been an incident in which a person has died or suffered serious injury or an incident involving another aircraft not involved in the private operation. I want to stress very clearly that the amendment would allow an officer to obtain a warrant to enter an aircraft if there was a security problem or in a situation where, possibly through incorrect functioning of navigational equipment, there had been a near miss. This amendment would not stop any investigation of that type of accident. It would, though, provide the owners and operators of those aircraft with the secure knowledge that, if they comply with all of the regulations, nobody can forcibly enter their aircraft when it is locked and tied up at an airport. The industry needs that assurance, so I strongly recommend that government and opposition senators look very seriously at this amendment.

The amendment to clause 24 removes the open-ended references extending the offence to situations where an investigation has not been commenced and to omissions. These references operate to dilute the requirements of recklessness, as defined in division 5.4 of the schedule to the Criminal Code Act. As I said in my opening statements, these amendments have come from the light aircraft industry itself. All pilots who hit the start button and go through their checks are as aware of their responsibilities in relation to safety as each and every one of us are eminently aware of them, due to the amount of time that we spend in those same aircraft. The amendments are not there to take away, in any way, from the power of the authority to investigate genuine accidents, near misses or any situation brought about by possible instrument irregularities.

In closing, I bring to the Senate’s notice section 5 of the Commonwealth of Australia Constitution Act. It states:
This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State...

If we look at the development of that passage, the meanings behind it and why it is worded that way, it is very specific. I quote:

No difficulty is suggested by the words, “and all laws made by the Parliament of the Commonwealth under the Constitution.” The words under the Constitution are words of limitation and qualification, so our Constitution limits the power of this parliament. It limits it to issues that are clearly defined. I quote further:

A law in excess of the authority conferred by the Constitution is no law; it is wholly void and inoperative; it confers no rights, it imposes no duties; it affords no protection. ... To be valid and binding—
that is, the law—they must be within the domain of jurisdiction mapped out and delimited in express terms, or by necessary implication, in the Constitution itself.
What is not so granted to the Parliament of the Commonwealth is denied to it.

I repeat:

What is not so granted to the Parliament of the Commonwealth is denied to it.

I quote further:

What is not so granted is either reserved to the States, as expressed in their respective Constitutions, or remains vested but dormant in the people of the Commonwealth.

This is the issue that we are facing on a regular basis in this chamber. The Commonwealth can only pass a law and have it operative if it is expressly within the defined power of the Constitution. Our Constitution clearly says to the Australian people: ‘We have the right to remain silent. We have the right not to incriminate ourselves.’ Yet we have this preponderance of legislation by the government that would take away the right of a person to remain silent. I come back to what our founding fathers clearly stated when this section of our Constitution was put together:

To be valid and binding they must be within the domain of jurisdiction mapped out and delimited in express terms, or by necessary implication, in the Constitution itself. What is not so granted to the Parliament of the Commonwealth is denied to it.

A law that is made in excess of the power of this parliament is totally void. It is up to the government to decide. If they wish to proceed with this piece of legislation—on the basis that they are removing a common law right and a constitutional right of a citizen of Australia to remain silent—they do so knowing full well that they will find themselves in the High Court of Australia and having a judgment made on whether that power is in excess of the constitutional power of this parliament. The amendments that I will move will remove the ability of the Commonwealth to cause a person to make a statement against their wishes. I commend them to the chamber.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (9.49 a.m.)—I will make a few summing up comments and then respond to Senator Lees and Senator Harris. The Transport Safety Investigation Bill 2002 includes the best practice principles of independent no-blame safety investigation contained in the Air Navigation Act 1920 and the Navigation (Marine Casualty) Regulations 1912 and applies them consistently to aviation, interstate and international marine travel, and interstate rail travel.

Senator O’Brien asked for an update of the negotiations with state and territory rail regulators. I inform him that the ATSB is at the final stage of negotiations with these bodies and that the negotiations have been handled in a very constructive way. I think he was asking, ‘At what stage are they?’ They are at a very late stage. It is worth noting that the ATSB sought to ensure proper consultation on the bills with industry, including the AIPA, by providing, in September 2001, a copy of the draft bills and an explanatory memorandum and inviting AIPA to a half-day workshop on the bill. The bureau granted AIPA an extension of time to make a submission but, despite the ATSB’s follow-up, AIPA did not provide comment on the bill until after the legislation was introduced last year. It is appreciated that AIPA now regards the bill, with the amendments agreed by the government, as an acceptable compromise. Industry support is important in maintaining improved future safety.

Amendments to the TSI Bill, with the consequential amendment bills, will be moved on behalf of the government. The amendments are made in response to matters raised by the Senate Standing Committee for the Scrutiny of Bills and by the Senate Rural and Regional Affairs and Transport Legislation Committee. The amendments also address some more minor matters and provide greater legal certainty on the operation of the bill in relation to an overseas investigation by the ATSB. The purpose of these amendments is to require occupiers of premises to be advised of their rights and obligations under the TSI Bill regarding entry and search of premises where the bill allows for it.

The amendments also seek to restrict the use of special premises powers to accidents and serious incidents, and require the executive directors to exercise those powers only
to the extent that it is reasonable for the purpose of transport safety investigations. They provide a regime to protect the confidentiality of cockpit voice recordings—CVRs—where they are not designated as on-board recordings under the TSI Bill. They include within the scope of the TSI Bill investigations conducted by the ATSB on behalf of a foreign country, or ATSB participation in investigations led by foreign countries, to ensure that evidence that the ATSB investigators obtain during these investigations is protected by the confidentiality provisions of the TSI Bill. They make changes to clause 17 of the bill so that the clause requires the executive director to exercise his or her powers in accordance with international obligations under the international agreements in force from time to time and also with regard to other international instruments listed in the regulations.

Although the government has stated that non-government amendments are not essential for the adequate protection of CVRs, the government is willing to agree to them. The TSI Bill is worthy of bipartisan support and the government will be appreciative of such support following acceptance of the amendments. The government acknowledges the work of the Senate and its committees in reviewing the bill and the work of the ATSB in the interests of future transport safety.

Question agreed to.

Bills read a second time.

In Committee

TRANSPORT SAFETY INVESTIGATION BILL 2002

Bill—by leave—taken as a whole.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (9.56 a.m.)—by leave—I move government amendments (1) to (5):

(1) Clause 13, page 16 (lines 18 and 19), omit "is a suitable person to exercise those powers", substitute "satisfies the criteria prescribed by the regulations".

(2) Clause 17, page 17 (line 21), after "international agreements", insert "(as in force from time to time)".

(3) Clause 17, page 17 (after line 22), at the end of the clause, add:

(2) In exercising powers under this Act, the Executive Director must also have regard to any rules, recommendations, guidelines, codes or other instruments (as in force from time to time) that are promulgated by an international organisation and that are identified by the regulations for the purposes of this section.

(4) Clause 22, page 20 (lines 23 to 28), omit paragraphs (c) and (d), substitute:

(c) the occurrence occurs outside Australia and any of the following apply:

(i) evidence relating to the occurrence is found in Australia;

(ii) the appropriate authority of another country has requested the Executive Director to conduct, or to participate in, an investigation into the occurrence;

(iii) the Executive Director considers that it is necessary to conduct, or to participate in, an investigation into the occurrence and the agreement of the appropriate authority of another country is obtained for the Executive Director to conduct, or to participate in, such an investigation;

(iv) Australia has a right or obligation, under an international agreement, to participate in an investigation into the occurrence.

(5) Clause 30, page 28 (lines 9 to 15), omit the clause, substitute:

Obligations of Executive Director before entering premises

(1) Before entering premises under this Part, the Executive Director must take reasonable steps to:

(a) notify the occupier of the premises of the purpose of the entry; and

(b) produce the Executive Director’s identity card for inspection by the occupier.

The Executive Director is not entitled to exercise any powers under this Part in relation to premises if the Executive Director fails to comply with the requirement under subsection (1).
I table a supplementary explanatory memorandum and correction and a revised supplementary explanatory memorandum relating to the government amendments moved to these bills. The memoranda were circulated in the chamber on 5 December 2002 and 4 February 2003, and the correction on 5 February 2003.

Senator O’BRIEN (Tasmania) (9.56 a.m.)—At this stage, the opposition would like to outline its position on these amendments and the amendments generally. We made comments at the second reading stage about these amendments. Since that time, additional amendments have appeared. We saw Senator Harris’s amendments a few minutes past nine this morning, which does not make it easy for the opposition—it has not yet reached 10 a.m.—to give them the scrutiny that might, perhaps in other circumstances, be warranted. But if I make it clear where we are in the matter, it might help.

The Transport Safety Investigation Bill 2002 has met most opposition from the aviation sector. That is ironic, because of all of the transport sector this bill impacts on aviation the least. By that I mean that the sector had an established no-blame approach to investigations to start with. Whilst some in the general aviation sector have been arguing a conspiracy around these issues—and I think we heard some of that this morning—the opposition has not signed up to the conspiracy theory. The opposition has criticised the ATSB on occasions and is concerned to see that they have adequate resources to perform their functions and that, at the end of the day, we have confidence in the professionalism and independence of their organisation.

The opponents of aspects of this bill have now had a full and proper opportunity to have their say. It was introduced into the House of Representatives on 20 June last year and completed its passage there on 24 September last year. It came into the Senate on 15 October and has been before the Senate and its committees since that time. So we are five months down the track of the Senate’s consideration of this matter and it has actually been before the parliament for nine months. The opposition has participated in the deliberations of the Senate Rural and Regional Affairs and Transport Legislation Committee’s consideration of this bill. We ensured that opportunity for such consideration was provided. The Senate Standing Committee for the Scrutiny of Bills has also suggested some changes to clarify the operation of this bill.

We think at this stage that the views of the Senate Rural and Regional Affairs and Transport Legislation Committee, the Senate Standing Committee on the Scrutiny of Bills, the aviation community and other transport communities have been heard by the government. We were critical of the government earlier in this debate because perhaps that should have been done before we got to this stage. Nevertheless, it has happened now, and the opposition is pleased to support the government’s amendments which have been introduced, including the ones now moved by Senator Boswell on behalf of the government that will facilitate a broader acceptance of this legislation and the opportunities it will provide for the Commonwealth to play a greater role in reducing transport accident fatalities.

Some of the amendments are technical in nature and improve the legal certainty of the bill in relation, for example, to investigations and in some parts to overseas investigations. Because of the nature of these amendments, I will deal with the generality rather than the specifics. Suffice it to say at this stage that the opposition will be supporting the government’s amendments. I indicate that we would have extreme difficulty in supporting the amendments moved by Senator Harris in this debate. We will listen to what he has to say, of course, but at this time we are not convinced that the amendments proposed are warranted.

Senator LEES (South Australia) (10.01 a.m.)—I would also like to speak generally about the government’s amendments. As has been said, this bill has now been in debate for six or seven months. As I read the supplementary explanatory memorandum that Senator Boswell has just tabled and look through the government’s amendments, I think they will work very well if everyone is of a cooperative mind, genuinely seeking the
best outcomes. My concerns are still with the delegation of authority. To be specific, my concerns still relate to the activities of CASA. My concerns are that there may indeed be, as some pilots still feel, some wiggle room—some loopholes that may allow CASA in to undertake activities that will not be in the best interests of air transport safety. All I can say to that is that we will be watching. We will keep an active brief on where this legislation goes, what it means on the ground in terms of actual implementation and what activities are undertaken that this legislation facilitates. Therefore I think that the government amendments are a reasonable compromise. I have had a look through Senator Harris’s amendments and I will speak to those in a moment.

Question agreed to.

Senator HARRIS (Queensland) (10.03 a.m.)—by leave—I move amendments (1) to (13) and (15) to (18) on sheet 2887:

(1) Clause 3, page 3 (after line 17), after the definition of accident site premises, insert:

administrative decision means a decision to which the Administrative Decisions (Judicial Review) Act 1977 applies, and includes a decision to which that Act would apply if the decision was not included in any of the classes of decisions set out in Schedule 1 to that Act.

(2) Clause 3, page 9 (line 1), omit paragraph (b) of the definition of special premises, substitute:

(b) a vehicle involved in an accident that is an investigable matter.

(3) Clause 13, page 15 (line 18), omit “14 or 25”, substitute “14, 25 or 32”.

(4) Clause 13, page 15 (lines 19 to 31), omit subclause (3).

(5) Clause 22, page 21 (after line 11), at the end of the clause, add:

(4) A transport safety matter cannot be investigated under this Act if the matter involves or is related to an aircraft that is employed in private operations as specified in regulation 2(7)(d) of the Civil Aviation Regulations 1988 unless as a result a person dies (or suffers serious injury) or another aircraft not engaged in such private operations is involved.

(6) Clause 24, page 22 (lines 4 to 8), omit paragraph (1)(b), substitute:

(b) the person is reckless as to whether the conduct will adversely affect an investigation that is being conducted at that time; and

(7) Clause 24, page 22 (lines 10 and 11), omit “(whether or not the investigation had commenced at the time of the conduct)”.

(8) Clause 24, page 22 (line 33) to page 23 (line 1), omit subclause (5).

(9) Heading to clause 27, page 26 (line 1) at the end of the heading, add “and not to be considered in certain administrative decisions”.

(10) Clause 27, page 26 (lines 3 and 4), omit subclause (1), substitute:

(1) A report under section 25:

(a) is not admissible in evidence in any civil or criminal proceedings; and

(b) must not be taken into account in any administrative decision that may adversely affect the interests of a person to whom the report directly or indirectly relates.

(11) Clause 27, page 26 (lines 7 and 8), omit subclause (3), substitute:

(3) A draft report under section 26:

(a) is not admissible in evidence in any civil or criminal proceedings; and

(b) must not be taken into account in any administrative decision that may adversely affect the interests of a person to whom the report directly or indirectly relates.

(12) Clause 32, page 29 (line 9) omit “any person”, substitute “the Executive Director”.

(13) Clause 32, page 29 (line 30), after “not”, insert “without reasonable excuse”.

(15) Clause 35, page 31 (lines 21 to 24), omit paragraphs (2)(a) and (b), substitute:

(a) announce that the Executive Director proposes to enter the premises; and

(b) consider any objections by the owner or occupier to the entry; and

(c) give any person at the premises an opportunity to allow entry to the premises.

(16) Clause 42, page 39 (lines 9 and 10), omit “an investigation warrant”, substitute “a warrant”.

Question agreed to.
(17) Clause 47, page 45 (line 20), at the end of subclause (2), add “and must not be taken into account in any administrative decision that may adversely affect the interests of a person to whom the material directly or indirectly relates”.

(18) Page 53 (after line 13), at the end of Division 1, add:

**59A Use of OBR information in certain administrative decisions**

OBR information, and any information or thing obtained as a direct or indirect result of the use of OBR information, must not be taken into consideration in any administrative decision that may adversely affect the interests of a person to whom the information or thing directly or indirectly relates.

I open my comments in relation to the amendments by saying that the amendments would not affect the validity of the financial impact statement included in the explanatory memorandum for the Transport Safety Investigation Bill 2002. So the amendments that I am moving have no financial impact on the Commonwealth whatsoever.

Amendment (1) inserts a definition of ‘administrative decision’, referred to in proposed amendments (27) and (47) and proposed new clause 59A. It amends the key concept of ‘special premises’. When read with the proposed amendments to clause 22 this would correct the present open-ended references to vehicles as far as aircraft are concerned. All it would do is put a definition in that speaks specifically to aircraft in relation to that section.

I now refer to amendment (2). At present, clause 3 on page 9 of the bill merely refers to ‘a vehicle’. Under the definition in the bill, as I said earlier, that refers to a motor vehicle, a truck, a bus, a train, a ship and an aircraft. We are proposing to delete the reference to ‘a vehicle’ and replace it with ‘a vehicle involved in an accident that is an investigable matter’. I believe that adds to the context of the legislation. For the benefit of senators in the chamber, as I go through amendments (1) to (13) and (15) to (18), if there are any amendments that senators would like voted on separately, I will concur with that.

Amendment (3) amends clause 13 on page 15 of the bill. It refers to omitting lines 19 to 31, which say:

(3) The Executive Director must not delegate his or her powers under section 32 to anyone other than:

(a) an SES employee; or
(b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position; or
(c) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (a) or (b) ...

This amendment extends the existing prohibition upon delegation so as to prohibit the executive director from delegating his or her powers under clause 32. Clause 32 contains extraordinary powers that should accordingly be exercised only by the executive director personally. The powers relate to transport incidents. It is our belief that in relation to aircraft those powers should not be delegated and should remain with the executive director. Amendment (4) omits subclause (3) of clause 13.

Amendment (5) refers to clause 22. This amendment would restrict investigations involving private aircraft to cases where a person dies or suffers a serious injury or to where another aircraft not involved in private operations is involved. This is the provision I spoke to earlier. There is a great difference between an accident involving an aircraft and, for example, a transport accident involving a tail-end incident on a highway. Therefore, we believe that clause 22 should be amended to take into consideration the difference between accidents relating to the aircraft industry and those relating to general transport.

Amendment (6) removes the open-ended references extending the offence to situations where an investigation has not been commenced and includes two omissions. These references operate to dilute the requirements of ‘recklessness’ as defined by section 5.4 of the Criminal Code Act.
Amendment (7) omits the words ‘whether or not the investigation had commenced at the time of the conduct’. The proposal refers to administrative decisions reinforcing the notion that reports are to be used for safety purposes only and that, while there may be relevant messages that arise from a report, it should be used in a constructive way, such as for restraining or changing procedures. I will not say anything further now about amendments (8), (9), (10) and (11).

Amendment (12) speaks to clause 32 on page 29 and again relates to restricting the ability of the executive director. This provision empowers the executive director to, amongst other things, require a person to attend before the executive director and answer questions put by any person to that person. These amendments admit the obligation to answer only those questions that are put to the person by the executive director. These amendments also add a ‘without reasonable excuse’ element to the offence created by the provisions, in order to bring it into line with the comparable provision inserted in 1995.

(Extension of time granted) Amendment (12) does not seek to remove the ability of the executive director to carry out such investigations as he deems necessary. What it does do is restrict the ability to delegate that power just to anybody to carry out that function. I have already read out amendment (13).

With the indulgence of the chair and the senators, I would like to speak briefly to amendments (15) to (18) as well. Amendment (15) speaks to clause 35. This is one of the substantive areas where the industry believes there needs to be a difference between issues relating to normal transport conditions and issues specifically relating to aircraft. In this case, it is relating to private aircraft. We are not talking about changing the safety rules in relation to our large commercially owned aircraft. We are just speaking specifically to those that are operated by private commercial operators.

The amendment is not giving a person the right to refuse entry, but requiring that the executive director propose to enter those premises and consider any objections by the owner prior to entering the premises. Importantly, it also allows the person in control of those premises the ability to voluntarily give entry to the executive director. That is very important because a person’s willingness to allow the investigation to go ahead is a clear indication that they fear no investigation and is a very strong proponent of that person being able to prove that they are innocent of any subsequent charges that may result from that investigation. As it stands, this is an open-ended provision extending to using force to effect entry. It is not expressly included in the 1995 amendments to the Air Navigation Act 1920. At the very least, the owner or occupier must be given an opportunity to have any objection by him or her considered.

Amendment (16) refers to clause 42 of the bill. It relates to lines 9 and 10 on page 39 and seeks to omit the words ‘an investigation warrant’ and substitute ‘a warrant’. As a matter of drafting, the adjective ‘investigation’ before the word ‘warrant’ is unnecessary. Other clauses in division 4 of part 5 do not use that adjective, although some of the headings do.

Amendment (17) refers to clause 47 on page 45 and extends the protection provided by subclause (2) to individuals in relation to the consideration of any administrative decision that may adversely affect their interests.

Amendment (18) refers to page 53 after line 13 at the end of division 1. It seeks to add a new section, section 59A, ‘Use of OBR information in certain administrative decisions’. The abbreviation OBR refers to on-board recordings. This amendment extends the protection of persons from the use of OBR information in the consideration of any administrative decision that may adversely affect them. This does not restrict the use of the OBR in any criminal matter or any investigative safety matter; it protects the conversations within the cockpit between a pilot and a copilot or between a pilot, copilot and ground force, that are related to incidental matters. This is attempting to protect the private conversations of pilots, copilots and ground administrators or control tower personnel from being adversely used in the administration, and that is to be commended. I thank the chamber for their indulgence in
allowing me to walk them through the reasons we are putting forward these amendments. I commend the amendments to the chamber.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.27 a.m.)—I listened carefully to Senator Harris as he explained his amendments. The government are not of a mind to accept any of them. I will go through some details that I have from information I have been handed and give some explanations for the government’s position. I want to make the point that Senator Harris has been offered briefings and opportunities to express any concerns on the TSI bills many times by John Anderson’s office and he has not accepted any of them.

I repeat the point that Senator O’Brien made that these are comprehensive amendments and we got them only 10 minutes ago. If you are serious about putting amendments up and you do want a result—and Senator Harris should know this; he has been here long enough—then you do not just dump three pages of amendments on the Senate when the debate starts. That is not the way to have amendments taken seriously. We have tried to get Senator Harris some information as he has been explaining his amendments, but this bill has been in the pipeline for quite a number of months and we have only received the amendments today.

The amendments that have been moved have been considered by the Senate Standing Committee for the Scrutiny of Bills and have not been recommended by the committee. The government opposes the amendments. Everything that Senator Harris has brought up today has been examined by the committee. That committee, made up of all sectors of the Senate, has not seen the need for these amendments. The government has accepted an amendment from Senator Lees. I will address that when she moves that amendment. I do not think her amendment is necessary but, given that it does not do any harm and it will make her happy, we will go along with it.

I will read from some information that has been handed to me as it addresses some of these amendments. Restricting delegation to the executive director would be unworkable as the ATSB carries out thousands of investigations. What happens if the executive director is in Western Australia and the accident is in Toowoomba or something like that? That is just an unworkable amendment. As to entry to special premises, the TSI Bill contains checks and balances for entry to the special premises which have been approved by a Senate legislation committee. It is not about removing rights; it is about the need to access time-critical safety information in the interests of future transport safety. In relation to another amendment, I wish to make it clear that information provided in an interview is restricted information and cannot be disclosed in criminal proceedings. Self-incrimination provisions only reflect the common law position and they are consistent with other Commonwealth legislation. The TSI bills do not relate to road transport, which is a state responsibility. The bills cover rail, aviation and marine modes of transport only.

I will finish on another piece of information. Mr Boyd Munro of Air Safety Australia has suggested, incorrectly, that some form of conspiracy is involved with this legislation, which has been before the parliament since last June. Of course, the government rejects that. If Mr Munro is suggesting a conspiracy theory, he has certainly come to the right place in presenting it to the parliament through Senator Harris. It is a nonsense that the government would involve itself with any conspiracy. We reject that totally.

Senator O’BRIEN (Tasmania) (10.32 a.m.)—The opposition has extreme difficulty supporting these amendments. However, to give Senator Harris the opportunity to have all his amendments understood, I would ask him to address amendment (1) again after the other speakers, so that we get a full understanding of what he means. I am not sure that I grasp the concept that he was putting in his first presentation.

I will go through the other amendments in order. We would not support amendment (2). The restriction which would limit the definition of ‘special premises’ to a vehicle involved in an accident is not acceptable. I will
return to this theme in relation to other amendments. An ‘accident’ is defined in the legislation in specific terms. On many occasions, particularly in aviation—the area which was the subject of comments by Senator Harris—there are incidents where things such as near misses happen. A near miss does not involve any death, injury or damage to property. Nevertheless, the causes of that near miss might well be such that it would be necessary to inspect that particular aircraft. What Senator Harris is saying is that, if a plane drops from the sky and passes 10 metres in front of another aircraft and a collision is narrowly avoided, there would not be any power to consider that aircraft as ‘special premises’ for the purposes of the legislation. We cannot accept that. That is just not a tenable proposition and we will not be supporting that amendment.

We call amendment (3) and a number of others the ‘Superman amendments’, because you are asking the executive director to do what Senator Boswell suggests—that is, be in all parts of the country at once and deal with a whole range of transport industry problems. The principle of delegation is accepted in many pieces of legislation in this country. The protections which exist against improper use of the delegated power remain, and we support that. We support the principle of the legislation and we certainly would not be supporting an amendment which made it unworkable.

As to amendment (4), clause 13 subclause (3) is a limitation on the delegation power of the executive director. Senator Harris proposes to admit that limitation. That is somewhat in conflict with his concerns in the previous amendment. On the one hand, he wants to limit it, but, on the other hand, he wants to take away a limitation on the delegation power of the executive director. We do not follow that logic and cannot support the amendment. Amendment (5) would unduly limit investigations. I have dealt with the issue of the near miss—this could be where the brakes of a train running through a station fail. There is no accident or damage to property, but it is an incident. The question is: if this amendment were passed, could ATSB carry out an investigation? There would be extreme doubt. We would not support this amendment.

Amendments (6) and (7) would render such limitation on the circumstances to be investigated as to impose too great a restriction. Suffice it to say that we are not satisfied that the regime proposed in the legislation is unduly onerous. We outlined at the commencement our support for the principles of a without-blame investigation. I think these amendments are almost imagining that that is not the regime that we are seeking to create, and we would not support those amendments either. Neither would we support amendments (8) and (9), based on those principles and on others that I will come to later.

Amendments (10) and (11) are very difficult to understand. I cannot see how the preparation of a report or a draft report, which are not able to be used in any civil or criminal proceedings, could form the basis for an administrative decision which ultimately faced a test under the administrative review principles before the appropriate administrative tribunal, because the authority that was seeking to rely on those would ultimately have to try and rely on them in civil proceedings. My advice is that they would not be able to do so in those proceedings. I do not think the amendments proposed are necessary. They do not add to the restriction, in effect, of the use of those reports, because the reports could not be used to support any such administrative action when tested before the appropriate tribunal. Amendment (12) is a ‘Superman amendment’, and I will not deal with that again.

In the proposal that a person would not fail to attend for an interview, Senator Harris seeks to add the words ‘without reasonable excuse’. I would like to hear the government’s response about that. I would have thought that ‘reasonable excuse’ is terribly vague. I would have expected, if someone were hospitalised or ill, that they would not be prosecuted for not attending, that that would be a reasonable excuse. Whether this is the appropriate means of attending to that problem I am not sure, and I will wait to hear Senator Boswell’s response on that. At this stage, we are not convinced that we should
support the amendment, but I would like further convincing from the government.

Amendment (15) is effectively trying to change the regime. Under the current regime, the executive director is able to go to the premises and say, ‘I’m entitled to enter the premises.’ The law would allow the executive director to do so. Senator Harris suggests we substitute ‘announce that the executive director proposes to enter the premises’, and then the new provision is that he has to consider any objections by the owner or occupier to the entry. How does he consider them? How long does he have to take? Is this going to be the subject of a legal test to whether the executive director did not take enough time to consider the objections before exercising the authority that he has under the legislation? It seems to me that the provision sought to be included is one which would create significant opportunity for litigation about the outcome of any such entry to premises and any material discovered. I think it would be undesirable in the context.

We are talking about no-blame investigations. We want to know whether there are factors which caused an accident or incident that, as a matter of public policy, ought to be drawn to public attention without blame. It may relate to modification of vehicles; it may relate to other matters. We do not think that this provision should be watered down in the way suggested. I am not sure what sorts of objections the owner or occupier could validly have in those circumstances. There seems to be the potential for delay and it does not seem to accept the very principle that these inspections are to do with public safety, not blame for a particular accident or incident.

I think amendment (16) is already the subject of a definition in clause 3. We think that is sufficient and do not believe this amendment is required. In relation to amendment (17), again we have addressed the principle of no-blame legislation and how other protections would mitigate against using reports in terms of administrative decisions. I am assuming that you have similar concerns to Senator Lees about CASA and their role in this regard—that is what I am taking from it—and that is where I see CASA would have difficulty using reports such as these. In relation to amendment (18) and the protections sought to be included in the legislation, the opposition relies on the controls to the use of OBRs to be administered by the coroner in the existing amendment. Subject to those qualifications, the opposition will not be supporting these amendments.

Senator LEES (South Australia) (10.44 a.m.)—In beginning my comments I would like to go back to something Senator Boswell said regarding Mr Munro and the concerns that he represents. Unfortunately, there are many pilots out there who are very suspicious—I wish it were otherwise—about where this legislation could lead. It would be nice, and it would indeed be what all of us would prefer, if the system relating to air safety operating in the real world—enforcing the rules and regulations and making sure that all of us travel as safely as possible if we rely on air transport—was based on goodwill and cooperation and the pilots really had some trust in the authorities that they were genuinely working in the best interests of air safety. When I speak to pilots, particularly back in my home state, it seems that authorities are not trusted and that there is a punitive regime, particularly if a pilot stands up and tries to offer information other than that which CASA wants to hear with regard to serious incidents and, indeed, tragic events where a number of people are killed.

This is not about a conspiracy, Senator Boswell; it is about very real concerns that pilots have, particularly those who fly privately and have their own aircraft—in some cases probably owned by the National Party’s constituents who are out there on some of the very large properties in the north of South Australia—and they are concerns shared by some small tourist operators who operate light planes. It is from personal experiences of pilots that these concerns have arisen.

Unfortunately, I am going to have to go back to my earlier comments about balance. Had we had the opportunity to look through these amendments in committee when the bill was dealt with the last time, Mr Munro may have been able to get ready some specific amendments along these lines. I know
we discussed the issues—and I thank Senator Boswell for accepting my amendment because that is certainly very important for those larger aircraft where voice recorders are involved—but if we go down the route of some of Senator Harris’s amendments we will render this legislation inoperable. There is a fine line between protecting the basic rights of pilots and making sure that we are really operating in the interests of air safety and that it does not become a punitive regime and a regime not able to operate at all because hands are tied to the point where, as for example in some of these amendments, there is going to be only one person who is able to do the work. But I would like to ask Senator Boswell, particularly relating to amendments (1) and (5), whether the government can give us some more reasons why those amendments may not be acceptable.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.47 a.m.)—While I get that information, I want to clear up one point. I never suggested it was a conspiracy. You quote me as saying that. What I said was that Mr Boyd Munro of Air Safety has incorrectly suggested that some form of conspiracy is involved with this legislation. I never suggested it was a conspiracy. I think it is a very serious piece of legislation and it needs full examination, and that is what we are giving it at the moment.

While we are still getting this information, I will respond to Senator O’Brien. I am informed that the wording, as it is now, meets the Criminal Code defence and the Criminal Code defence would apply. The Attorney-General has given us that advice. The alternative phrasing is too vague. It is better to use a defined set of circumstances. That is the information I have in response to your inquiry.

Senator O’BRIEN (Tasmania) (10.48 a.m.)—Can Senator Boswell assure the Senate that reasonable excuse would be a defence without it being in the legislation?

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.49 a.m.)—The answer is yes.

Senator ALLISON (Victoria) (10.49 a.m.)—Repeating comments that have been made about the timeliness or otherwise of these amendments, it has been extremely difficult for us to look at them and make a judgment about whether they should have our support or not when we have them half an hour before we come into the chamber. We have done our best, but again the Democrats are concerned about making such decisions as this on the run. In general terms, we would like to hear more from the government about the amendments which go to the question of administrative decisions—amendments (1), (9), (10) and (11). We are inclined to support those amendments, if not most of the rest. I note that the ALP intends not to support those, so this may be academic, but it seems to us this may improve protection and not cause difficulties with the operation of the bill. We would not support amendments that prevent delegation by the executive director. Obviously that would be very difficult and impractical. We also would not support amendment (5), which would prevent private aircraft from being investigated. It should be noted that private planes carry passengers and can be a public safety threat just as much as any other vehicle can.

Senator O’Brien—Much more than.

Senator ALLISON—More so. Thank you, Senator O’Brien. We think that amendments (6) and (7) are not necessary. We are unsure about amendment (8). That is a legal matter that I am not in a position to make a judgment about. Perhaps the minister can speak a little more about that. As I said, amendments (9), (10) and (11) we might consider—they seem to us at first glance to be reasonable; but there is not a lot more that we feel we can support. Again, amendment (17) is another of those administrative decisions which might fall into the category of being supportable. It is very difficult for us to make judgments and, as I have said, whether we support them or not may not matter. But, again, I would ask that these issues be raised during hearings into legislation. That is what we have them for. That is what the committee system is designed to
deal with, and it would have been much easier if we had been able to test some of these suggestions at that time.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.52 a.m.)—That raises the point, Senator Allison, that the committee should have had the opportunity to examine the amendments that Senator Harris wanted to put up. It also raises the point that Senator Harris was invited to Mr Anderson’s office on a number of occasions to get a briefing or offer his suggestions to the minister’s office. Senator Allison, I will get you the information you require. Someone is going to pass it to me in a minute.

But let me just go back to Senator Lees. Senator Lees, I am advised that it is not necessary, as CASA will need to conduct parallel investigations if they intend to take administrative action. In response to Senator Lees and Senator Allison on amendments (9), (10) and (11), the amendments are about preventing administrative action being taken on the basis of information being acquired from the ATSB.

Senator HARRIS (Queensland) (10.54 a.m.)—I will respond to senators’ comments on the amendments and will in all probability do them in reverse. Senator Allison has raised the issue of amendments (9), (10) and (11). We are actually finding as our legislation becomes more complex—and everybody in this chamber, I am sure, will agree that it is—that there also comes a wide range of people’s interpretations as to how they will administer it. As these complexities bring on variations in administration, in some cases it is important to explicitly define what cannot be determined to be a person’s interpretation in administering a piece of legislation. That is what amendments (9), (10) and (11) clearly set out to do.

Senator O’Brien did request from Senator Boswell—and I do too—an assurance that evidence that is provided in a report or evidence that is used in compiling a report cannot be taken into an administrative decision. Senator Lees raised the issue very clearly that the pilots out there have great concern about that because they are finding that this is actually happening now. That is the reason for those amendments. I thank Senator O’Brien for his comments relating to ‘without reasonable excuse’. I note that Senator Boswell has clearly indicated to the chamber that a person would be excluded from and not subjected to any punitive action if their inability to make themselves available for an investigation was based on a reasonable excuse.

If we look at the earlier amendments—amendments (2) and (5)—we see that amendment (5) talks about whether ‘another aircraft not engaged in such private operations is involved’. The amendment clearly talks about whether there is another aircraft involved in a near miss. Senator O’Brien asked whether, if an aircraft happened to rapidly descend from a high altitude to a lower altitude, they could look at that aircraft. Yes, they could. I have personally been on a small commercial aircraft along with about 13 other people and actually seen a crop-duster take off and vertically climb almost between the front wing and the tail, and that person had not even indicated on the radio frequency for that aerodrome that they were taking off. This amendment clearly is not intended to cover that. The amendment is to specifically put a set of situations relating to an aircraft in the bill, speaking broadly across all transport issues.

I would also appreciate the government’s assurance that any information involved in the compiling of that report will not be taken into account in any administrative decision by CASA, because this is where the concern of these people relates. Finally, all senators have voiced disappointment about the urgency of my amendments being circulated. I would say to the committee that this bill was scheduled for Thursday but was brought on at 6.35 p.m. last night by the government. So a change in the legislative program has condensed the amount of time available in which I could circulate the amendments for the benefit of senators. I again indicate that, if senators would like any of the amendments to be taken singly, I will agree to that. I commend my amendments to the chamber.
Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.01 a.m.)—I think I gave an assurance to Senator Lees and to Senator Allison that the amendments are about preventing administrative action being taken on the basis of information being acquired from the ATSB. I think that is the assurance you need. In response to the concerns of the committee, I can assure the committee that the concerns that pilots have about the Civil Aviation Safety Authority have been heard. The Deputy Prime Minister announced a package of reforms late last year, and I inform the chamber that I will be introducing them in the very near future.

Senator Harris’s proposed amendment (5) would restrict applications for investigation further than is currently the case under the Air Navigation Act. The Air Navigation Act does not differentiate between commercial and private operators. I remind Senator Harris that this legislation has been on track for about a year now. It was scheduled for last week. He has procrastinated, thinking it was to be on Thursday, but it has been around for a long time.

Question negatived.

Senator BOSWELL (Queensland) (11.03 a.m.)—In my consultations with the aviation industry in particular, the industry indicated that they believe the government’s amendment to definitely be an improvement, particularly as it relates to commercial airlines. I put on record One Nation’s support for the amendment.

Question agreed to.

Senator HARRIS (Queensland) (11.04 a.m.)—In light of the indications of the chamber, I withdraw One Nation amendment (19), opposing clause 64.

Bill, as amended, agreed to.

TRANSPORT SAFETY INVESTIGATION (CONSEQUENTIAL AMENDMENTS) BILL 2002

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.06 a.m.)—I move government amendment (6):

(6) Clause 33, page 31 (lines 3 to 7), omit the clause, substitute:

**33 Power to enter special premises without consent or warrant**

(1) The Executive Director may enter special premises without the occupier’s consent and without obtaining a warrant if:

(a) the Executive Director believes on reasonable grounds that it is necessary to do so; and

(b) the investigation is an investigation into an immediately reportable matter.

(2) The Executive Director may enter the special premises with such assistance, and by such force, as is necessary and reasonable.

(3) Before entering special premises under subsection (1), the Executive Director must take reasonable steps to give to the occupier of the premises a written notice setting out the occupier’s rights and obligations under this Division in relation to the powers that may be exercised under section 36 upon entry.

(4) The Executive Director is not entitled to exercise any of those powers in relation to special premises the Executive Director has entered under subsection (1) if the Executive Director fails to comply with the requirement under subsection (3).

Senator HARRIS (Queensland) (11.05 a.m.)—In my consultations with the aviation industry in particular, the industry indicated that they believe the government’s amendment to definitely be an improvement, particularly as it relates to commercial airlines. I put on record One Nation’s support for the amendment.

Question agreed to.

Senator HARRIS (Queensland) (11.05 a.m.)—In light of the indications of the chamber, I withdraw One Nation amendment (19), opposing clause 64.

Bill, as amended, agreed to.
PART IIIB—PROTECTION OF CVR (COCKPIT VOICE RECORDING) INFORMATION

32AN Definitions

In this Part:

Australian court means a federal court or a court of a State or Territory.

civil proceedings means any proceedings before an Australian court, other than criminal proceedings.

Commonwealth entity means:

(a) the Commonwealth; or
(b) an authority of the Commonwealth; or
(c) a corporation in which the Commonwealth, or an authority of the Commonwealth, has a controlling interest.

Commonwealth place means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

constitutional corporation means:

(a) a corporation to which paragraph 51(xx) of the Constitution applies; or
(b) a body corporate that is incorporated in a Territory.

court includes any tribunal, authority, person or body that has power to require the production of documents or answering of questions, but does not include a Royal Commission, the Parliament or either House of the Parliament.

crew member, in relation to CVR information, means any person who had operational duties on board the aircraft at any time during the recording period of the CVR.

criminal proceedings means criminal proceedings before an Australian court.

CVR or cockpit voice recording has the meaning given by section 32AO.

CVR information means:

(a) a CVR or any part of a CVR; or
(b) a copy or transcript of the whole or any part of a CVR; or
(c) any information obtained from a CVR or any part of a CVR.

damages proceedings means civil proceedings for damages in respect of personal injury, death or damage to property.

disclose:

(a) in relation to information, includes divulge or communicate the information in any way; and
(b) in relation to information contained in a document or other article, also includes produce the document or other article, or make it available, for inspection.

operational duties means duties or functions in connection with the operation or safety of the aircraft.

Royal Commission means a Commission that has been commissioned by the Governor-General to conduct an inquiry, and includes any member of such a Commission.

32AO Definition of CVR or cockpit voice recording

(1) A recording is a CVR (or cockpit voice recording) for the purposes of this Part if:

(a) the recording consists of (or consists mainly of) sounds or images, or sounds and images, of persons on the flight deck of an aircraft; and
(b) the recording was made in order to comply with a law of the Commonwealth; and
(c) either of the following applies:

(i) any part of the recording was made while the aircraft was on a constitutional journey, or was made incidentally to such a journey;
(ii) at the time when the recording was made, the aircraft was owned or operated by a constitutional corporation or Commonwealth entity; and

(d) the recording is not an on-board recording for the purposes of the Transport Safety Investigation Act 2002.

(2) In this section:

constitutional journey means:

(a) a journey in the course of trade or commerce with other countries or among the States; or
(b) a journey within a Territory, or to or from a Territory; or
(c) a journey within a Commonwealth place, or to or from a Common-
wealth place.

32AP Copying or disclosing CVR infor-
mation

(1) A person is guilty of an offence if:
(a) the person makes a copy of informa-
tion; and
(b) the information is CVR information.
Penalty: Imprisonment for 2 years.

(2) A person is guilty of an offence if:
(a) the person discloses information to
any person or to a court; and
(b) the information is CVR information.
Penalty: Imprisonment for 2 years.

(3) Subsection (1) or (2) does not apply to:
(a) copying or disclosure for the pur-
poses of an investigation under the
Transport Safety Investigation Act
2002; or
(b) copying or disclosure for the pur-
poses of the investigation of any of-
fence against a law of the Com-
monwealth, a State or a Territory; or
(c) disclosure of CVR information to a
court in criminal proceedings
against a person who is not a crew
member; or
(d) disclosure of CVR information to a
court in criminal proceedings
against a person who is a crew
member for an offence against a law
of the Commonwealth, a State or a Territory punishable by a maximum
penalty of imprisonment for life or
more than 2 years; or
(e) disclosure to a court in damages
proceedings where the court makes a
public interest order under subsec-
tion (4) in relation to the CVR in-
formation.

Note: A defendant bears an evidential
burden in relation to a matter in
subsection (3). See subsection 13.3(3) of the Criminal Code.

(4) If the court is satisfied that, in the cir-
cumstances of the case, the public in-
terest in the proper determination of a
material question of fact outweighs:
(a) the public interest in protecting the
privacy of members of crews of air-
craft; and
(b) any adverse domestic and interna-
tional impact that the disclosure of
the information might have on any
future investigation under the
Transport Safety Investigation Act
2002;
then the court may order such disclo-
sure.

(5) The court may direct that CVR infor-
mation, or any information obtained
from the CVR information, must not:
(a) be published or communicated to
any person; or
(b) be published or communicated ex-
cept in such manner, and to such
persons, as the court specifies.

(6) If a person is prohibited by this section
from disclosing CVR information, then:
(a) the person cannot be required by a
court to disclose the information; and
(b) any information disclosed by the
person in contravention of this sec-
tion is not admissible in any civil or
criminal proceedings (other than
proceedings against the person un-
der this section).

32AQ CVR information no ground for
disciplinary action
A person is not entitled to take any
disciplinary action against a crew
member on the basis of CVR informa-
tion.

32AR Admissibility of CVR information
in criminal proceedings against crew
members
CVR information, and any information
or thing obtained as a direct or indirect
result of the use of CVR information, is
not admissible in evidence in criminal
proceedings against a crew member,
other than:
(a) criminal proceedings for an offence
against a law of the Commonwealth,
a State or a Territory punishable by
a maximum penalty of imprison-
ment for life or more than 2 years; or
(b) criminal proceedings for an offence
against this Part.
Admissibility of CVR information in civil proceedings

(1) CVR information is not admissible in evidence in civil proceedings unless the court makes a public interest order under subsection (3) in relation to the CVR information.

(2) A party to damages proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that CVR information be admissible in evidence in the proceedings.

(3) If such an application is made, the court must examine the CVR information and if the court is satisfied that:

(a) a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and

(b) the CVR information or part of the CVR information, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and

(c) in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs:

(i) the public interest in protecting the privacy of members of crews of aircraft; and

(ii) any adverse domestic and international impact that the disclosure of the information might have on any future investigation under the Transport Safety Investigation Act 2002;

then the court may order that the CVR information, or that part of the CVR information, be admissible in evidence in the proceedings.

Examination by a court of CVR information under subsection 32AS(3)

(1) This section applies if a court examines CVR information under subsection 32AS(3).

(2) The only persons who may be present at the examination are:

(a) the person or persons constituting the court, other than the members of the jury (if any); and

(b) the legal representatives of the parties to the proceedings; and

(c) such other persons (if any) as the court directs.

(3) The court may direct that the CVR information, or any information obtained from the CVR information, must not:

(a) be published or communicated to any person; or

(b) be published or communicated except in such manner, and to such persons, as the court specifies.

Where a court makes an order under subsection 32AS(3)

(1) This section applies if CVR information is admitted as evidence under subsection 32AS(3).

(2) In relation to proceedings against a crew member, the CVR information is not evidence for the purpose of the determination of the liability in the proceedings of the crew member.

(3) In relation to any proceedings, the court may direct that the CVR information or any information obtained from the CVR information, must not:

(a) be published or communicated to any person; or

(b) be published or communicated except in such manner, and to such persons, as the court specifies.

Schedule 1, page 4 (after line 3), after item 6, insert:

6A Schedule 3

Insert in the appropriate alphabetical position:

Civil Aviation Act 1988, subsections 32AP(1) and (2)

Senator LEES (South Australia) (11.06 a.m.)—by leave—I move my amendments:

(1) Government amendment (2), omit paragraph 32AP(3)(d), substitute:

(d) disclosure of CVR information to a court in criminal proceedings against a person who is a crew member for an offence against a law of the Commonwealth, a State or a Territory punishable by a maximum penalty of imprisonment for life or more than 2 years, where:
(i) the offence does not arise as a result of an act done or omitted to be done in good faith in the performance of the person’s duties as a crew member; and

(ii) the court makes a public interest order under subsection (4) in relation to the CVR information; or

(2) Government amendment (2), omit section 32AR, substitute:

32AR Admissibility of CVR information in criminal proceedings against crew members

CVR information, and any information or thing obtained as a direct or indirect result of the use of CVR information, is not admissible in evidence in criminal proceedings against a crew member, except where:

(a) the CVR information has been disclosed in the proceedings because of the operation of paragraph 32AP(3)(d); or

(b) the criminal proceedings are for an offence against this Part.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.06 a.m.)—In the interests of maintaining broad support for the passage of the TSI Bill, the government supports Senator Lees’ proposed amendments to the CVR protection to be inserted into the Civil Aviation Act. The government does not see the proposed amendments as being essential for the protection of pilots. However, the government recognises that the amendments will help to ensure the continuing constructive working relationship it has with stakeholders in the transport sector. Therefore, we accept these amendments.

Senator O’BRIEN (Tasmania) (11.07 a.m.)—The opposition will not oppose amendments (1) and (2) moved by Senator Lees. The issues of disclosure and admissibility of cockpit voice recorder information are very important to professional pilots. Mr Ferguson in the other chamber stressed Labor’s commitment to rigorous protections for crew members from inappropriate use of these recordings. The case of the New Zealand Dash 8, where an inappropriate use of such recordings led to the disconnection of the device, is a case which should not be repeated here. It is not in the interests of safety that that occur.

The opposition was not persuaded by evidence to the committee that officers of the ATSB may listen to conversations of general aviation pilots, such as Mr Dick Smith and his wife. I do not think that is their role, they do not see it that way and that is not the way they perform. I think that is an exaggeration of the impact of this legislation. This is, and has been, a fairly emotional issue. I hope that the emotion has subsided or will subside. We will not oppose the proposed amendments. The general thrust of the Transport Safety Investigation (Consequential Amendments) Bill 2002, as it has now been amended by the government, is supported by the opposition.

Senator LEES (South Australia) (11.08 a.m.)—I thank Senator O’Brien and Senator Boswell for their support. These amendments are important. I understand the government is still not convinced of that. I will pick up on Senator Boswell’s final comment about cooperation and goodwill in the industry and the general concern of the government, which I share, that we really do need a system that people have some faith in. Hopefully, we will see over time that the amendments to this bill have helped to ensure not just good aviation safety but also greater trust from those who want to work with government officials and bureaucrats to ensure that safety.

Senator ALLISON (Victoria) (11.09 a.m.)—I indicate Democrat support for these amendments too. We think they go beyond keeping Senator Lees happy, as Senator Boswell said. They are substantial and worth while.

Senator HARRIS (Queensland) (11.09 a.m.)—Here we have the perplexing issue of two different standards. My words earlier in relation to the amendments moved by One Nation clearly indicated that the purpose of those amendments was to ensure that private conversations did not become part of the process. We have just heard Senator O’Brien flippantly make a reference to comments made between Dick Smith and his wife in the cockpit. Let’s get real. Let’s talk about
the realities of operating an aircraft. There are some flippant remarks made between pilots and ground staff and between people in the cockpits of private aircraft. As a result of the decision of this chamber, they are not excluded. But in a commercial aircraft they are.

I support Senator Lees’s amendments because they go to exactly the issue that One Nation raised and that both the opposition and the government voted down. Senator Lees’s amendment (1) says, under part (d):

(i) the offence does not arise as a result of an act done or omitted to be done in good faith in the performance of the person’s duties as a crew member; and

(ii) the court makes a public interest order under subsection (4) in relation to the CVR information;

That says it all. That is exactly the protection that One Nation asked for for the private commercial pilots in this country, and you refused it.

Senator O’BRIEN (Tasmania) (11.12 a.m.)—I am perplexed by that. The fact of the matter is that cockpit voice recorders are not devices which are normally in private aircraft. Senator Harris betrayed his confusion by talking about ‘private commercial pilots’. He has combined two sets into one. These are very different issues and very different amendments, and that is why the opposition has taken a very different stance on them. Senator Harris ought to reflect on what this legislation really means. We have supported amendments on their merits. The references to the evidence given about cockpit voice recorders and conversations between Mr Smith and his wife were designed to demonstrate what a nonsense some of those submissions have been. I was not being flippant at all; I was making a serious contribution to the debate, Senator Harris.

Senator ALLISON (Victoria) (11.13 a.m.)—The point needs to be made that there is no distinction between private and commercial pilots. These provisions apply to both.

Senator BOSWELL (Queensland)—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.13 a.m.)—Senator O’Brien is perfectly right. I give Senator Harris an assurance that the protection under the TSI bill is extended to private operators where they are required to carry a cockpit voice recorder. So Senator O’Brien is absolutely right.

Senator HARRIS (Queensland) (11.13 a.m.)—Senator Boswell has clearly indicated that private conversations between pilots in an aircraft and between pilots and ground staff that are transmitted will not be covered. Senator O’Brien has indicated that there is confusion when I say ‘private commercial’. There is no confusion in what I am putting before the chamber. There are private individuals who have commercial licences, and there are corporate entities who hold commercial licences. I am clearly speaking about the individual, private person who holds a commercial licence. Again, I believe there is a situation where a private conversation between a private person who has a commercial licence and their ground staff would not be excluded. I believe it should be.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.15 a.m.)—I gave that assurance in my previous statement, but maybe I can do it a bit better. Yes, it will be protected as restricted information. It is important to note that conversations between pilots and ground staff or air traffic controllers are not on-board recordings.

Question agreed to.  
Original question, as amended, agreed to.  
Bill, as amended, agreed to.


Third Reading

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.17 a.m.)—I move:

That these bills be now read a third time.
Question agreed to.
Bills read a third time.

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

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] acquainting the Senate that the House has agreed to amendment No. (2) made by the Senate and disagreed to amendments (1), (3), (4), (5) and (6) made by the Senate and requesting the reconsideration of the bill in respect of the amendments disagreed to in the House.

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

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.19 a.m.)—I move:

That the committee does not insist on Senate amendments (1), (3), (4), (5) and (6).

Senator SHERRY (Tasmania) (11.19 a.m.)—On behalf of the Australian Labor Party opposition, I rise to speak to the message from the House of Representatives. The Labor Party will not agree with the message from the House of Representatives and will be voting to oppose it. The message we are dealing with relates to the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002. That is the description it has given the bill. We have seen a variety of other titles used for industrial relations legislation. We have had the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, the Workplace Relations Legislation Amendment (Fair Dismissal) Bill 2002 and the Workplace Relations Amendment (Fair Termination) Bill 2002—they are titles of other bills which come to mind. I want to say very firmly and clearly to the Senate that this bill is not about compulsory union fees; the bill itself speaks of ‘bargaining service fees’.

The position taken by the Labor opposition to this piece of legislation in the Senate was a positive one. We took that approach in conjunction with my Senate colleague Australian Democrat Senator Murray and successfully moved six amendments to the legislation. Without going into all the detail, the core of the amendments was to outline a process by which permissible bargaining fees would be allowed. The substantial detail of that is contained in the first amendment, which was carried by the Senate. It outlines a process whereby an organisation may charge a permissible bargaining fee if it is in connection with an agreement made under section 170LJ. The agreement’s beneficiaries include those who have not made a contribution to the costs of reaching the agreement of bargaining fees and whether or not they have legal force. However, the Liberal government has presented a piece of legislation that effectively outlaws bargaining fees. The Labor Party takes the view that, in presenting the legislation to outlaw bargaining fees, the government was intervening unnecessarily in matters that are determined by the relevant parties to industrial provisions. It is up to the individuals involved—both employees and employers—to determine what are appropriate bargaining fees at an enterprise level. The same principle holds true in the issues relating to Australian workplace agreements. The Labor Party does not believe that, where the parties have agreed, government should be interfering in the agreements that are reached.

The government has entitled this bill the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2]. That is the description it has given the bill. We have seen a variety of other titles used for industrial relations legislation. We have had the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, the Workplace Relations Legislation Amendment (Fair Dismissal) Bill 2002 and the Workplace Relations Amendment (Fair Termination) Bill 2002—they are titles of other bills which come to mind. I want to say very firmly and clearly to the Senate that this bill is not about compulsory union fees; the bill itself speaks of ‘bargaining service fees’.
by means of paying a union membership fee. The permissible bargaining fee has to be explained in clear language, and in writing, to all employees in advance of the vote on the agreement, and I emphasise that a vote will take place on the agreement.

In summary, the amendment provides that the details of the permissible bargaining fee and the services are set out in the agreement; all employees affected by the agreement are advised; a valid majority of persons employed at the time whose employment would be subject to the agreement must have genuinely agreed to the provision; the agreement provides for the method and timing of the fee to be paid; the independent Industrial Relations Commission is to be satisfied that the fee is fair and reasonable; and the agreement provides that new employees pay the fee only for a pro rata period of the agreement.

That is the substance of the first amendment and the six amendments that were successfully moved by Senator Murray on behalf of the Australian Democrats and supported by the Australian Labor Party. Amendment (2) provides for a tough provision if a false or misleading representation is made. There is some inappropriate irony in the fact that the government has decided to pick up the tougher enforcement provisions and accept them when they go to prohibiting bargaining fees, but it is not supporting the other five amendments which outline the process through which bargaining fees may be charged.

The Labor Party maintains its position. It thinks it has been positive and responsible in amending the bill in the way that has been advanced by Senator Murray. I was informed this morning that Senator Murray, on behalf of the Australian Democrats, is not going to insist on the amendments that were carried and, therefore, will be voting to accept the message from the House of Representatives. I ask, through you, Chair: is that correct, Senator Murray?

Senator Murray—To clarify, as a courtesy I advise the Labor Party that that will be so.

Senator SHERRY—Thank you. I thank the Temporary Chairman for his indulgence. I was advised correctly. I wanted to confirm that before I launched into a critique—I did not want to be unfair. It is a matter of grave disappointment to the Australian Labor Party that the Australian Democrats are going to back down and support the government's message and effectively support the bill that the government has presented to the other place and to the Senate. As I said earlier, the Australian Labor Party believes the amendments that were moved by Senator Murray—I emphasise that they were Senator Murray's amendments—were appropriate and well balanced. They made the current position, which is legally unclear, very clear. We had certainty as a result of the amendments that Senator Murray moved and which the Australian Labor Party supported. We are disappointed with the approach of the Australian Democrats.

As I indicated in my opening remarks, the Australian Labor Party, as true defenders of the protections and rights of workers in this country, will not be changing their position. We believe that it is appropriate and may be permissible for bargaining fees to be charged. There should be a clear process for that to occur, and it is wrong in principle to be interfering in agreements that are reached between employees—workers—and employers. Where they agree and where these arrangements are subject to a ballot in a democratic process, it is inappropriate for government to be interfering in this way. For the very clear reasons of principle that I have outlined to the Senate chamber this morning, the Labor Party will not be supporting the message. They will not be backing down and they will not change their position on this issue.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.30 a.m.)—I would like to make a couple of points in response to Senator Sherry and put the government's position on this message and the motion that I have moved. The government did consider the amendments made by the Senate and, in a spirit of trying to seek a compromise and a resolution to a measure that we believe is important, have indeed agreed to accept amendment (2) which was moved by Senator
Andrew Murray when the bill was last in this place. We did look at the other amendments but believe in general that they cut across the policy objective of the legislation.

On a political point, Senator Sherry claims that he and the Labor Party are the true defenders of workers. I think it would be more accurate and more truthful to say that they are the defenders—and indeed the true defenders—of unionised workers. We seek to ensure that union members and their rights are defended. We seek to defend those rights against union bosses who may not always think about their members—they may think about their own interests ahead of others'. Many union bosses do not, but some do. We also seek to defend the rights of non-unionised workers who have made a decision not to join a union for whatever reason is in their conscience at that time. We also seek to fight for the rights of people who would like to be workers, who would like to have a job and, if they get a job, who would then have that fantastic democratic right of deciding whether they want to join a union. My party and our government seek to defend the rights of all of those people.

In relation to Senator Sherry’s eloquent term ‘a defender of rights’, it is inappropriate to seek to defend the rights of one person in or out of the workplace ahead of those of others. We think that unionised workers have rights, non-unionised workers have rights and, very importantly, people who seek to enter the workplace have rights as well. The government—and I am sure we share this with all people in this parliament—would like to see as many people as possible who seek to enter the workplace have the opportunity to do that and exercise the choices that are made available. We have, as I have said, sought to compromise to get this legislation through. We agree with that very successful Labor leader who said:

You can’t put a tax on other members of the work force and the state can’t require the collection of union fees from non-unionists.

That was a comment referred to by Laurie Oakes this morning in a column about Bob Carr’s success as a Labor leader. It was said by Mr Carr in a report in the Sydney Morning Herald on 7 October 1999. We believe in that. We believe that people should have the choice to join a union and that unions should have a well protected, well understood and strongly defended right to organise in the workplace. We believe that there is a need for unions to operate within a clear legal framework, to organise, to get members to join for good reasons and, in the great tradition of trade unionism, to defend the rights of those workers. But workers should not be coerced into joining. They should make a decision based on the fact that the union can actually provide a service which is of value to those members. Therefore, to require others who make the choice not to join to pay a fee anyway is a travesty of that principle that the government believe needs to be made clear in the law.

I welcome the amendment moved by Senator Murray, who has obviously also considered the various issues here. We appreciate the work he put into it. We appreciate that his amendment does in fact benefit the bill. It is an indication of the government’s preparedness to find ways to improve our legislation and an example of how the Senate, in the great traditions of this place, can improve government legislation. As former senator Bob McMullan said at a function in Parliament House two nights ago, governments of both political persuasions sometimes fail in this place because they do not accept someone’s idea if they did not think of it first. I think he is quite right about that. There is a natural tendency for governments to knock back amendments if they have not thought of them. In this area, we are happy to look at good ideas from anywhere around the chamber. Senator Nettle might be leaping to her feet to come up with another good idea for us. We are even happy to accept ideas from her. This is an indication of the fact that the government are prepared to compromise and are prepared to see their legislation improved.

Senator NETTLE (New South Wales) (11.36 a.m.)—I will leap to my feet with perhaps a good idea that Senator Ian Campbell could take on board. I agree with the comment that he has just made, quoting the Labor Premier of my state, that people should not be coerced into joining a union. I
think everyone in this chamber would agree with that, but that is not what this bill is about. This bill is about a fee for a service that trade unions provide in the workplace. The collective bargaining that trade unions participate in has been proven time and again to improve the pay and working conditions of people who are represented by their union. Those benefits do not just accrue to union members. They do not just accrue to people who support and recognise the value of collective bargaining by joining and becoming a part of their trade union. They also accrue to other workers in a workplace who have not paid their membership fee and become members of the trade union.

This argument is about a service fee for those non-union members who receive the benefits of the collective bargaining that the union participates in, that the union negotiates with the employer on their behalf, on everyone’s behalf, for improved pay and conditions. That is what the argument from this side of the chamber is about—that is, those people should pay a service fee to the trade union that provides them with a negotiating service that improves their pay and conditions in their workplace. That is what this bill is about. It is not about coercive union fees. There are many other benefits that accrue from being a member of a trade union, apart from just the negotiating power that that trade union brings to an employment situation. Non-union members who pay a bargaining fee but who do not join the union do not get those benefits. They are simply being asked to pay a fee to cover the service the trade union is providing for them in their workplace. That is why the Greens will continue to support the rights of unions to charge bargaining fees to non-union members who accrue the benefits that the trade union achieves in their workplace.

Senator MURRAY (Western Australia) (11.39 a.m.)—This is the fourth double dissolution bill I personally have had to deal with this year. I on behalf of my party, the Australian Democrats, have insisted on three of those, but I am not going to insist on this one. The question is: why? The three bills from the government that I on behalf of the Democrats, in conjunction with the Labor Party, insisted on all sought to change the law. We considered that the changes that were being sought by the government were not merited, and the majority of the Senate agreed with us, and therefore they are now double dissolution triggers. I am afraid, if there is a double dissolution election, three of those bills will be my fault!

So why don’t I insist on this fourth one? Because it confirms the law. Yesterday the Minister for Employment and Workplace Relations—I am quoting from page 13202 of Hansard of Tuesday, 25 March 2003—said:

It is the government’s view that the best current legal authority is that so-called bargaining agents fees are not permitted by the law as it stands. Nevertheless, despite the fact that these fees are not permitted by the law as it stands, on the best authorities, it is certainly the case that in a number of workplaces workers are being told that they have an obligation to pay. This is not the case, and it should not be done.

The Industrial Relations Commission in January 2003 determined that bargaining fee provisions should not be included in certified agreements. As Bills Digest No. 101 says, 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 AIRC has determined that the fees are non-allowable.

Two principles are at play here. One is that the majority of the Senate, as a result of our own advocacy—and we are very pleased they have agreed with us—do believe that the circumstances in which fee for service should apply need to be expressed in the law and that principle needs to be inserted in the law. That is my amendment, and the Labor Party—and I am very grateful to them for it—have adopted this as new policy, because it was not in their previous legislation, and they are in accord with the principle, and I think they are right. The more people who join in with that view the better. The government made it quite clear that they will not accept that policy, and there is nothing we can do about it. They control the House of Representatives.
Therefore, what is my position? My position is that if the law stands and if the purpose of this bill is to make the law more explicit—which I think it does—I do not believe that we should consider it as appropriate material for a double dissolution trigger. It would just be unnecessary, because the government’s bill confirms the law. We do not agree with it. We think the law needs to be changed, but that is an entirely different circumstance to those we have thought of in the past.

It should be recorded that the bill does have the merit of not preventing the voluntary contribution of such fees by nonmembers to unions, and the bill explicitly allows employer associations and unions to charge bargaining fees where such fees have been arranged under a contract for services. In that respect it is an advancement on existing practice and, in fact, will improve the capability of agreements being made where fees can be voluntarily agreed to by the parties concerned. I respect the Labor Party’s opinion in this matter. In some respects I wish I could join in with them, but our principle with double dissolution bills has been that, if they change the law and we disagree with that change, we should stay firm, but since this bill just confirms the law we see no point to insisting on it.

Question put:
That the motion (Senator Ian Campbell’s) be agreed to.

The committee divided. [11.48 a.m.]
(The Chairman—Senator J.J. Hogg)

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AYES

NOES

PAIRS
Coonan, H.L. Hill, R.M. Knowles, S.C. Minchin, N.H.

*B denotes teller

Resolution reported; report adopted.

MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) BILL 2003
MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) (CONSEQUENTIAL AMENDMENTS) BILL 2002

First Reading
Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.52 a.m.)—I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the
(11.53 a.m.)—I table a revised explanatory memorandum relating to the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) BILL 2003

The provision of medical indemnity is of critical importance to ensuring the continued provision of essential health services to the Australian community.

The Government has already shown its commitment to the continued provision of services by introducing legislation to give effect to the IBNR scheme, the High Cost Claims Scheme, and the subsidy to certain specialties. The Government also provided an indemnity to the provisional liquidator of UMP/AMIL to allow certain claims to be paid in full.

This bill gives effect to the balance of the Prime Minister’s announcements of 31 May and 23 October 2002. It also gives effect to my announcement of 24 March 2003 to remove the more prescriptive elements of run-off cover.

The Commonwealth is committed to ensuring the long-term financial sustainability of the market for medical indemnity cover. Prudential regulation provides the highest level of certainty that financial promises made by financial institutions to their customers will be met.

Medical indemnity providers essentially operate as insurance companies. However medical indemnity providers have not been subject to regulation because they formally offer coverage subject to discretion such that any claim by a medical practitioner against the provider can be denied in any circumstance.

However, medical defence organisations rarely deny a claim—indicating that there is no reason to treat these entities differently to insurance companies.

In addition, in the case of medical indemnity cover, a long period of time can elapse between an adverse incident taking place and the point at which a claim is made against the provider. This poses a much higher risk to consumers than some other forms of insurance, because consumers cannot be sure what the financial position of the provider might be at the time at which a claim is lodged, as it may be many years in the future. In addition, insurers face uncertainty in deciding how much to set aside to meet claims.

In this context, it is essential that medical indemnity providers not only provide affordable cover to practitioners, but that medical practitioners and their patients have a reasonable degree of certainty that their claims will ultimately be met.

Under this bill, medical practitioners and their patients will have a reasonable degree of certainty that their claims will ultimately be met, through the move to contracts of insurance. The current system of unlimited, discretionary cover has resulted in considerable uncertainty to doctors as to the extent to which a claim for indemnity will be met. In practice, ‘unlimited’ cover is limited by the capital available to the medical defence organisation. The experience of UMP has clearly demonstrated that doctors are not prepared to provide unlimited capital to their medical defence organisations to fund unlimited claims.

In contrast, insurance companies are prevented from providing unlimited cover, in recognition that no company has access to unlimited capital.

This bill therefore provides that, from 1 July 2003, medical indemnity cover will be provided by means of a contract of insurance from an authorised insurer. Authorised insurers are subject to prudential regulation by the Australian Prudential Regulation Authority (APRA).

The bill also provides for the transition of medical indemnity providers to the new regime over five years from 1 July 2003 to allow medical indemnity providers to meet prudential capital requirements.

The bill also provides for doctors to receive greater certainty in insurance coverage by prescribing minimum standards for medical indemnity cover. Providers of claims-made cover will be required to provide retroactive cover to ensure that all doctors have access to continuous cover.

The bill was amended in the House to allow greater flexibility in specifying the type of run-off cover that must be offered.

It is the Government’s intention to regulate in advance of the July 1 that appropriate interim “run-off” cover is offered to medical practitioners, consistent with conditions in the reinsurance market and the type of cover that MDOs are able to offer. The Government is determined to ensure that workable arrangements are put in place to enable medical practitioners to access affordable and adequate run-off cover. It is committed to examining all options in this area as a high priority.
The bill does not prohibit the provision of claims-incurred cover for doctors. However, it is essential that if this type of cover is offered, medical indemnity providers will be required to hold appropriate capital, reserves and reinsurance against the risk of claims.

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

This bill is consequent to the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002.

The main purposes of the consequential amendments bill is to require MDOs to provide data to APRA, and to prevent MDOs with discretionary liabilities from becoming authorised insurers. Such liabilities will have to be held in a separate entity from the authorised insurer so that there can be adequate prudential supervision.

Senator CONROY (Victoria) (11.54 a.m.)—The purpose of the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 and the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 is to ensure that health care professionals have access to medical indemnity cover that is provided by insurers prudentially regulated by APRA and to specify minimum standards for medical indemnity cover. The proposals contained in these bills represent part of a package of measures in response to the collapse of UMP in April 2002. The parliament has already passed the Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002. The purpose of that bill was to appropriate funds for payments in accordance with an indemnity agreement between the Commonwealth and United Medical Protection, and its wholly owned insurance subsidiary Australian Medical Insurance Limited—or AMIL—and to confirm the government’s commitments relating to UMP and AMIL.

On 23 October last year, the Prime Minister announced a range of measures which were said to address rising medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market. In December, the parliament considered and passed a package of four bills, including the Medical Indemnity Bill 2002, which implemented most of these initiatives. These measures included the establishment of an incurred but not reported, or IBNR, scheme to assist Medical Defence Organisations with unfunded IBNRs and a high-cost claims scheme under which the Commonwealth will meet 50 per cent of the cost of claims payments greater than $2 million, up to the insured amount, made by MDOs or insurers.

The bills now before the Senate deal with the one outstanding element of the package announced by the government on 23 October; namely, that MDOs be brought into a new regulatory framework administered by APRA and subject to a range of prudential safeguards to mitigate insolvency risks. The proposed framework also contains product safeguards to ensure that health practitioners receive continuity of cover.

Medical indemnity is currently largely provided by medical defence organisations. MDOs are not-for-profit mutual organisations that provide discretionary cover to their members in exchange for a subscription payment for membership of the organisation. MDOs are not contractually obliged to meet the claims of their members if their activities fall outside the definition of insurance business in the Insurance Act 1973 and the prudential supervision of APRA. MDOs rely heavily on reinsurance to protect their financial position. Most MDOs have wholly or partially owned insurance company subsidiaries which they use to access reinsurance markets. APRA does have regulatory power over these captive insurers. MDOs can raise additional capital under their current structural arrangements by charging increased subscriptions or making a call on members for an additional amount of money. Since 1999, four of the main MDOs have been required to make a call on their members for additional funds.

There are seven major MDOs in Australia: United Medical Protection, which is in provisional liquidation; Medical Defence Association of Australia; Medical Indemnity Protection Society; Medical Defence Association of South Australia; Medical Defence Association of Western Australia; Medical
Protection Society of Tasmania and Queens-
land Doctors Mutual Ltd. While all MDOs 
write business, to some degree, across Aus-
tralia, the home state of the MDO generally 
provides most members.

I turn now to the key measures contained 
in these bills. From 1 July 2003 only general 
insurers, under a contract of insurance, will 
be able to provide medical indemnity cover 
for a health care professional. Breach of this 
requirement carries a maximum penalty of 
12 months imprisonment. Health care pro-
fessionals are broadly defined to include any 
person who provides care, treatment, service, 
advise or goods in respect of the physical or 
mental health of a person whether or not for 
reward. The definition specifically includes 
medical practitioners and registered health 
professionals. Prudential standards under the 
Insurance Act 1973 provide that insurers 
must have capital of at least $5 million. The 
bills provide for transitional arrangements so 
that MDOs may apply to APRA for an ex-
emption from the minimum capital require-
ments until 30 June 2008. In order to obtain 
an exemption, MDOs must submit a funding 
plan to APRA. The intent of the funding plan 
is to ensure that MDOs will be able meet 
APRA capital requirements at the expiry of 
the transitional period.

The bills also set out product standards for 
medical indemnity insurance contracts. The 
minimum cover amount is $5 million, and/or 
another amount prescribed by the regula-
tions. Failure to provide such cover consti-
tutes an offence. The bills draw a distinction 
between claims-made based cover, where 
claims must be made within the contract pe-
orid, and incident-occurring based cover, 
where a claim can be made after the contract 
has expired providing the incident occurred 
during the contract period. If a contract to 
provide claims-made cover is entered into, 
comes into effect or is renewed on or after 1 
July 2003, the bills provide that an insurer 
must also offer to provide cover for all past 
health care incidents for which the health 
care professional does not have cover—I 
think you would describe that as retroactive 
cover.

Insurers are also required to offer ex-
tended reporting benefits cover—often re-
ferred to as run-off cover—within 28 days of 
a triggering event. Triggering events include 
where a health care professional dies, be-
comes permanently disabled, retires or ter-
minates a contract. ERB cover protects health care professionals from claims in rela-
tion to events that occurred before ERB 
cover commenced and for which the person 
was otherwise uninsured.

The bills specify requirements that must 
be met in order for offers of retroactive cover 
and ERB cover to be regarded as complying 
for the purposes of the act. Significant re-
quirements include that offers must be in 
writing; must be open for 28 days; must give 
clear, concise and effective explanation of 
the features of the cover; and must charge 
premiums that are reasonable. APRA may 
issue guidelines for the purpose of assessing 
whether a premium is reasonable. These 
guidelines are disallowable instruments.

The Medical Indemnity (Prudential Su-
pervision and Product Standards) Bill 2003 
vests responsibility for enforcing product 
standards for medical indemnity contracts in 
ASIC. The Medical Indemnity (Prudential 
Supervision and Product Standards) (Conse-
quential Amendments) Bill 2002 will require 
MDOs to provide data to APRA to prevent 
MDOs with discretionary liabilities from 
becoming authorised insurers. In order to be 
authorised insurers, MDOs will be required 
to transfer their discretionary liabilities to a 
separate entity.

On Wednesday, 19 March, the government 
announced a number of minor amendments 
to the bills as a result of discussions with 
medical defence organisations and doctors 
concerned about the impact of the bills. 
Those amendments ensure that the five-year 
transitional relief from the full application of 
APRA’s capital adequacy requirements is 
extended to the existing captive insurers of 
MDOs; they make a minor change to the 
definition of a health care provider to ensure 
that it also covers former health care provid-
ers; they ensure that the compulsory offer 
requirements for medical indemnity provid-
ers for run-off cover do not extend to medi-
cal indemnity providers that have stopped 
writing new policies and are running off their 
eexisting liabilities; they enable medical in-
demnity providers to exclude known incidents from cover in the same way that an insurer would exclude known incidents; and they provide that APRA must make a determination within 30 days of receiving an application for transitional relief from the capital adequacy requirements.

The government also announced that it will commission a study of options to examine the retirement cover issue and it will increase the level of its financial support for the medical indemnity insurance of obstetricians in regional and rural Australia. The government’s amendments are technical and Labor supports them.

Medical defence organisations and doctors have warned that there may be serious and immediate adverse impacts on the medical workforce if the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 passes in its present form. Despite the modifications announced by the government to its own bill last week, there remain three issues of concern to the profession and the industry generally. The first issue is death, disability or retirement cover, also known as run-off cover. Under the bill in its original form, death, disability or retirement cover that had not commenced after 1 July 2003 would be deemed subject to the new regime. It has been argued, notably by the AMA, that this would mean that doctors would continue to pay large premiums after retirement.

The government has now acknowledged the concerns of doctors about the availability and affordability of appropriate run-off cover. The government has agreed to amend the bill to remove the more prescriptive elements relating to run-off cover for doctors upon retirement. Instead, the government will enable run-off cover to be prescribed by regulation. The government has indicated that it intends to regulate in time for the bill’s commencement on 1 July 2003 to:

... require that appropriate interim run-off cover is offered to medical practitioners consistent with conditions in the reinsurance market and the type of cover that MDOs are able to offer ...

Labor welcomes this significant concession by the government that there are still outstanding issues to be addressed and its under- taking to continue to work with the MDOs and the AMA to ensure that the run-off cover is affordable, available and appropriate.

The second issue relates to what are sometimes referred to as ‘blue sky’ claims. Doctors have significant concerns that, under the proposals, doctors will be personally liable for claims that are settled in excess of the maximum cover provided by their insurance. Under the present discretionary arrangements, cover is uncapped. This means that, if a doctor holds an insurance policy which offers $15 million in cover but a catastrophic injury occurs which exposes the doctor to a payout of more than $15 million, the doctor would be held personally liable for the extra amount. The government’s current scheme offers no protection for doctors against this eventuality and may force some doctors to asset strip in order to protect themselves against the consequences of adverse claims. Some doctors may choose to retire early rather than face the possibility of personal liability for high-cost claims.

Whilst the issue has not been satisfactorily resolved in the bills before the Senate, the government has recognised that this is a continuing issue of concern for the profession and it has given an undertaking that it will continue to progress the issue in consultation with medical representative organisations. In particular, I understand that the government is considering raising the issue of blue sky claims at the next ministerial meeting, due to be held in Perth on 4 May. Once again, we welcome this recognition from the government that serious problems remain as a result of the move from discretionary cover to insurance contracts and that there is more work to do.

The final outstanding issue is the adverse impact on some of the smaller MDOs in particular in moving from discretionary to insurance based contracts. The larger MDOs, representing more than 80 per cent of doctors, have broadly accepted the move from discretionary cover to offering insurance contracts. However, there are a number of smaller MDOs who have strongly argued that the model of discretionary cover better serves their members and that there would be adverse consequences associated with mov-
Labor accepts the proposition that medical indemnity cover should in future be provided by way of insurance contracts, as insurance contracts have the potential to offer all persons greater certainty and stability in their medical indemnity arrangements. Serious concerns have, however, been raised about the potential adverse impacts on the medical work force as a result of the passage of these bills.

Some medical defence organisations and doctors’ groups are concerned that the move from discretionary cover to insurance contracts will result in dislocation in the medical work force in the form of a withdrawal of services by general practitioners and specialists. The issue is of particular concern to medical practitioners and MDOs in Tasmania. Regrettably, the government does not appear to appreciate at all the full extent of the work force problems which may arise as a result of a move to insurance contracts. However, it is insistent that, come 1 July 2003, medical indemnity insurance in Australia will be provided by way of insurance contracts rather than by discretionary cover. That insistence has not diminished, despite extensive lobbying over a period of several months from those medical defence organisations who wish to continue to offer discretionary cover.

In conclusion, in view of the government’s insistence that this legislation must pass this week to allow medical defence organisations sufficient time and certainty to get ready for 1 July 2003 and its insistence that, from that date, all medical indemnity cover will be by way of insurance contracts rather than discretionary cover, Labor will support the passage of these bills now. In doing so, Labor recognises that the solutions put forward by the government are not perfect. While the government’s objective is to put medical indemnity insurance on a surer footing in the future, there are a number of significant issues which are yet to be fully resolved.

Labor welcomes the government’s undertakings to continue to progress these issues in consultation with the medical profession and the medical indemnity insurance industry. The government, however, will no doubt be held to account for any adverse consequences, particularly with respect to the medical work force, which arise as a result of these changes. These sentiments are summarised in the second reading amendment circulated in my name, which I will move in a moment.

I make the very obvious point that it is only March and that, once again, the government is seeking cooperation from the opposition for its parliamentary agenda when it has set one of the thinnest parliamentary sitting patterns we have seen in many years. We realise the government does not have much of a third-term agenda, but it is shoddy to force the sausage mill to run through all the bills the government is trying to insist it must get through before parliament has a seven-week break. The parliament deserves better. It is disappointing that we are being forced to pass legislation because a satisfactory resolution has not been achieved on the basis that the government has not set enough sitting days. Having said that, I move my second reading amendment:

At the end of the motion, add:

“But the Senate, while supporting the provisions of the Bill:

(a) notes the Government’s insistence that this Bill be passed urgently, as part of its package of medical indemnity reforms, to ensure that the medical indemnity insurance industry has legislative certainty as it approaches the 1 July 2003 deadline for the introduction of the Government’s reforms; and

(b) notes the Government’s insistence that it intends to bring all medical defence organisations under an insurance model of medical indemnity and to end the current model of discretionary cover, in the face of warnings from a number of medical defence organisations and representative medical organisations of serious adverse consequences on the medical workforce, particularly in Tasmania; and

(c) notes that the Government has recognised that medical defence organisations and representative medi-
cal organisations have continuing concerns with the operation of the provisions relating to death, disability and retirement by withdrawing those provisions from the Bill, and the Government’s undertaking to continue to work with medical defence organisations and representative medical organisations to address serious concerns relating to those provisions; and

(d) notes that the Government has recognised that there are continuing problems with respect to personal liability of doctors in excess of the insured amount and the Government’s undertaking to review this issue in consultation with medical defence organisations and representative medical organisations.”.

Senator RIDGEWAY (New South Wales) (12.08 p.m.)—I rise to speak on the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002. These bills were formulated in response to the problems that faced medical practitioners, as well as the community, following the provisional liquidation of UMP in May 2002. This measure accompanies a range of concessions granted by the government to medical practitioners since that time.

In the last debate dealing with the medical indemnity bills, we had raised, more importantly, three issues that did need to be responded to by the government. I think the legislation that we are currently dealing with goes some of the way, but it still denies the fact that much of what needs to be looked at is the question of poor management of the insurance industry, which, quite frankly, has been let off the hook in terms of an appropriate response. The other issue is an understanding of the cyclical nature of the industry itself. Recent articles, particularly in the Canberra Times, have alluded to the fact that it is unlikely that even making the changes, with tort law reform at state level and with what has been insisted on federally, will in fact decrease the cost of being able to get adequate cover under insurance arrangements in this country.

We also said during the last debate on these bills that prudential monitoring needed to be addressed, and these bills do go some way towards addressing that. At the end of the day we are seeking to make sure that there is not a repeat of what we have seen with the HIH collapse and certainly with the difficulties that UMP has found itself in, that adequate assurance and guarantees are provided. Most of all, at the end of the day it has to be about focusing on guaranteeing that people at the community level do get proper access to health services that are affordable and accessible.

United Medical Protection was the largest medical insurer in Australia, with coverage of approximately 60 per cent of medical practitioners nationally and 90 per cent in my home state of New South Wales. Since its creation it pursued an aggressive market growth strategy, which no doubt contributed to the state that this body is in today. Insurance is vital for medical practitioners and all health care professionals. As we have seen, without this form of protection, many doctors in high-risk specialisations have been unwilling to perform certain medical procedures for fear of adverse claims. Not only has there been a threat to the level of bulk-billing, which is already in decline, but also, and more importantly, a reduction in services does create a threat to the health of the community and those who are the most vulnerable, such as the elderly and the poor.

Medical defence organisations such as UMP are not subject to prudential regulation. Whilst prudential regulation alone does not guarantee a repeat of a UMP type incident, one only needs to look at HIH to see that this move to bring MDOs into line with general insurers is a worthwhile venture. Among other things, the bills provide for medical defence organisations to have minimum capital requirements and make it a requirement that MDOs offer insurance contracts rather than discretionary cover, which has been offered to date. Discretionary cover occurs where a member pays a subscription for cover and, when a claim arises, the MDO has the discretion as to whether or not the indemnity is provided. It is intended that these bills will provide certainty to policy-
holders and that industry supervision will mean that MDOs maintain a strong financial position and an ability to pay claims now and in the long term.

The bills also include transitional provisions, allowing the providers of medical insurance cover the time to comply with prudential standards relating to minimum capital requirements. The prudential standards require that insurers hold a minimum of $5 million in capital at the point of start-up, and the transitional provisions in these bills will give MDOs until July 2008 to acquire the necessary capital. In addition, the bills state that medical indemnity insurance contracts must have certain key attributes so that health care professionals have access to insurance policies that give them complete coverage.

The regulation of medical defence organisations is a measure that the Australian Democrats have been calling for since the insurance crisis came to prominence. My hope with these bills is that industry monitoring will ensure that the services offered by medical professions continue and that the health of the community is not compromised. While some MDOs may experience problems with these bills, I am hopeful that the five-year lead-in time for raising capital will go some way to alleviating their concerns. And where concerns have been raised about the potential competition problems with entering into the new regime, it will be incumbent on the government to ensure that the ACCC itself is ready and well equipped to deal with these issues if and when they arise.

The package as it exists does not address the professional indemnity needs of all health care professionals. As I have mentioned to the Senate on a number of occasions, midwives, for example, continue to face many difficulties in securing appropriate insurance for their work, which is affecting the level of services available for expectant mothers. Also, despite the fact that the supply of midwives is only two-thirds of the demand, we need to keep in mind that midwifery education is also at risk when universities are unable to obtain professional indemnity insurance for their students or when state governments do not follow suit in terms of providing the necessary extension of cover to deal with these sorts of cases.

Recently, concern was expressed by a number of smaller MDOs who view this bill as crippling their very existence. In particular is the claim in the recently commissioned Allen report that they will no longer be able to offer claims incurred cover for their members. This form of cover was the most desirable to members, as it covered all incidences that occurred during the period regardless of whether a claim was actually lodged. It is believed that, with the problems associated with APRA regulation and securing reinsurance, this particular type of cover will be unavailable. The cover that has gained much attention due to the problems associated with retirement is claims made cover. This covers claims that are made within the period where the indemnity exists so that doctors might be liable to pay damages claims where the incident has occurred within the indemnity period but the claim was made outside the indemnity period itself.

Another matter that I would like to mention is that the discretionary cover that has been offered by MDOs addresses the moral hazard of insurance cover that exists in our society. Their claim is that, by offering discretionary cover, this encourages their members to minimise risks and results in a reduction in the number of accidents and incidents that might give rise to a claim. I am somewhat sympathetic to this view in that I think there is a moral hazard to insurance. While I am unsure of the substance of the smaller MDO claims, prevention of accidents is an important issue that has not been addressed since the insurance crisis began. Since the collapse of HIH and UMP so much concentration has gone into arguing about rising claims costs and our increasingly litigious society and so on. But, arguably, while community expectations and standards may have changed over the years and people are becoming more willing to make claims, it is just as plausible that there has been an increase in the number of negligent acts causing injury for which someone else is liable.

Looking at the issue of insurance on a larger scale rather than at just medical indemnity, by far the most widespread solutions to
the current crisis have been tort law reform. Whilst tort reform across the country has gone about targeting the victims of these accidents, my fear is that we might be confusing the symptom with the cause. By targeting the victims of accidents, I ask the question: are we not targeting the most vulnerable people in society? To this end, I would be interested to know what strategies the government may have in contemplating the reduction of the number of accidents and claims, especially those associated with medical treatment.

Another issue that this bill raises is the effectiveness of prudential regulation. It is one thing to have prudential regulation, but it is another thing to ensure that that regulation is effective. APRA has received a lot of criticism over its handling of the HIH affair and, without a strengthened regulator, the measures in the current bill may not reach their full potential or have the desired outcome of providing certainty within the industry and giving community confidence. At no other time has there been a need for the government to ensure that APRA has the necessary means and expertise to be an effective regulator and that the mistakes of the past are not repeated.

Generally, the bill is an essential measure in tackling the current crisis in medical indemnity. While a recent insurance industry survey suggests that insurance policy prices will continue to rise and the hard cycle will continue over at least the next three years, measures like this one should hopefully stand the community in good stead to ride the waves of each cycle. I am, however, disappointed that the involvement of the insurance industry as a whole has been basically nonexistent since the crisis reached its peak last year. Industry involvement, in my view, is vital to what is an industry problem and I call on the government to shift its focus from the victims of negligence and towards negligence in the insurance industry.

Finally, I have only just received the amendment to the second reading circulated by Senator Conroy on behalf of the ALP. Having looked at it very briefly, whilst the Democrats will support the passage of this bill, the Australian Democrats will be supporting that amendment. It goes without saying that, given the shortness of time in which this bill has been put forward by the government, the reduction in the number of Senate weeks to deal with bills, the time deadlines and the need to properly review the consequences of these types of bills—particularly on the smaller MDOs in Tasmania and Queensland—we are still unsure as to what those consequences might be. We do understand that there are some deadlines that have to be met, and on balance there is a need to support the bill, but we would hope that, in response, the government takes up a very aggressive monitoring role to ensure that those smaller MDOs are not necessarily punished. Yes, there is the five-year lead time; but, quite frankly, they are going to see themselves in the difficult position of having to comply with the new compulsory regime that is to be put in place and, most of all, we ought to be looking at the consequences for the doctors they provide cover for, the consequent flow-on effect out in the community and whether services will be available to people generally.
the possibility of the kinds of problems which UMP experienced recently.

The Howard government has taken a number of actions to deal with the medical insurance crisis. These include the medical indemnity premium subsidies for neurosurgeons, obstetricians and GPs proceduralists, which were announced on 23 October 2002; the extension of the guarantee to UMP to 31 December 2003; a high-cost claims scheme, whereby the Commonwealth government will reimburse medical indemnity providers on a paid claim basis for 50 per cent of the insurance payout over and above $2 million; and the funding of the IBNR liabilities for those medical defence organisations that have insufficient reserves to meet these liabilities, through a levy on medical defence organisation members.

In addition, following a series of meetings between the Commonwealth, state and territory ministers and the Ipp review of the law of negligence, the states and the territories have agreed to institute tort law reform, which is a very important dimension to this matter; and there is to be reform of the law of negligence which should have the effect of reducing the cost push pressures on medical indemnity premiums. The government's reforms in the area of medical indemnity will provide for greater transparency and certainty and benefit both doctors and patients alike.

The other thing which the government has done is to make it a requirement that there be discussion of a structured settlement agreement before damages are awarded. That, as I have said before in this chamber, will do a lot to ensure that people who do suffer injury from medical negligence are well looked after for the rest of their lives, rather than having the danger of getting a lump sum which is expended quickly, leaving the poor claimant with no money with which to support themselves.

As I said, the medical defence organisations were themselves largely responsible for the situation in which they found themselves by not planning for future contingencies and not raising their fees. One of the core issues was that the medical defence organisations were run as mutually beneficial companies rather than as insurance companies. The effect of the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 is to rectify this situation and make medical defence organisations subject to the same prudential regulatory arrangements as general insurers under the Insurance Act 1973, administered by the Australian Prudential Regulation Authority, APRA.

I have had a lot of letters from doctors—particularly from Western Australia, where I come from, but also from other parts of Australia—who have expressed concern that the medical defence organisations are having to convert to become insurance companies because they feel that that will mean an increase in premiums. They believe that a mutually beneficial society, which existed in the past, will cover the situation. But, of course, the reality is that it does not. Dr Robert Bain, the Secretary General of the Australian Medical Association, told the Senate Economic References Committee:

We would like to see some APRA requirements on the MDOs so that all of them have to meet minimum capital. There is also the question of common accounting standards. They have all adopted slightly different accounting conventions, with the most starkly different being at UMP, which had not brought the tail of what are called IBNR—incurred but not reported—incidents onto their balance sheet.

So their accounting was very incomplete and gave a very false impression of their financial situations. It is important that the financial standing of medical defence organisations is transparent and that member doctors and their patients can have confidence in the MDO's financial standing and do not get any sudden, nasty surprises when a large amount of damages are rewarded but cannot be paid.

There are a number of advantages to the medical defence organisations falling under APRA. Among other things, the Insurance Act provides the following requirements: APRA authorisation of a body corporate for carrying on as an insurance business; prudential supervision of general insurers, including APRA determination of prudential standards; all general insurers to have an APRA approved actuary and auditor; and a minimum asset requirement placed on MDOs as general insurers.
As has been said today, the MDOs currently provide cover to their members on a discretionary basis, which is potentially a cause of uncertainty and unfairness to both the doctor and the patient alike. Under discretionary cover, doctors have no legal right of indemnification. If it had wanted to, an MDO could refuse to cover a member—which would be both potentially financially ruinous to the doctor and a source of financial hardship to a patient—where it has been determined that the doctor has been negligent. Under the Medical Indemnity (Prudential Supervision and Product Standards) Bill, from 1 July 2003 medical indemnity cover will be provided by way of a contract of insurance, which will resolve the uncertainty which I just referred to.

Currently, as well as being discretionary, the coverage provided by MDOs is unlimited. However, as the Hon. Peter Slipper MP stated in his second reading speech on this bill, in practice unlimited cover is limited by the capital available to the medical defence organisation. He went on to state:

In contrast, insurance companies are prevented from providing unlimited cover, in recognition that no company has access to unlimited capital. That is a very important point. It is interesting to note that contractually based, rather than discretionary, medical indemnity was a recommendation of the Tito review, which looked into the issue of medical defence organisations a few years ago. Importantly, the medical indemnity bill provides for a transitional period to give some medical indemnity providers sufficient time to meet prudential capital requirements.

The medical indemnity bill also has the advantage that doctors will be provided with a greater certainty of coverage by way of the imposition of minimum standards for medical indemnity insurance. For instance, part 3 of the bill specifies a minimum coverage amount of $5 million, or it can be another amount prescribed by regulations. Where claims made cover is provided, the insurer must also offer retroactive and run-off cover so that the doctor is covered for all past health care incidents as well as for claims that are made after the policy has expired for incidents that occurred during the term of the policy. This ensures comprehensive coverage and gives both the doctor and their patients peace of mind—a very important matter as far as doctors are concerned in this time of uncertainty.

I have had a number of letters from doctors in Western Australia in particular who are concerned that, when this bill becomes law, they will have to continue paying premiums beyond the time when they might retire so that they have retroactive cover. In the case of doctors working for the public health system in Western Australia in particular, that cover should be provided by the Western Australian state government.

In the case of general cover, I am able to say that the federal government has acknowledged the concerns of medical practitioners who do not expect to retire for many years that these arrangements may not go far enough in ensuring the availability of affordable and adequate retirement cover. On 19 March, the Prime Minister announced that the government would commission a study of options to examine the retirement cover issue, in consultation with the AMA and MDOs. I am sure, Mr Acting Deputy President, that a resolution to this issue will be found. This means that those doctors who have said that they may be forced to retire before 1 July so that they will continue to have retroactive cover—and that includes a lot of orthopaedic surgeons and other specialists in Western Australia who are older than 55 and who have considered retiring before 1 July this year to maintain their retroactive cover—will have a solution provided to them through the offices of the federal government.

Senator WEBBER (Western Australia) (12.33 p.m.)—We are told that the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 give effect to the balance of the Prime Minister’s announcements of May and October last year. We have already dealt with four related pieces of legislation last year, the main one being the Medical Indemnity Bill 2002, which gave effect to the High Cost Claims Scheme, subsidies to certain speciali-
ties and the provision of an indemnity to UMP to allow claims to be paid in full.

A cursory glance, therefore, at the legislative program would suggest that the government is working hard at resolving the problems with medical indemnity. As I said in this place during the debate on the Medical Indemnity Bill 2002, that is what the government would want us to believe. But the reality is quite different. As I have said previously, this government essentially allowed this problem to reach crisis point before it came up with a solution. Not only that but, instead of taking the opportunity to reform the system, all we have had so far is a band-aid approach that has left the real work to the states. The states got the bulk of the real work by having to undertake tort law reform. The federal government got to make all the good news announcements and left the real work up to the states.

We can see the effects of all the government’s hard work in what it has achieved to date. Every announcement and every piece of legislation on medical indemnity is enhanced or rectified—take your pick—within three or so months of the original legislation being announced. Here today we get yet another go. We are told that this prudential regulation will ensure the long-term financial sustainability of the market. We are told that this regulation provides the highest level of certainty that promises made to customers will be met. I am sure that, with the recent experience of HIH, most Australian customers will agree with that concept, but the reality is quite different. The reason for this regulation is that most medical indemnity providers operate as insurance companies, but with a caveat: in the past they have not been regulated in this way, because they were medical defence organisations, not insurance companies. This is because medical defence organisations provide a discretionary cover—that is, they are not contractually obliged to meet the claims of members and, as such, their activities fall outside the definition of insurance business in the Insurance Act 1973 and, therefore, are not subject to the prudential supervision of APRA.

The government is going to impose a level of regulation and make changes to ensure that contracts of insurance exist in the medical indemnity business. As I mentioned in my earlier contribution, the issue here is that the government pretends that MDOs are the same as other insurers when the reality is quite different. Generally, all members of a medical indemnity fund pay the same premiums, regardless of their claims history. There is no recognition in premiums of risk management procedures. In short, they are still defence funds, and not insurers in the strict sense of the term. This increased regulation is designed by the government to paper over the cracks. It is not designed to fix the system, just to make sure that another UMP problem does not surface.

Even though coverage will be provided from 1 July this year under a contract of insurance, without fundamental reform of the system this will not go far enough. In fact, these changes are so badly thought through that even the AMA, as recently as 27 February this year, is reported in the Financial Review as describing the changes as: 

... a complete mess, saying they would only exacerbate the shortage of GPs and specialists.

The AMA went on to say that the changes actually increase the costs for doctors and their patients. In that article, Dr Phelps, the President of the AMA, was quoted as saying:

‘We already have towns around the country which don’t have an obstetrician and women are having to travel distances, and sometimes long distances.’

The solution to the medical indemnity crisis is out for comment, and it would seem the stakeholders do not like it. The government has done what it has done consistently for month after month in relation to this crisis: it waited for a reasonable period to get the issue off the front page and then threw some more money at the industry to buy it off. On 20 March, the Prime Minister announced that the package was being extended to increase the amount of subsidies for country obstetricians. You would think that the government could have avoided all of this by taking a more consultative approach. How much time and effort would have been saved if the government had worked this out prior to the release of the legislation? Of course, that would not be this government’s way.
There were other problems raised by the AMA in February. It raised concerns about how doctors would be covered for claims over $15 million and in the event that they retire. In March, the Prime Minister said he would look at the issue of retirement but he was silent on the matter of claims above $15 million. In the Financial Review of 20 March, Peter Marer, executive officer of Queensland Doctors Mutual, said the government’s approach was ‘tinkering at the edges’. And that is exactly what the government has done during this whole crisis. It has tinkered at the edges and made change after change. Normally, once the AMA has kicked up a fuss about its proposed solution, it is then galvanised into action. It tinkers away, and then the AMA has another kick. Tinker; get a kick. Tinker; get another kick. This approach, which can only be likened to death by a thousand cuts, is no substitute for fixing the crisis in the first place. It is a national disgrace that this issue has lurched along for as long as it has. Indeed, it has been an issue confronting this government ever since I joined this place.

Perhaps if the minister had actually got her act together this would not have turned into a melodrama that shows no sign of ending. During my last speech in this debate, I suggested that, if the system is as broken as it so obviously is, the government should engage in a wholesale reform of medical indemnity. Instead, the minister has taken the approach of doing as little as possible to keep it struggling on. And now the legislation has come before the Senate with more changes—changes introduced at the last moment to prevent referral of this current round of legislation to a Senate Economics Committee inquiry.

There are pressures from the industry to resolve the legislative framework this week because of the change to contracts of insurance and the need for insurance certainty beyond 1 July this year. We are told that the changes must take effect before we rise this week. This is not a problem of the making of the Labor Party nor, indeed, the other minor parties and Independents in the Senate. This is a problem of the government’s making. This is the result of months and months of inaction. Now, at the last possible moment, the government is seeking to make more changes and is tinkering yet again so that it can avoid a full, proper Senate Economics Committee inquiry with witnesses from the relevant stakeholders.

Given that this issue has been going for years, it is ridiculous that the government has suddenly found itself short of time. Suddenly, it has run into yet another deadline in order to avoid yet another collapse in the medical indemnity system. We cannot afford any delay now because it would put at risk medical indemnity from 1 July. We would not have found ourselves in this situation if the government had been on the job from the moment that this issue first appeared. If the government had been working, from the first, on a total solution that covered all health professionals, that properly addressed the needs of medical defence organisations and that provided holistic cover throughout Australia, we would not have had this result. There have been four or five pieces of legislation. Perhaps we are going to see yet another package of bills after we get beyond the current 1 July deadline. Then we will just lurch into another crisis.

I remain to be convinced that we actually have the entire system covered. The industry does not accept this approach. It is concerned about this papering over of the cracks. The doctors do not support it and, what is more, the other allied health professionals certainly do not support it. Put simply, the minister and the government should have fixed it the first time. It is not a lot to ask that, rather than cobble together a whole series of legislation, amended at the last possible moment, we actually take the time to ensure that we come up with a rigorous, longstanding solution to guarantee the provision of medical services throughout this nation, particularly in regional areas.

As Senator Eggleston has said, in Western Australia we have our own unique set of difficulties due to the vast distances that people have to travel to access medical services. We have difficulties attracting medical professionals into some of those regional areas. This is made all the more onerous and difficult by the fact that there is not a robust,
longstanding solution to the medical indemnity crisis. As I have said before, the industry does not accept this approach. Doctors and other health professionals do not support the approach of this government. The minister and the government should have fixed this the first time.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! It being 12.45 p.m., I call on matters of public interest.

Small Business: Predatory Pricing

Senator BRANDIS (Queensland) (12.45 p.m.)—On 7 February, the High Court handed down its decision in ACCC v. Boral. The case has generated considerable public discussion. I acknowledge the contributions to that discussion of my colleagues Senator Ron Boswell, Senator Guy Barnett, the member for Moncrieff, Mr Steven Ciobo, and the member for Petrie, Ms Teresa Gambaro, all of whom have expressed serious concerns about the consequences of the Boral decision and, in particular, its impact upon small business. I wish to take this opportunity to add my voice to those concerns. In doing so, let me say something about the decision itself.

Boral was a case about the practice known as 'predatory pricing'. Predatory pricing is not a term of art, nor is it defined in the Trade Practices Act. In layman’s terms, it can be described as the commercial practice whereby one firm, with sufficient economic power to enable it to absorb the short-term losses, lowers its prices to such a level that smaller firms are unable to compete and are thus driven out of the market. The benchmark for whether a pricing strategy is predatory is often described by trade practices lawyers and economists as pricing below avoidable or variable cost.

Commonly, the consequence of predatory pricing is that, once the small firm is driven out of the market, the powerful firm is then able, free of competitive constraint, to raise its prices again. Sometimes, that conduct may produce the result that the large firm becomes so dominant that it can raise its prices above the level which would have been sustainable in a competitive market. So whatever short-term benefit might have been enjoyed by consumers during the period of price cutting will be negated by the capacity of the dominant firm to raise prices in an uncompetitive market in the long term.

So there are three losers from predatory pricing. The first are smaller firms which, lacking the capacity to absorb short-term, below-cost pricing, are driven out of business. The second are consumers. Although consumers might enjoy the benefits of price cuts in the short term, they are the long-term losers, since the effect of a successful predatory pricing strategy will be to remove competition from the market and allow the dominant firm to raise prices without constraint. The third loser will be the competitive process itself. By the cynical use of a technique which relies not upon true competition but rather upon the economic power of a large firm to absorb short-term losses so as to destroy its competition, the market will be made less competitive in the end.

Liberals have a strong commitment to free and competitive markets. But, as antitrust lawyers know, there is a variety of techniques, of which predatory pricing is one and price fixing and other forms of collusive conduct are others, by which true competition can be destroyed and competitive markets degraded into monopolies or cartels. It is the purpose of antitrust law in Australia, contained in part IV of the Trade Practices Act, to prohibit such practices and, therefore, to make competitive markets work properly, in the interests of free enterprise and to the ultimate benefit of consumers.

In the Boral case, the court was concerned with the market for concrete masonry products in Victoria. At the time the relevant events took place, in the early to mid-1990s, the Victorian building industry was in recession. Boral was one of the principal players in the market. One of its competitors was a small entrant to the market, Ç & M Brick, which had acquired a more efficient state-of-the-art plant and was therefore able to manufacture its product at a lower unit cost. Boral identified the growing market share of the more efficient Ç & M Brick as posing a major threat. Accordingly, in May 1995, Boral
adopted a Strategic Business Plan, which was placed in evidence before the court. The Strategic Business Plan stated:

Our aim throughout 1996-97 and 1997-98 is to drive at least one competitor out of the market ...

It is true that Boral had competitors other than C & M, but it is equally clear that it was C & M that Boral had in its sights. This is plain from another Boral strategy document, which was also produced in evidence, in which we find this statement:

The long-term solution to the market decline in Melbourne is for C & M to fail as a producer and one of the major producers to pick up the assets.

The assets referred to were C & M’s plant and equipment. In order to give effect to its strategy, Boral quite deliberately engaged in the practice of pricing below variable cost. In this case, its strategy did not succeed. C & M Brick survived following an upturn in the market after 1996. Nevertheless, the Australian Competition and Consumer Commission took action against Boral, alleging breach of section 46 of the Trade Practices Act.

Section 46 is the key provision of the Trade Practices Act aimed at misuse of market power. It provides, so far as is relevant to this case, that a corporation with a substantial degree of power in a market shall not take advantage of that power for the purpose of eliminating or substantially damaging a competitor. It does not, in terms, prohibit predatory pricing. Nevertheless, until Boral, it was generally believed that predatory pricing was the very type of conduct at which section 46 was directly aimed.

The case was tried before Mr Justice Heerey of the Federal Court over 17 days in July and August 1999. His Honour found that Boral was indeed motivated by the purpose prohibited by section 46 and that it had sought to achieve that purpose by the strategy of pricing below avoidable cost. He nevertheless decided the case in Boral’s favour because he considered that it had acted in response to competitive pressures, in particular resulting from the depressed condition of the Victorian construction industry in the early 1990s, and hence could not be said to have taken advantage of market power. He therefore considered that Boral’s predatory pricing strategy was not caught by section 46.

The ACCC appealed to the full court of the Federal Court where, in February 2001, all three judges—Justices Beaumont, Merkel and Finkelstein—decided that Justice Heerey’s approach was wrong. In a short parliamentary speech about complex legal issues, it is difficult not to oversimplify. But I hope it does justice to the full Federal Court’s approach to say that they considered that the issues of predatory conduct and market power could not be looked at in isolation. The fact that a large firm like Boral was able to absorb substantial short-term losses in pursuing a commercial strategy of below-cost pricing, in order to drive a smaller competitor out of the market, was in their Honours’ view itself indicative of the existence and use of market power.

As we know, Boral’s appeal to the High Court was successful. Six of the seven judges, with Justice Kirby dissenting, decided that Mr Justice Heerey’s approach was correct and that the three judges of the full Federal Court were wrong. I do not wish to spend my time today arguing that the High Court’s decision was wrong, nor would this be the appropriate place to do so. In a sense, the question is academic: the High Court has declared what the law is, and that, from the point of view of the judicial branch of government, is the end of the matter. But it is not the end of the matter for the legislature, because the Boral decision has important policy consequences which the parliament must address.

In the first place, it gives section 46 a narrower range of operation than many people, in both the trade practices community and the commercial community, had hitherto thought to be the case. In particular, it means that section 46 does not prohibit the type of conduct in which Boral was engaged—that is, predatory pricing for the advertent purpose of forcing a smaller competitor out of the market—where the predator can claim that it was itself responding to competitive pressures. Yet if a large firm can engage in conduct of that kind, and for that purpose, it is difficult to see much scope for the operation of section 46 in prohibiting price preda-
tion. This is one of the unfortunate consequences of artificially isolating the question of whether prohibited conduct has been engaged in from the question of whether market power exists.

It certainly gives the Australian law a markedly narrower operation than that recognised in the American antitrust jurisprudence developed under section 2 of the Sherman Act. I must say that I share the robust view of the two most distinguished American commentators, Professor Areeda and Professor Turner, who say simply:

A firm which drives out or excludes rivals by selling at unremunerative prices is not competing on the merits, but engaging in behaviour that may properly be called predatory.

A second consequence of the decision is that it tends to defeat the point of the amendment made to section 46 by the Trade Practices Revision Act 1986. That act altered the threshold for the operation of section 46 from a case where a corporation was ‘in a position substantially to control a market’ to the present requirement that the corporation have a ‘substantial degree of power in a market’. As the then Attorney-General, Mr Lionel Bowen, said in his second reading speech in the House of Representatives on 19 March 1986, the purpose for which the amendment was made was to make clear that:

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.

Mr Bowen also made it perfectly clear that the amendment was being made:

... to ensure that small businesses are given a measure of protection from the predatory actions of powerful competitors.

Now, I appreciate that Mr Bowen’s words are parliamentary language, not scholarly analysis or judicial exegesis. But the second reading speech does reveal, plainly enough, that parliament did intend section 46 in its current form to be operative at a lower threshold of economic power than the conduct of a dominant firm. It also, as it seems to me, declared that the measure was in some sense intended to be protective of the interests of small firms. That is a legislative objective which the courts ought to have regard to and which, I must say, the High Court signal failed to acknowledge in Boral.

Thirdly, the case raises a more fundamental issue about part IV of the Trade Practices Act. Is its purpose merely to prohibit the misuse of market power, or should its operation extend, more broadly, to prohibiting the abuse of economic power? I have always been of the latter view. So has the Howard government, which has used part IV as a vehicle to protect both firms and the public against the abuse of economic power by sections 45D and 45E. The circumstances in which those sections operate has nothing to do with market behaviour but everything to do with economic power.

Finally, I cannot let the opportunity pass to respond to some abrasive comments made by Mr Terry McCrann, denouncing my criticism of the Boral decision. Amazingly, Mr McCrann thought that the Boral case was not about predatory pricing. I can only assume that he had not read it. To this day, I shake my head in wonderment that a commentator could rush into print and be so totally, comprehensively and embarrassingly wrong. Perhaps it is a salutary reminder that, when it comes to complex issues of law, people like Mr McCrann would be safer to follow Gilbert and Sullivan’s advice to the House of Lords and should ‘not itch to interfere in matters which they do not understand’.

But I am indebted to Mr McCrann for—no doubt unintentionally—giving the public debate about reform of section 46 a robust acceleration. I look forward to the government’s response.

Research and Development: Rural Sector

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.57 p.m.)—I rise briefly to table Innovating rural Australia: research and development corporation outcomes 2002. Rural R&D is vital to Australia’s economy. Agriculture makes up more than 22 per cent of our export of goods and services, contributing $31.5 billion to Australia’s economy. R&D investment underpins much of the international competitiveness and sustainability of our rural indus-
tries and, as such, plays a significant role in the health and welfare of our rural communities. Supporting farmers and producers through investment in R&D and innovation to advance our agricultural, pastoral, fisheries, forestry and food industries remains a critical national priority. In 2001-02, industry contributed $209 million, with the Commonwealth contributing $196 million. This totalled an investment of nearly $400 million.

The model we have for rural research and development is recognised by many as world’s best practice, and the Commonwealth government is proud of the strong partnership it has developed with industry, particularly through the RDCs. Those investments are helping producers and resource managers make better decisions, and world-leading research is funded through the RDCs and underpins those decisions. If our rural industries are to remain competitive and sustainable, we must continue to invest in R&D that promotes innovative products and practices and sustainable resource management. This model has been operating successfully for more than 10 years. I am proud of the substantial results that have been achieved over the past year, as detailed in this report, and I trust that the achievements showcased in this report will provide an informative account of the significant and ongoing role of the corporations in ensuring Australia’s economic future.

Defence Update 2003

Senator ROBERT RAY (Victoria) (12.59 p.m.)—I am pleased that the government has at last tabled its updated assessment of Australia’s strategic environment entitled Australia’s National Security: A Defence Update 2003. It has been a long time coming. Following the release of the 2000 Defence white paper, the government promised annual strategic reviews. The 2001 review was sensibly deferred because of the terrorist attacks on the United States on 11 September. However, the reasons for the extended delay remain unexplained. Lack of resources cannot have been the cause, since the defence department took two very senior officers off line for over six months to coordinate the drafting.

The update has earned quite a reputation for the number of revisions and rewrites. I understand the minister’s own efforts to draft strategic guidance were rejected by his colleagues on the National Security Committee of cabinet. Wouldn’t I love to have a look at Senator Hill’s rejected draft! It may be that a clash of visions and a need to consider financial and fiscal realities have been the main reason for the 18-month delay. The slim document that the Minister for Defence tabled on 3 March is something of an anticlimax. In his tabling statement, the minister said that the unclassified report represents: ... the broad conclusions of an extensive classified Government review of Australia’s defence interests.

I hope that this is true, because the published document is rather disappointing in that the update identifies what it sees as adverse change in our strategic environment but contains no detail of what changes are being considered to the ADF’s structure and capabilities. Much is made of the extent to which terrorism and the proliferation of weapons of mass destruction are real and immediate threats to Australia and its interests, but the conclusion is that there is only need for ‘some rebalancing of capabilities and priorities to take account of the new strategic environment’. The update contains nothing specific on what this rebalancing might involve.

Let me turn first to the analysis and assessment in the paper. I agree that global terrorism as represented by al-Qaeda has created a serious adverse impact on Australia’s security, both domestically and internationally. The domestic impact on the threat of Australia being a terrorist target will continue to necessitate increased allocation of resources involving a significant number of government agencies. Internationally, and particularly in South-East Asia, Australia will be required, as the update acknowledges, to have an integrated approach involving diplomatic, legislative and intelligence cooperation to prevent and respond to the threat of terrorism.

The campaign to combat and eventually defeat the scourge of terrorism will be long and difficult. The close cooperation of as many countries as possible will be absolutely
essential. Ensuring cohesion of the international coalition against terrorism will require considerable diplomatic skill and perseverance. The ADF has a key role to play in helping to combat terrorism. I do not see it as having a primary role either domestically or in our response in our region or further afield. The report refers to the likelihood of Australia being required to provide military support to future coalition operations against terrorism. The government must provide more information about the basis on which it makes this judgment.

The use of military force to remove the Taliban in Afghanistan was an exception rather than a template for further action. Afghanistan was and is in many respects a special case. Al-Qaeda exercised real power over the Taliban in Afghanistan and, in many respects, it was more that the Taliban was dependent on al-Qaeda than that the Taliban was acting as the sponsors of the terrorists. There is no comparable situation in any other country. The major effort will be to ensure that those countries in which terrorist networks are active are fully involved in international action against terrorism and to ensure that they are equipped with the capabilities to confront and overcome that threat.

In reading the Defence Update, I was particularly struck by the extent to which all developments seen as important to Australia’s security are viewed through the prism of Australia’s alliance with the United States. The paper describes our relationship with the United States as a national asset. In many respects it is. There are enormous benefits to Australia’s security in our relationship that have been extensively discussed in successive white papers and strategic reviews. The last thing the alliance relationship needs in the current situation is for the Australian government to act as an uncritical and unquestioning echo of the policies and pronouncements of the United States administration policy.

The national security policy of the coalition has a single base: the alliance with the United States. This approach undermines Australia’s standing, particularly in the Asia-Pacific region, and thereby lowers the value of the alliance for the United States. The government has largely squandered opportunities to strengthen the alliance and to make a worthwhile contribution to regional security. Washington valued the commitment of successive Australian governments to security and stability in South-East Asia. For countries of the region, Australia’s alliance was seen as an important contribution to the continued US engagement in the region.

Australia has built up an extensive network of bilateral relationships with South-East Asia. The range and complexity of these relationships was impressive. We have seen an erosion of this standing in South-East Asia, where, as one observer has noted, we are ‘tolerated but not trusted’. The government tries to make much of the memorandums of understanding it has concluded with regional countries, but the basis of these agreements is undermined when the government indulges in ill-disciplined speculation about pre-emptive strikes. One obvious conclusion from the government’s assessment of the terrorism threat in South-East Asia is a need for a regional approach to the threat. It is regrettable that South-East Asian countries have not been able to agree on a coordinated regional response despite the shared assessment of threat. It is even more regrettable that the Australian government is not in a position to provide any credible leadership role on such an important issue.

The Labor Party is and has always been a very strong supporter of the US alliance. But the basis of our contribution has been that we are a more valuable partner to the United States as an ally, not as a sycophant. If Australian policies and views are simply seen as reflecting the policies and views of Washington, then our influence with other foreign governments will be diminished. This is particularly important in present circumstances where we are seeing an increase in anti-Americanism. The Defence Update notes but is rather dismissive of increased hostility and suspicion of US motives and intentions. I disagree. It is of concern that US Secretary of State Powell has said that serious questions have arisen on whether the United States ‘can use its enormous political, economic and above all its military power wisely and fairly’. Though the United States
may lead the international coalition against terror, successfully dealing with the problem will require the active participation of dozens of countries. If that active participation is to be achieved, the United States will need to maintain high levels of trust.

The Defence Update identifies the proliferation of weapons of mass destruction as the second major issue to have achieved prominence since the 2000 white paper. Again, this issue is not a primary responsibility of the ADF. The deepening crisis with North Korea does, however, underline the seriousness of proliferation of weapons of mass destruction. I agree with the update that the ‘international non-proliferation and export control frameworks remain an important first line of defence’. It is unfortunate, therefore, that the United States administration has repudiated agreements that have long been a very important part of the international regulatory framework. Failure to ratify the Comprehensive Test Ban Treaty, the decision to walk away from negotiations of the Biological Weapons Convention and withdrawal from the ABM Treaty, even though this treaty was bilateral, has weakened the international nonproliferation framework. Efforts to maintain, let alone strengthen, the international framework will be severely weakened unless the United States administration can be persuaded of the absolute importance of its support for the international regulatory regime.

The update refers to a ‘layered defence’ against the proliferation of weapons of mass destruction. It notes in this regard that Australia may need to meet ‘future requests to support coalition military operations’, and there is a vague reference to national missile defence. Does this reference to future requests for a military contribution go beyond involvement in the coalition of the willing against Iraq, or are other operations under consideration? We are entitled to elaboration and clarification. The government’s speculation about possible Australian participation in the United States’ missile defence program is yet one more attempt to play wedge politics. The government has raised the spectre of a possible North Korean missile attack on Australia as the rationale for seeking Australia’s involvement in the United States’ missile defence program. The government has not attempted to provide any analysis of why it considers Australia might be a target if and when North Korea develops an intercontinental missile capability. The Prime Minister and the Minister for Defence have made vague reference to the possibility of basing lasers or missile interceptors on Australian territory. The Prime Minister has claimed that a missile defence system could provide ‘the ultimate defensive shield against a missile attack’.

Let us be clear about the facts of missile defence. The United States has had an interest in missile defence extending back some 50-plus years. However, it is yet to develop any effective defensive systems. The Bush administration has accorded a particular priority to ballistic missile defence and has invested heavily in the various component programs to the tune of billions of dollars in additional funds. Most of those programs are experiencing delays. It would be a mistake to underestimate American technical expertise or innovation, but the odds are that it is highly unlikely that effective and reliable defences against long-range ballistic missiles will ever be developed. For Australia to become involved in the United States’ missile defence program has serious consequences. Missile defence is a massively expensive undertaking. It has been claimed that the United States has already spent $70 billion over the last 20 years. The Missile Defence Agency’s projected budget for the next five years is about $50 billion.

Costs of this magnitude are clearly beyond Australia’s resources. If we were to be involved, it would not simply be a matter of offering basing for US systems. Australia would need to invest in extremely expensive ground or sea based radars. The speculation about lasers would involve Australia in boost phase missile defence that adds a further level of complexity. Talk about the efficacy of missile defence systems creates a false sense of security. The likely response to moves to introduce defence systems in our region would be to increase the number and sophistication of offensive missiles. The best that current programs offer is protection against a limited missile attack. No current
program contemplates providing a shield against a large number of missiles.

There are two rather disturbing aspects to the government’s approach revealed in the debate it has provoked on missile defence. First, it is yet another example of a shift in policy towards security in the region rather than working with our neighbours to maintain regional security. Second, there is an underlying assumption that deterrence is now of little or no value. That assumption is at odds with a longstanding policy, reaffirmed in the 2000 white paper, that Australia relies on the extended deterrence provided by US nuclear forces to deter the remote possibility of any nuclear attack on Australia. You have to ask: what has changed? You have to hope that, when the strategic review comes out in 2004, it will be less muddled and it will be more precise as to the force structure implications of the direction in which our region and the world is going.

Noonan, Michael Thomas

Senator HARRADINE (Tasmania) (1.14 p.m.)—I wish to advise the Senate that Michael Thomas Noonan, the statutory agent and campaign manager for the Senator Brian Harradine Group, died in the early hours of Sunday morning on 9 February 2003 after a four-month battle with cancer. Mick was a great friend, a brilliant mathematician, a superb organiser, with more than a touch of humour. He has made political history as the only person to have successfully led six campaigns for any Independent member of the Australian parliament since Federation—1975, 1980, 1983, 1987, 1993 and 1998.

Mick was born in Hobart on 7 June 1932. He grew up, was educated by the Christian Brothers of St Virgil’s College and lived in Tasmania all his life. He was a proud and grateful Tasmanian, as evidenced by his many quiet achievements of lasting benefit to society. Michael Noonan started work as a survey draftsman with the Lands and Surveys Department on 14 February 1949. In 1950 he commenced part-time study at the University of Tasmania for a Bachelor of Science degree, majored in mathematics, and completed it in 1955. Mick was awarded the Ida Williams prize in pure mathematics.

In the fifties and early sixties Mick developed, by research, new photogrammetric methods and systems of surveying by analytical photogrammetry involving the use of aerial photographs and complicated mathematical computations. The results were used in the first instance by the Hydro Electric Commission. Other than for the ordnance survey in the UK, no other government had adopted this method of mapping. Mick became the font of knowledge for other jurisdictions as they sought to adopt this technology.

In 1965, and for a few years after that, Mick successfully lectured in computations II at the Hobart Technical College. Michael Noonan was appointed as the chief research and development officer in the Mapping Division in 1979 and was responsible for the introduction of the latest technology to the division’s operations. He controlled, directed and coordinated the work of the unit in the research and development of computer systems, programs and techniques, providing a computing and automated drafting service for the Mapping Division, including geodetic, photogrammetric, cadastral and cartographic applications. He was appointed Acting Director of Mapping in May 1989, a position he held until his retirement on 14 February 1990 after 41 years in the service.

Surpassing his commitment to advancements in his scientific field was his devotion to God, his wife and family, his many friends and to social justice. Mick married Pauline Higgins in 1960. They shared many interests in common. Both were handy tennis players and coached many youngsters in various sports. When their children, Gerard, Mark, Angela and Paul, were old enough, it was off to the various sports venues on Saturdays. The family looked forward to the summer holidays in Tasmania, including the east coast, Bruny Island and Flinders Island. Mick was keen on fishing and hunting, during which time many a problem or question raised by accompanying offspring was solved. Mick could identify all Tasmanian birds and could mimic most.

When Mick retired he would regularly catch a bucket of flathead for distribution
around the neighbourhood, including to many who were housebound. His commitment to the community, including to their parish, was manifold. Is it any wonder that the Lindisfarne Church of the Incarnation was overflowing for the mass of Christian burial? Mr President, your presence was appreciated and was recognition of the legacy this genuinely humble man leaves to our community. Mick told me soon before his death that, by the grace of God, death held no fear for him. As a lifelong jazz enthusiast, Mick expressed a wish for his coffin to be carried out of the church to a rousing rendition of *When the Saints Go Marching In*. His dying wish was granted in full measure.

**Iraq**

Senator NETTLE (New South Wales) (1.20 p.m.)—As the war on Iraq continues, it has become a television event, with pictures of charging tanks, explosions and unumpteem cruise missile launches from the decks of ships. Debate has been put on hold in favour of military analysis. Ethical, legal and political critique has been replaced by endless speculation on military tactics, troop moral and sterile technicalities—all of this being delivered with the latest of war machine jargon. For this reason it is vital that we remind ourselves that this war remains immoral no matter how many towns are so-called ‘liberated’, it is still illegal no matter how many new so-called ‘allies’ are bought out, and it is still setting a frightening precedent. It is a precedent that threatens to plunge the wider region into a bloody turmoil of civil war, to worsen the plight for Palestinians and the fear of the Israelis, and encourages a ‘might is right’ doctrine, destabilising conflict zones around the world.

These are the key reasons why the Australian Greens continue to oppose this war but support our troops. We support our troops because we care about them. As human beings, we wish them all safety in a time of great danger. This is the same motive that brings thousands of people onto the streets against this war—the desire to prevent the death or suffering of our fellow human beings, be they soldiers or civilians. That is why the Greens continue to say, ‘Support our troops by bringing them home.’

There are those in this chamber and in the media who are determined to write off these concerns about casualties. We heard in the chamber yesterday one of those people citing the fact that ‘only’ a few hundred civilians had been killed in the first few days of war, or they say that ‘humane bombing’—that sickening oxymoron—was delivering a bloodless victory to these humane invaders. These apologists for war are quick to claim success but, sadly, those of us who are not dazzled by the military circus know that this war and its effects cannot be judged after just a few days or a few weeks. Only after several months, years and even decades will the damage that has been done be truly understood. It is on a long-term scale that our actions must be judged. Yet, even after the first few days, there is much that we need to mourn for. The military spin that told us of whole divisions surrendering has sadly proven to be false, so too the willingness of Iraqi soldiers to welcome the Australians, British and Americans. We do not know how many civilians have been killed so far. Certainly, hundreds have been, with many more injured. As fighting intensifies these numbers are likely to rise.

These civilians are real people, innocent of any crime against us or our allies. They are real people, like Rossel Salam, a 10-year-old girl, who was hurt on 21 March, in the west end of Baghdad. At about 9 p.m. she was in her garden. There was a blast and metal splinters were flying about. Her wrist, forearm, hand and breast were hit. She has multiple fractures. A tube has been put in her thorax, her lung was hit and blood has entered her chest cavity.

These are the bare facts that have escaped the military mindset. Good news is quick to be reported; bad news is slower to surface. We can be sure that the thousands of bombs and missiles that have rained down on Baghdad, Basra and other cities and towns in Iraq have not all found their ‘military’ targets, certainly not the unexploded cluster bomblets that are now littering Basra in their thousands—they have already killed and maimed hundreds of civilians and will continue to do so for weeks, months and years to come—and certainly not the cruise missile
that sent shrapnel into the legs and spine of a five-year-old girl, Doha, who now lies among the 101 other patients brought to a hospital in Baghdad last Friday night.

These are the confronting facts of war that will begin to surface weeks from now in larger and larger numbers. These are the facts that this government shares responsibility for, the result of a decision that this government could have rejected but did not. And what for? People truly believe that Iraq will be at peace—what, like Afghanistan? Has that bloody episode ended the threat of terrorism or brought freedom and security to the local people? The sinister ripples of this decision are on the move and will not stop at the borders of Iraq.

This does not bode well for the fragile state of Middle Eastern politics. Central to this fragility is the 50-year-old wound of the Israeli occupation of Palestinian territories. This war threatens to further derail any hopes for peace in that region, hopes which have already been weakened in recent weeks. A new right-wing Israeli government continues its violent repression of the Palestinian people—action surely encouraged by the US led gunboat diplomacy. Israel responds to the terrorism of extremists with its own terrorism of indiscriminate killing: bulldozing, shooting and blowing up men, women and children, all the time giving birth to new and more desperate extremists ready to keep the violent cycle spinning. An escalation of this violence is already being felt in the camps in Gaza and in the West Bank. Violence has already seen over 400 Israelis killed in extremist attacks over the last two years—and a staggering 1,806 Palestinians, nearly 500 of whom were children killed by the Israeli defence forces.

Politically the situation has deteriorated. The Sharon government has recently declared that there will be no independence for the Palestinians, only a state ‘with certain attributes of sovereignty’, a declaration that comes as Israel continues with its construction of a six-metre security fence planned to totally surround any Palestinian state. This is not a road map to peace but a commitment to oppression. Without radical and concerted political action to head off this aggression, the region will be condemned to yet more years of conflict and more years of pain.

The pursuit of violence as a political tool, as we are seeing in Iraq, only serves to worsen this human tragedy. As the months roll by, the decision to attack Iraq will increasingly represent a betrayal of the hopes of the children of Israel and Palestine, hopes for a future, for peace and for security. Surely the tragedy of Palestine should be our guide: 50 years of violence are no closer to bringing peace; 50 years of political, financial and military resources have not brought the Israelis the security that they desire. Only justice can do that and only a commitment to equality, the elimination of poverty and a free pursuit of self-determination.

The United States will not win a war on terrorism if they are still fighting it with cruise missiles and cluster bombs decades from now. The stupidity of this tactic is painfully obvious. They cannot bring peace and harmony to this most volatile of regions at the end of a gun. This is a recipe for perpetual tragedy. The world is crying out for a different way: a commitment to peace, a commitment made real through an investment in eliminating poverty, through an investment in the development of international law and through the concerted and genuine pursuit of eliminating human rights abuses. Australia has a role to play in averting this tragedy. As a rich Western democratic and—until now—essentially peaceful country, we are in a strong position to advocate for these changes. The message of the peace movement is to focus on this goal, to see through the media dazzle dressing up this war and to recommit to peace. We need to start now by bringing home the troops, lifting the sanctions, supporting international law and saying no to war. I seek leave to table over 28,000 signatures against the war that were circulated to parties and senators yesterday.

Leaves granted.

Western Australia: Gallop Labor Government

Senator EGGLESTON (Western Australia) (1.30 p.m.)—It was recently the second anniversary of the election of the Gallop Labor government in Western Australia, and
today I would like to say a few words about its commitment to regional Western Australia, which, to put it kindly, has amounted to nothing more than hollow rhetoric. In short, the Labor Party has proved itself unable to rise above its citycentric focus, and it has a record of neglect of country people and their interests. Firstly, it has to be said that the Gallop government is a 1930s style, ideologically-driven socialist government. The Gallop government still believes in the concept of class war and practises the politics of envy.

A good example of this was its attempt to introduce a special higher land tax on properties valued at more than $1 million. These days many properties in Perth are valued at more than $1 million, but the owner-occupiers are often far from wealthy. These houses are often owned by retirees or pensioners who purchased a house in the seaside western suburbs of Perth 40 or 50 years ago for a few thousand dollars and, thanks to inflation, the value of their houses has steadily risen. The Gallop government understood this but, apparently, did not care. Instead, all that mattered to it was that these people lived in valuable properties and should, therefore, be penalised. This proposal and the plan to locate state housing in the middle of more affluent suburbs are clear examples of the 1930s class war mentality of the Gallop government. I am pleased to say that faced with an unprecedented level of public criticism, the Gallop socialist government withdrew the super land tax proposal.

I want to return to the main thread of this speech, which is to detail the Gallop government’s disregard for the interests of the country people of Western Australia. If there was anything that exemplified the state government’s absolute disregard for the interests of country people, it has to be its one vote, one value legislation. The state government is intent on reducing the level of political representation of regional WA in the state parliament by appropriating eight lower house seats from the country and giving them to city residents. Ostensibly, this is done in the name of fairness and democracy but the real purpose is to enhance the electoral chances of the ALP. If the legislation is successful, the Labor Party could be elected to government in future without ever winning a single country seat.

I find this a truly frightening prospect in a state whose wealth is almost totally derived from its regions, be that from agriculture, mining or from the great industry of tourism. That this is being done in the name of one vote, one value, which on the face of it sounds fair and just, is one thing, but the reality is that in Western Australia this is not an appropriate formula for the good government of a vast state with the demographics of Western Australia. WA has one large city and dozens of small country towns scattered across the many and varied regions which make up the one million square miles of WA.

From the earliest days of responsible government in Western Australia, the commonsense of regional representation providing the composition of the state parliament as the best formula for the good government of the colony was accepted. At the door of the Legislative Assembly in Perth there is a list of the original seats, from which it is quite apparent that regional representation was the guiding principle upon which seats were created. For example, there were several seats in the Pilbara and the Kimberley, whereas under the Gallop proposals there will be just one. Despite the fact that this legislation is almost universally opposed in regional WA, and despite the four to one ruling in the Supreme Court that its legislation was unconstitutional, the Attorney General, Jim McGinty, has launched a High Court challenge that will cost WA taxpayers millions of dollars and is probably doomed to fail because regional representation is an accepted principle in the Australian political context.

There are many other examples of the Gallop government’s neglect of the interests of the people of regional WA. Perhaps the most prominent of these is that, despite the fact that the National Land and Water Resources Audit found that Western Australia has the largest area of dryland salinity in Australia and the highest risk of increased salinity in the next 50 years, the state government has dragged its feet on signing on to the National Action Plan for Salinity and Water Quality. Western Australia was,
fact, the last state to do so. WA finally signed up in December 2002, by which time all other states had already received federal funding.

Another area where the Gallop government has failed WA is in the forest industries, which were once such an important job creating and profitable part of the south-west economy. The government’s decision on the allocation of jarrah has been driven by the radical green movement without any consideration for the workers, jobs, small businesses and, indeed, whole country communities in the south-west, which will suffer as a result of the closure of the timber industry.

The Commonwealth is committed to a viable, sustainable forest industry that will allow Western Australia to continue to market, both domestically and abroad, its famous and highly sought after jarrah products. The Commonwealth remains committed to industry development in the south-west. It has offered a grant of $15 million to facilitate industry development and is ready, willing and able to pay this money immediately, when the WA government announces a viable allocation of jarrah for timber industry development.

Advice to the Commonwealth is that 200,000 cubic metres of jarrah is needed for a viable industry. This can be achieved, according to scientific and industry advice, even allowing for the government’s so-called ‘old growth’ election promise. If, and when, this allocation of 200,000 cubic metres of jarrah is announced by the government of Western Australia, the federal government will immediately provide $15 million to facilitate industry development and is ready, willing and able to pay this money immediately, when the WA government announces a viable allocation of jarrah for timber industry development.

However, what I really want to emphasise today is the state government’s regional health record, which is one of centralisation and downgrading of services. The state government has restructured country health services, with the creation of a single WA Country Health Service authority. There are now six regions, each with on-the-ground administrative and support staff. There are also a number of Perth based staff, who according to the recent Country health services review:

... provide support in areas such as facilitating policy formulation, service and infrastructure planning, finance planning and management, and corporate business systems development.

One has to wonder whether staff based in Perth are best placed to formulate regional health policies. Surely, staff based in country areas would have a better day-to-day understanding of the needs of regional Western Australia in terms of health services. It is also interesting to note that the state government’s contribution to health funding has failed to keep pace with Commonwealth government funding in recent years. This is at a time when WA received $2,518.1 million in GST revenue in 2001-02 and is set to receive an estimated $2,825.7 million in GST revenue in the current financial year.

A contentious element of the restructuring of health services in Western Australia has been the abolition of local hospital boards. The government has said that the local hospital boards will be replaced by district health advisory councils. However, as the shadow minister for health, Mike Board MLA, has noted:

Most towns would be lucky to have one community representative on the Council, when they had previously had an entire board to look after their own hospitals.

Mr Board went on to state:

The Councils are a real step backwards for country health. With no power to make decisions, they will just end up being another way for the Gallop government to ride roughshod over country health needs while claiming to be consulting with the community.

One of the most important and concerning programs which the Gallop government is proposing to introduce is the downgrading of various hospitals. This affects both regional and district hospitals. It has already occurred in Carnarvon and Derby and is also affecting hospitals such as Port Hedland hospital, which is a regional hospital for the Pilbara
area and which has an uncertain future under the Gallop government.

The Derby Regional Hospital, in the Kimberley, has already witnessed the loss of a number of medical specialists to Broome, including an obstetrician/gynaecologist and a paediatrician. In 2000-01, 75 per cent of the patients at the Derby hospital were Indigenous, with Indigenous people being at least twice as likely as other Australians to be admitted to hospital. The Derby hospital has traditionally had a focus on the provision of medical services to the Indigenous people of the West Kimberley. I believe this focus will be lost with the transferral of the regional hospital services to Broome.

With the downgrading of the Derby hospital, a question must hang over the future of the RFDS base in Derby. The Derby RFDS base services the Kimberley and for many years was funded by the people of Victoria. Thus, the Kimberley became known as ‘Victoria’s outback’ as far as RFDS services were concerned. However, if specialist services are no longer based at the Derby hospital, it must only be a matter of time before the RFDS base is shifted to Broome, which will represent a significant economic loss for the town of Derby. This is hardly a good prospect for a small Kimberley town.

It has to be said that the ALP member for Kimberley, Carol Martin, an Indigenous person, can take no pride in the role she has played—or not played—in seeking to preserve the status of existing medical services in Derby for the benefit of the Indigenous people of the West Kimberley or in looking after the general interests of the town of Derby which, I believe, to her disgrace, is her home town. Port Hedland hospital is also under threat in terms of its status as a regional hospital. Again, the same kinds of considerations will apply to the Port Hedland hospital, if it loses its regional hospital status, as those that have applied to the Derby hospital.

In conclusion, all this demonstrates the hollow nature of the Gallop government’s commitment to the people of regional WA. That the Gallop socialist government has no sensitivity to the needs of the people of regional WA should not come as a surprise.

The ALP is, after all, a metropolitan based party and its members are by and large ex-union officials who, for the most part, have no knowledge or understanding of the regional areas which make up Western Australia.

Agriculture: Dairy Industry

Senator O’BRIEN (Tasmania) (1.45 p.m.)—During the last estimates round I asked a number of questions about the Dairy Regional Assistance Program. These questions followed a number of questions I placed on notice about the general program as well as a number of specific projects. Mr Acting Deputy President Ferguson, you might recall this program was allocated some $65 million to assist regions disadvantaged by the deregulation of the dairy industry. You may well recall that nearly 20 per cent of those funds were allocated to just two electorates: the electorate of Wide Bay, held by the Minister for Agriculture, Fisheries and Forestry, Mr Warren Truss, and the electorate of Lyne, held by the Deputy Leader of the National Party, Mr Mark Vaile. Senators would be aware that areas that had clearly been badly affected by deregulation, such as the electorate of Paterson in New South Wales, did not fare so well.

During those estimates hearings I asked the department how applications for funding through the Dairy Regional Assistance Program were assessed. I was advised that an area consultative committee would first look at projects and, if the committee considered a project worthy of support, it would put it to the department. I was told that regionally based departmental officers would then look at the project and make recommendations. The guidelines that apply to the Dairy Regional Assistance Program were released on 13 July 2000 and then updated in August last year. Section 8 of those guidelines states that funding is not available retrospectively. It further states that proponents should not plan to begin a project dependent on DRAP funds prior to formal approval. I take that to mean that it is not possible to, for example, erect a building and then, sometime later, apply for funding to cover the construction of that building. I must say that seems to be an entirely reasonable application of the rule.
This program should have been about generating new activity, not paying for activity already under way or completed. During the hearings I asked some questions about funding that was provided for the construction and fit-out of a plant at the Moruya industrial estate on the South Coast of New South Wales. It is located in the Eurobodalla Shire. The South East New South Wales Area Consultative Committee covers the region; it is in the federal electorate of Eden-Monaro, held for the Liberal Party by Mr Gary Nairn. According to the DRAP summary document for round 6 of 2001-02, the funding was provided for the construction of a new building and the installation of new machinery. The grant was for $339,000. That application was lodged in June 2001 and it requested $300,000 but was granted $309,000. I assume that the $339,000 included an amount to cover the goods and services tax. The assessment of this application was completed on 12 December 2001 and the application was approved on the same day.

According to Mr Anderson, in answer to a question on notice, work commenced on this project— I assume the construction of the building—on 24 December 2001, and installation of the equipment commenced in January 2002. I stress that is according to the advice given by Mr Anderson. The department says it was advised on 30 April last year that the construction of the building had been completed and the equipment installed. I have gone to the trouble of arranging to check with the Eurobodalla Shire Council about the construction of the building. An inquiry was made to Mr Peter Tegart, the council’s Director, Environment, Planning and Administrative Services, for the date that the building—constructed to house a steel profiling plant—was approved by the council. We also asked when the council discussed the construction of the building and the use of the funds from the Dairy Regional Assistance Program. The request was made on 30 September 2002 and I received a response from the council on 15 October last year. I was advised that a development application for the building was lodged on 20 September 2000 and was approved by a council delegate on 7 December 2000. I was advised that a construction certificate was issued on 26 February 2001. Inspections of the building commenced on 14 March 2001. So the construction of this building—it appears to be the same building—was well under way well before the first application for DRAP funding was lodged. It appears this building was completed prior to the application being approved and therefore the application did not meet the program guidelines.

In relation to my question about any council discussions regarding the use of DRAP funds and this project, the council email advised:

A copy of the report to Council dated 27 August 2002 which outlines Council role in the development and the construction and subsequent agreement for sewerung the industrial estate is attached to this email.

I seek leave to table that document.

Leave granted.

Senator O’BRIEN—I have supplied a copy to the government whip. It is section A9 of the administrative report of the Eurobodalla council meeting held on 27 August 2002. It is headed ‘Arrangements for the sewerung of the north Moruya Industrial Estate’. The report provides details of the allocation of costs for the work between the owner of the estate and the council. The owner’s share is an initial payment of $309,000 and a further payment of $272,500 over 10 years. The council contribution is identified at $508,500. The report says:

“Note that the initial payment of $309,000 [by the owner] is federal dairy RAP money [ex. GST] granted to Mordek for the expansion of Mordek steel rolling operations and new jobs growth.”

It therefore appears that funding provided for a building that had already been constructed was then used to meet sewerage costs—even though an early application for funds to pay for the sewerage system was rejected. It is clear that there was a problem with funding the installation of a sewerage system on this estate. There was an attempt to fund the provision of the sewerage system through the Dairy Regional Assistance Program in July 2001. According to Mr Anderson, that application was rejected as being outside the guidelines. And we now know—based on the Eurobodalla council minutes—the funding
for the building and the building fit-out was actually used to fund part of the sewerage works.

I have been advised that there were a number of meetings involving staff from the Eurobodalla council and representatives of the federal government about this project. I further understand that the federal member for Eden-Monaro, Mr Gary Nairn, was involved in the discussions about the diversion of these funds from the approved project to the rejected sewerage works proposal—that is, the laundering of some $339,000 through the DRAP system. I note that Mr Nairn handed over the cheque for the money to the proponents of the steel fabricating project. There is a photograph of him on the front of the South East Opportunity Newsletter—summer 2002 edition—doing just that. I understand the council officer involved in these negotiations was Mr Phillip Herrick.

The Dairy Regional Assistance Program was strongly supported by the opposition. It was pressure from this side of the chamber, in fact, that saw the level of funding for the program increased. We assumed this program would be properly administered. The purpose of the program was to provide financial assistance in regions affected by dairy deregulation, not political sustenance to coalition members. The allocation of nearly 20 per cent of the total national funding to just two National Party electorates is confirmation that DRAP has been used as little more than a political slush fund. And now we have what could be described as a corruption in the use of the program.

When I raised this matter at the estimates hearings on Tuesday, 11 February, Senator Ian Macdonald—I am sure in good faith—committed to provide me with advice on the Friday of the following week, which was 21 February. The committee secretariat was then contacted by Mr Anderson’s office on 21 February—after some prodding, I might add—and advised that a response would not be provided that day. Mr Anderson’s office said a response might take up to four weeks. That was nearly five weeks ago. Nearly all the facts surrounding this matter have been compiled by the Department of Transport and Regional Services. These facts are contained in answers to questions on notice, all of which would have been vetted by Mr Anderson’s office for the signature of Senator Ian Macdonald. I provided additional material that I had in my possession to Senator Ian Macdonald on the morning of 12 February, as requested.

The failure of the Deputy Prime Minister to provide a timely and comprehensive response to what are very serious allegations heightens my concern about this matter. I will therefore give notice later today of a motion to refer this matter to the Senate Finance and Public Administration References Committee for inquiry and report. I plan to move the motion tomorrow. I have chosen to refer this matter to that committee because the information we have to date suggests that this is very much an issue that goes to the effective administration of a government program. If the Senate agrees to this reference I will be proposing that a number of witnesses be called to give evidence. In addition to the relevant officers from both the district and central offices of the Department of Transport and Regional Services, I will also propose that others directly involved in this process be invited to appear. That would include all the relevant officers from the Eurobodalla Shire Council. Members of the South East New South Wales Area Consultative Committee should be invited to give evidence. I will also propose that officers from the Department of Agriculture, Fisheries and Forestry who were consulted about this project should appear.

In a number of questions I placed on notice about this matter I asked what communication there had been between the federal member for Eden-Monaro, the proponents of the proposal or anyone acting on behalf of the Minister for Transport and Regional Services and the Minister for Agriculture, Fisheries and Forestry or their staff. The answer I received advised that the department was not aware of any communication between these parties. My question was not to the department but to Mr Anderson. There was little more in his answer than a smart alec response to a serious question. The role in this matter of both these ministers and their staff, along with the federal member for Eden-
Monaro, Mr Gary Nairn, should therefore be a key part of this proposed inquiry.

QUESTIONS WITHOUT NOTICE

Iraq

Senator CHRI$ EVANS (2.00 p.m.)—
My question is directed to Senator Hill, the Minister for Defence. Is the minister aware that the US President has requested congress to approve $US75 billion to cover the costs of the war with Iraq? Hasn’t the US Department of Defense stated that if it does not get this additional funding it will have severe impacts on its operations and it will have to curtail essential activities? On a proportional basis with the size of the forces committed, doesn’t this equate to a total cost of the war for Australia of around $1 billion? Given that the Treasurer, Mr Costello, has estimated the cost in the hundreds of millions of dollars, will the Australian government now inform Australians of the actual cost of this war to Australian taxpayers?

Senator HILL—This question has been asked several times this week already. I think it was even asked by the Australian Democrats. It is interesting to now see the Australian Labor Party playing catch-up to the Australian Democrats. What I have said on previous occasions is that the cost to Australia will be in the vicinity of some hundreds of millions of dollars. It will need to be funded through the budget process and it is the subject of budget deliberation at this time. It is inappropriate for me to speculate on budget outcomes. The honourable senator will not have to wait too long before it is revealed to all of the community and put before the parliament in terms of appropriations pursuant to the budget process.

Senator CHRI$ EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer, but effectively it seems that even the cost of the war is now highly security impacted information. It seems to me that this question has been asked before because people want to know the answer. Minister, isn’t it the case that the US has costed the predeployment of troops to the gulf at $US30 billion, a significant part of the total cost of the war? Is the Australian government still maintaining that Defence will have to absorb the cost of the predeployment in its current budget? How much did that cost? Will Defence be fully supplemented for the full cost of the conflict? Surely, Minister, you can provide the Australian taxpayer with a better estimate than ‘hundreds of millions of dollars’ as to the cost of this war to the Australian taxpayer.

Senator HILL—It seems that the US, under its system, needs an appropriation at this time, thus the President has gone to the congress. Under our system, of course, that is not necessary. As I have said before, we are able to fund the cost to date within our existing appropriations, but I have said that the additional costs of the war will be supplemented and it will be within the framework of the forthcoming budget. At that time we will be seeking appropriations from the Australian parliament and therefore coming forth with figures in the same way that the US has to at this time.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a delegation from the parliament of Fiji, led by the President of the Senate, the Hon. Senator Taito Waqavakatoga. On behalf of honourable senators, I have much pleasure in welcoming you to the Senate, and I trust that your visit will be both informative and enjoyable. With the concurrence of honourable senators, I invite Mr Waqavakatoga to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!
Mr Waqavakatoga was seated accordingly.

QUESTIONS WITHOUT NOTICE

Iraq

Senator HUMPHRIES (2.04 p.m.)—My question is to the Minister for Defence, Senator Hill. Will the minister update the Senate on the role that Australian forces are playing in the international effort to disarm Iraq? What contribution are Australian forces making to help ensure that humanitarian assistance reaches the Iraqi people?

Senator HILL—I thank the honourable senator for his question. Coalition forces
continue to consolidate the very significant gains they have made in the first six days of the campaign and to prepare for the decisive phase of operations around Baghdad. I note that CENTCOM spokesman Major General Renuart said on Tuesday that, despite challenges posed by bad weather, some coalition casualties and resistance from some Iraqi forces, coalition forces continue to move northward and are on track to achieve their objectives. Since I last reported to the Senate, there have been successful engagements of Iraqi forces by the coalition at a number of locations, including in the vicinity of Nasiriyah and Basra.

The welfare of the Iraqi civilian population, as I said yesterday, remains a key priority as the coalition pursues its objectives of ridding Iraq of weapons of mass destruction. This applies to our determination to minimise civilian casualties and damage to civil infrastructure through very careful targeting, our efforts to protect civilians from continuing Iraqi reprisals and oppression and efforts to enable humanitarian relief to flow rapidly to where it is needed. I am pleased to be able to report significant progress in this regard. The International Committee of the Red Cross teams in al-Basra are repairing the power system and, as of yesterday evening, have restored power to 40 per cent of the population. It is worth noting that Basra’s power supply was run down and unreliable before coalition operations. Unfortunately, approximately 40 per cent of al-Basra’s population is without water, but relief organisations led by UNICEF are standing by to restore water supplies as soon as the security situation in Basra stabilises. Basra air-port is in coalition hands and will be developed as a hub for humanitarian assistance once the threat to coalition aircraft is removed from inside Basra.

Yesterday I was asked about the vital port of Umm Qasr. I am advised that Umm Qasr is under the control of coalition forces. Australian Navy clearance divers have now commenced the crucial task of clearing the port and its approaches of mines and any booby traps. There are few tasks more dangerous and crucial than mine clearing, but I am sure that our divers will live up to their distinguished record. We anticipate that the divers’ work should be completed perhaps as early as this evening Canberra time. This could allow for humanitarian assistance to start flowing through the port possibly as early as tomorrow morning Canberra time, although the environment in which we are operating is inherently fluid. As soon as the port is clear, we will be able to begin delivery of the 100,000 tonnes of Australian wheat donated to the Iraqi population by Australia as humanitarian food assistance. Finally, I am pleased to report that our other force elements continue to contribute effectively to the coalition and that all our personnel are safe and well.

**Iraq**

Senator FAULKNER (2.08 p.m.)—My question is directed to Senator Hill, the Minister representing the Prime Minister and the Minister for Foreign Affairs. Can the minister inform the Senate whether the government supports the establishment of a US military protectorate, or equivalent arrangement, in the aftermath of the war against Iraq? What representations has the government made to the US and the UK as to the form of post-conflict administration that should be put in place in postwar Iraq? Has the Australian government made any representations to the United Nations regarding the postwar governance of Iraq?

Senator HILL.—It will be a difficult situation in Iraq immediately post-conflict in terms of not only the administration, as raised by Senator Faulkner, but also security and humanitarian need. The Australian government has been involved in the so-called phase 4 considerations for some time and has been putting views to our coalition partners—the US and Britain, in particular. The United Nations, informally before the commencement of the conflict, had been giving the matter some consideration but, because of the difficulties of debate in the Security Council as to whether a further resolution would be passed, were not able to give any significant airing to the issue through formal channels in that chamber. The Australian outcome—the outcome that we would wish to see—is that governance in Iraq is returned
to the Iraqi people as soon as possible, and that it is governance that is open and free—

Senator Sherry—And a democracy?

Senator Hill—and a democracy. Yes, we believe in democracies, and we on this side of the chamber are prepared to say so. We would like to see democratic processes, because we believe that would be in the best interests of the Iraqi people. We would like to see the humanitarian issues resolved as quickly as possible. Obviously, all this must be to a background of maintaining security.

What form that civil administration will take in the interim and the degree to which the United Nations will be a party to that is still unresolved. We believe that there is value in the internationalisation of any interim form of administration, but that has been made particularly difficult by the unwillingness of the Security Council to face up to its responsibilities in the case of Iraq. But discussions are ongoing on that subject, and we will continue to make representations along the lines of that which I have just outlined.

Senator Faulkner—Mr President, I ask a supplementary question. Minister, I note that you mentioned governance, security and humanitarian need. Can you indicate to the Senate whether, in your view, the governance structures put in place in Iraq will affect the amount and type of Australian postwar humanitarian assistance? If that is the case, could you indicate how that might be so? Also, is the government providing any new funding for humanitarian assistance in Iraq beyond that provided for in the existing aid budget?

Senator Hill—The form of interim governance in Iraq would not alter our commitment to provide humanitarian support or, I would think, the form of that support. In relation to whether there will be additional funding for humanitarian purposes over that which is already in the aid budget, that will be addressed within the forthcoming budget process.

Iraq

Senator Eggleston (2.13 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Will the minister inform the Senate what tax concessions are available to members of the Australian Defence Force currently deployed in the international effort to disarm Iraq?

Senator Coonan—I thank Senator Eggleston for the question. At a time when Australia’s defence forces are playing such a crucial role in Operation Falconer, the coalition operation to disarm Iraq, I am pleased that the ADF personnel have the support of the overwhelming majority of the Australian people. I cannot speak too highly of the bravery and commitment of our defence forces and am pleased to be able to advise this chamber that the pay and allowances of the ADF members currently in Iraq are exempt from income tax.

This exemption is a result of these ADF members being deployed on overseas duty that the Minister for Defence has declared to be warlike. The exemption comes under section 23AD of the Income Tax Assessment Act 1936, which allows an income tax exemption for the ADF pay and allowances of ADF members serving on eligible duty outside Australia. That exemption results from a three-step process involving a declaration by the Minister for Defence that the service is warlike, prescription under the Income Tax Regulations, and certification by the Chief of the Defence Force of an individual’s participation.

The Minister for Defence, after consulting with the Prime Minister, declared that the service is warlike on 18 March this year. Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. With this prerequisite in place, the next step is prescription under the Income Tax Regulations 1936. The final stage of the exemption process will be the Chief of the Defence Force certifying that particular ADF personnel have been on eligible duty.

The resultant income tax exemption is intended to recognise the duties, responsibilities and risks undertaken by ADF personnel. In addition, ADF personnel in Operation Falconer are entitled to an additional allowance, namely a specific allowance of $200 a day while serving inside Iraq, and an allowance
of $125 a day elsewhere inside the Operation Falconer area of operations. The allowances are paid in recognition of the operational and environmental threats likely to be encountered on the deployment.

Senators will appreciate that these initiatives are consistent with benefits given to personnel in other operations. ADF members are receiving a tax exemption for eligible duty in East Timor and for eligible duty in Operation Slipper in the war against terrorism in the Middle East. Tax exemptions were also available in previous years for ADF members serving in a number of overseas localities, including Iraq and Kuwait, during the Gulf War.

Senators will also be aware that the government introduced into parliament, on 23 October last year, the Taxation Laws Amendment Bill (No. 7) 2002, which proposes to provide an exemption for compensation paid to ADF members for loss of a deployment allowance owing to injuries sustained while on eligible duty outside Australia. That of course ensures that, where an ADF member returns to Australia because of an injury sustained in service, the lump sum compensation payment received for the loss of the deployment allowance is exempt from tax. The government has undertaken these measures as part of its commitment to the military effort and support for the ADF personnel engaged in the Iraq campaign and their families, who can be assured of the full support of the government for them and their loved ones serving in the Middle East.

Iraq

Senator BOLKUS (2.18 p.m.)—My question is to the Minister for Defence. Can the minister advise whether the ships containing military equipment or the ships containing humanitarian supplies will be given priority for docking and unloading in Umm Qasr after our Navy divers have cleared the mines in this port? Has the government decided how it will resolve, over the next few weeks, the competing priorities that are emerging between delivery of extra troops and military supplies to Iraq on the one hand, and delivery of humanitarian relief supplies and workers on the other hand? What are Australia’s obligations to Iraqi civilians, as one of the three occupying powers after control is gained by the invading coalition forces over particular areas of Iraq?

Senator HILL—I have not seen a shipping schedule, but I can assure the Senate that we will be getting the 100,000 tonnes of Australian wheat into that port as quickly as possible. That is consistent with our overall humanitarian approach in this conflict, to minimise civilian casualties and to minimise the obvious distress and disturbance that are associated with any conflict. But one must remember, as I said yesterday, that these are people who are already suffering at the hands of the regime that has governed them for at least the last 2½ decades. Out of this conflict, as an incidental benefit, we hope that they will be in a position where they have to endure less suffering. We hope that they will be better off from a health perspective, from a food perspective and generally in terms of their wellbeing. Whilst our primary objective is of course the disarmament of Saddam Hussein of his weapons of mass destruction, we believe that, through the liberation of the people of Iraq, they will have a much better chance in relation to the future. I think that that primarily answers the question.

On the issue of responsibility, the principal responsibility for the suffering of the Iraqi people is of course in the hands of Saddam Hussein. Senator Bolkus shakes his head as if to excuse that responsibility but, if it were not for the refusal of Saddam Hussein to meet the requirements of the international community to disarm over the last 12 years, then this conflict would not be necessary. It is not our wish that it be necessary; it is our wish that it did not occur. The trouble is that this man was unwilling to meet the demands of the international community and achieve that outcome peacefully, which left no other option than that it be achieved through force. I think that that point should be stressed. Despite that primary responsibility for his own people, we, as part of a civilised international community, not only want to contribute to a safer world but also wish to contribute to the wellbeing of the Iraqi people, who have suffered so long. We therefore, as part of the broader international community, accept our share of that responsibility.
Senator BOLKUS—You must ask yourself: what are they going to do with the wheat if they have no power and water? Mr President, I ask a supplementary question. Is the minister aware of comments made yesterday by the UN Secretary-General, Kofi Annan, that in times of war it is the belligerents who are responsible for the welfare and safety of the people? What mechanisms has the Australian government implemented to discharge its obligations to all Iraqi citizens whose safety and wellbeing have been jeopardised by coalition military operations? This is your responsibility, Minister.

Senator HILL—I have just answered that question and I have answered similar questions over the last couple of days. My answer is that we are making great efforts to minimise the consequences of this conflict for civilians because the innocent people of Iraq are not our target. We want to liberate the innocent people of Iraq and give them the chance for a better future. That continues to be an incidental objective to our primary objective of disarming Saddam Hussein.

Iraq

Senator BARTLETT (2.22 p.m.)—My question is to the Minister for Defence, Senator Hill, and it follows on from my question yesterday about the importation of a large amount of anthrax vaccine. In your answer to the question yesterday, you stated that, if the conflict continues, there may be a need for a rotation of forces; but you also acknowledged that this was likely to only include ships and Navy personnel, not ground forces and air forces. Minister, given that the vaccine that has been imported would cover 10,000 people, that seems an extraordinarily large amount. That would allow for five rotations of 2,000 troops at, presumably, six-month intervals—or, if it is only Navy personnel, 1,100 people. Does the large number of vaccinations imported mean that there is a potential expectation of an Australian presence being in Iraq for a very prolonged period of time or has the minister subsequently made inquiries and discovered that there are additional intended uses of the anthrax vaccine, such as for our troops in Australia or in other parts of the world?

Senator HILL—What I said yesterday is that, unfortunately, this is part of the new security environment in which we live. What we are so opposed to is the proliferation of weapons of mass destruction, in particular chemical weapons, biological weapons and nuclear weapons. In this environment, where rogue states are in possession of such weapons—and, in the case of Saddam Hussein, clearly are prepared to use those weapons— prudent planning would require that the ADF be able to effectively combat that threat. It may not have been necessary in the past, but we certainly believe that it is necessary now and for the future. Thus we would expect the ADF to be planning to meet that contingency. So there is an interest in this issue well beyond the conflict in which we are presently engaged. If, however, it is necessary to rotate any forces to this region whilst the threat remains, we would expect the ADF to guard against that threat.

In my answer to the question that the honourable senator asked yesterday I said that I would seek further information. The response I have been given by Defence is that we have ordered more US anthrax vaccine as a routine replenishment of our inventory levels, to be able to enhance the vaccine regime for those already vaccinated, should that be required, and to meet the need for individual or force element rotation of the current force. These are routine orders and are not being progressed urgently. While details of Defence purchases, including vaccines, are on the public record, for good operational security reasons we do not give details of stock held or why purchases are made. For operational security reasons, we do not comment on the details of preparations, equipment or protective measures used to preserve the safety of our personnel from chemical or other threats.

Senator BARTLETT—Mr President, I ask a supplementary question which goes to the issue of rotation and I thank the minister for that additional information. The minister has basically said that our ground troops, our SAS, would not be rotated. Isn’t that because we do not have sufficient SAS troops in reserve to replace the existing contingent without sacrificing our domestic counter-
terrorism capabilities? That being the case, has the government given consideration to what it will do if the conflict continues for three or more months and the six-month period of deployment is up? Is the government simply going to withdraw the SAS or will it keep them in Iraq indefinitely, past the six-month period?

Senator HILL—That is not the reason at all. We do have the capability to rotate our special forces without any detrimental consequence to domestic security or our other security obligations around the globe; it is just that we do not believe, in this instance, that it will be necessary. I applaud what I would interpret as the encouragement of the Australian Democrats to expand our special forces, because that is the decision that the Australian government have, in fact, taken—which Senator Bartlett might have missed—that is, to increase the size of our special forces, to support them with a company of commandos and greater logistical support, to relocate the helicopters to operate in conjunction with them ultimately out of Sydney and to set up a new enhanced command structure for our special forces. The government have taken those decisions and I appreciate the support from the Australian Democrats. (Time expired)

Iraq

Senator MACKAY (2.28 p.m.)—My question is to Senator Hill, the Minister for Defence, the Minister representing the Prime Minister and the Minister for Foreign Affairs. Is the minister aware of reports last night that confirmed the United Kingdom military command has now classified Basra, a city of over one million people, as a military target? What will the specific military targeting of Basra mean for the civilian population of that city and has Australia accepted the city of Basra as a legitimate military target?

Senator HILL—I did not see that report and I do not quite understand what it means, but there are clearly—

Opposition senators interjecting—

Senator HILL—I will tell you what our position is: there are clearly military targets located in Basra and in the vicinity of Basra—targets within the Australian targeting directives and within our rules of engagement. There are clearly Iraqi military forces operating there and clearly there are firefight with coalition forces. We support the coalition forces winning those fights and helping to contribute to ridding Saddam Hussein of his weapons of mass destruction.

We will continue to do this in a way that minimises civilian casualties, if that is the point being made by the opposition, because that has been a key plank in our military campaign from the start. We will maintain our determination to minimise civilian casualties, even though, as I said yesterday, that is made particularly difficult when the opposition military forces operate from within cities and suburban areas. Nevertheless, we will seek to achieve the military objective in as humanitarian a way as possible.

Senator MACKAY—Mr President, I ask a supplementary question. Minister, I am surprised that you are not aware of this; it has been out on the news wires for 24 hours. Does the minister recall comments by the Minister for Foreign Affairs last night that taking a longer time in the military conflict in Iraq is the price to pay for avoiding the targeting of civilian targets? Can the minister now advise whether the United Kingdom’s announced position that all of Basra is now a valid military target is consistent with the foreign minister’s statements last night?

Senator HILL—I do not think it is appropriate for me to report on the British position. That is something the honourable senator should ask somebody else. As I said at the start of this conflict, we do not target civilians. We are not targeting civilian infrastructure. We do not refer to cities as targets. There are no cities listed in our targeting directives. Our principal target is the military apparatus of Saddam Hussein, which enables him to keep weapons of mass destruction and further develop them to be a threat to us and to others. I regret to say that I think the honourable senator has this matter very confused. I suggest that she give the British Embassy a call.
National Health and Medical Research Council

Senator HARRADINE (2.37 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Minister, I note your comments in today’s Mercury, where you defend the cut of millions of dollars of National Health and Medical Research Council funding from Tasmanian medical researchers. Are you defending a funding system which, soon after its introduction, led to cuts in funding for medical research at the University of Tasmania and which has continued to threaten the viability of the medical school, the teaching hospital and, therefore, the quality of health of Tasmanians? Will you investigate this new system to ensure that Tasmanians get their fair go?

Senator PATTERSON—I saw a press release that Senator Harradine put out regarding this issue. I want to start by saying that the coalition government has actually doubled the amount of spending on medical research. I want to put that on the record to start with. I would also say that I had the opportunity of visiting the Menzies Research Institute on 9 August. I met with a lot of the researchers there and I saw the very good research they are doing.

I have to say that, as Senator Harradine has indicated, there have been some changes to the way in which the National Health and Medical Research Council administers and deals with grant applications. We are a very small country of 19 million people trying to bat above our weight in a world where there is enormous competition not only in research but also in maintaining and keeping our researchers here. Currently, all of the NHMRC project grant applications are reviewed against a strict set of criteria of significance and innovation, scientific quality and track record of the applicants. There is no basis for asserting a geographical basis for the NHMRC process.

I do not support the view that either specific states or individual medical research institutions should be provided with a base level of funding that is not subject to a competitive process. The approach would, among other things, fly in the face of reforms introduced in the response to the Health and Medical Research Strategic Review in 1999, which was undertaken to try and drive our research dollar to the point where we had a critical mass of people working in an area, sometimes in a virtual institute, and also to ensure that researchers from formerly block funded medical research institutes are required to compete for grant funds from the NHMRC on the same basis as all other researchers.

Professor Saunders, who is currently the chair of the NHMRC, responded to a letter written by Professors Muller and Walters of the University of Tasmania regarding the success rate of applications from their university. On 16 December 2002, Professor Saunders indicated that the number of applications received from the University of Tasmania had not risen in recent years, despite continued growth nationally. So the number of applications pro rata in relation to other applications had not risen at the same rate. Senator Harradine should, of course, be arguing strongly for Tasmania. But, as health minister, I have to ensure that we have the very best outcome for our research dollar. We have a system now which addresses, on a very competitive basis, the issue of trying to make sure that we have the research that will best give us the outcomes that we need for that dollar.

I hope that the Menzies Research Institute will be successful in another round. One of the ways in which they can work is in conjunction with another university, as some have done across states, to be successful in receiving a grant. But I think most Australians would expect that we have a competitive research grants system so that we ensure we have the very best. That is not in any way denigrating what is being done in Tasmania. We have some of the best researchers in the world and all of our institutions are competing against that. It is not in the best interests of Australia to allocate that money geographically. It is important to allocate it on the basis of who is going to deliver the best outcomes in medical research.

Senator HARRADINE—Mr President, I ask a supplementary question. The minister did not even advert to what I said about the University of Tasmania and the teaching
hospital. Is it a fact that Tasmania went from receiving $3.2 million to receiving $420,000—an amount of 0.28 per cent? That surely is not—is it, Minister?—a doubling of NHMRC funding. Isn’t it a fact that the committees that recommend those grants are larger groups, often high profile groups, with heavy representation on the inside of the system? Do you agree with the fact that these committees are comprised of persons who already have, or have had, grants?

Senator PATTERSON—From my days as an academic at Monash, I know there has always been concern when a group does not get an NHMRC grant. There will always be that; we see that in any grant system. What I said to Senator Harradine, through you, Mr President, is that our funding for medical research has doubled. I did not indicate it had doubled in a particular state—it has doubled. The most important thing is that we actually have a competitive process which gives us the best outcome for our research dollar. I have indicated that Professor Saunders has written to Professor Muller and Professor Walters to indicate that the number of applications has not increased at the rate of the rest of them, so that is one indication of the level of competition. There will always be concern, and there will always be people who are upset when they do not actually cut the chase in that competition. (Time expired)

Iraq

Senator CHRISS EVANS (2.39 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 Vanstone. Will the minister inform the Senate about the tragic abuse of women and children under the Iraqi regime of Saddam Hussein? Is the minister aware of how this abuse has impacted on the views of the Australian Muslim and Iraqi communities in relation to the war?

Senator VANSTONE—I thank the senator for his question. I have previously outlined to this chamber some of the horrendous examples of abuse from the barbarous regime of Saddam Hussein. I am sure that no senator could fail to be outraged by the use, for example, of rape or sexual abuse to punish opponents to achieve political ends, or the stories of decapitations of women in front of their own homes, or the existence in Iraq of chemical ponds to dissolve human remains and of machines for the purpose of grinding humans to a pulp. Perhaps the most disturbing report of all was the torture of children by crushing their feet.

In the past I have outlined to the Senate some comments from Iraqi women, urging the West to take action against the criminals that currently subjugate the Iraqi people. These include women like Rania Kaski, who asks those opposed to the war:

Are you willing to allow [Hussein] to kill another million Iraqis?

The brutality of the regime, which matches that of any regime in modern times, has also impacted on the views of Australia’s Muslim and Iraqi community. Adem Somyurek, a Labor member of the legislative council in Victoria and one of only two Muslim MPs in Australia, feels so strongly about the issue that he broke ranks with his own party and called on Muslim communities of Victoria to support our troops unconditionally against the bloodthirsty, evil tyrant who is Saddam Hussein. He went on further to say: ‘Let us not forget that Saddam Hussein’s actions are not, and never have been, motivated by Islam or Muslim values.’
Senator Kemp—Is this a member of the Labor Party?

Senator VANSTONE—It is a member of the Labor Party, Senator. Mr Somyurek has a preference for the involvement of the UN in military action and has a view about the role Australia should take to support Iraq in the postwar period. The government, of course, shared that strong preference for the UN to resolve the crisis, yet Mr Somyurek urges Victorian Muslims to keep a low profile with respect to antiwar protests. At least one Labor MP recognises the evil of the Hussein regime. The conceit of these protests is that participants in them claim to speak—

Senator Cook—You hypocrite. You absolute hypocrite.

The PRESIDENT—Order! Senator Cook, withdraw. You know that is out of order.

Senator Cook—Mr President, I do not want to sit here and be told that I do not oppose the Saddam Hussein regime—

The PRESIDENT—I have asked you to withdraw.

Senator Cook—by her or anyone else. Of course we oppose the Hussein regime.

The PRESIDENT—Senator Cook, you shall withdraw that unparliamentary remark—unequivocally.

Senator Cook—if I have made an unparliamentary remark, I withdraw it.

The PRESIDENT—You have made an unparliamentary remark; you know you have. Withdraw!

Senator Cook—if I have made an unparliamentary remark, Mr President, I withdraw it—

The PRESIDENT—Good.

Senator Cook—and I replace it with: she is no better than Peter Reith—

The PRESIDENT—Order!

Senator Bartlett—Mr President, I raise a point of order in relation to the minister’s comments. Under standing order 193, which is to do with rules of debate, part (3) suggests that a senator should not impugn improper motives on members of this or other houses. The minister has basically impugned improper motives on certainly every member of the opposition—and, I would suggest, every member of the parliament that opposes the military action—by saying that we do not care about the atrocities of Saddam Hussein. I would suggest the minister might like to read the sensible remarks made by Senator Santoro last night about the best way to conduct debate on this issue. Mr President, I would ask you to get her to withdraw that imputation.

Senator Cook—Mr President, I rise on a point of order. I support the point of order and commend it to you as perhaps the point of order I should have made. But you were presiding, Mr President, when an unfair reflection was made upon me and my colleagues and I would have hoped that you would have drawn the minister’s attention to that as being an unparliamentary remark. That is what caused my reaction. But I do support the point of order, and perhaps now you ought to ask the minister to remove that reflection, which is an absolute slur on me and every other member of the Labor Party not only in this place but everywhere else in Australia. What a disgrace!

The PRESIDENT—Order! I hear Senator Bartlett’s point of order, and I would remind the minister not to impugn improper motives to a member of parliament in another place.

Senator Vanstone—Thank you, Mr President. My remark was merely a statement on the fact that there is at least—one Labor MP who recognises the evil of the regime. Nonetheless—

Opposition senators interjecting—

The PRESIDENT—Order! Senator Vanstone, I do believe you are impugning the motives of other parliamentarians.

Senator VANSTONE—Mr President, I did not seek to speak on the point of order because I had assumed it was pretty clear. We do have one Labor MP who has quite clearly come out, and all I have said is that there is at least one—unless by self-notification they identify themselves. There may be many more—that is not for me to
say—but I should be entitled to say that at least one does oppose this regime.

The PRESIDENT—If I heard it correctly at the time, I do believe that may have been seen to be impugning the motives of other members of parliament. I just ask you to be careful in future with your turn of phrase so that other members in other places are not impugned.

Senator VANSTONE—Thank you, Mr President, and I will heed your advice and exercise care.

Senator Cook—Mr President, I rise on a point of order. The recording of this session will show exactly what the minister said, as will the Hansard record. I believe what the minister said was that, unlike other Labor Party members, this person was opposing Saddam Hussein and the torture that he inflicts. I take that as a slight on me as a proud member of the Labor Party, because I do too oppose Saddam Hussein. And, what is more, I have stood up for human rights in this place on more occasions than the minister and to now pretend that I do not stand up for human rights is a reflection on me and every other member of the Labor Party. I put it to you that is unparliamentary language in the circumstances and you should now ask her to withdraw.

The PRESIDENT—I will review the Hansard and report back to the Senate tomorrow.

Senator Cook—Mr President, on a point of order: if my description of what Senator Vanstone said is revealed to be true in Hansard, will you ask her to withdraw?

The PRESIDENT—I said I would review the Hansard and, if I am satisfied that there was an improper remark or imputation, I might well ask that very question. But until I review the Hansard I cannot make that decision.

Senator Forshaw—Mr President, on a point of order: when you are reviewing this I just draw your attention to the fact that I think it was only a couple of weeks ago this very minister jumped to her feet on a point of order and raised concerns about inferences contained within questions put by the opposition. I would therefore ask you, when you are reviewing this, to look at inferences that are made with respect to answers.

The PRESIDENT—I have already said I will review the Hansard.

Senator VANSTONE—I am happy to give you the undertaking that I will also check the Hansard and before tomorrow, if I find this afternoon that I have impugned the motives or the views of other senators, I will come back and withdraw unreservedly. Nonetheless, I do note the call from at least one senator opposite who has used the ploy of ‘I can’t recall’ when she was asked to withdraw something and got away with it—most unhonourably, I thought. I am simply telling you I will check and, if I have, I am telling you I will unreservedly withdraw, unlike the senator opposite who could not recall—

The PRESIDENT—Would you return to the question, Minister.

Senator VANSTONE—and got a case of Carmen’s disease. Continuing with the answer, it is of course the Iraqi people who will be the beneficiaries of the disarmament of the Hussein regime. We only have to ask some members of the Iraqi community in Australia who support military intervention. Heather Ewart interviewed some Shepparton Iraqi community members on the 7.30 Report. One man, Mr Abbass al Atheiry, who has been in Australia for three years, said he would be very sad to see his family dying back in Iraq. But he went on to say:

... but the only choice is to get rid of Saddam, is to sacrifice these people, so we can have peace in Iraq.
Mariam al Atheiry, presumably his wife or a relative, said:
You say—
someone has obviously put it to her—
about 1 million of Iraqi people will die now.
It’s way better than still having Saddam Hussein
and then later on more than 1 million people will
die because of Saddam Hussein.

Senator Sherry interjecting—

The PRESIDENT—Senator Sherry, you
are out of order! Repeated interjections
across the chamber you know are out of or-
der.

Senator VANSTONE—The Age on Sat-
urday details the views of an Iraqi Austra-
lian, Sadiq Musawi. He was tortured by the
Iraqi regime and he said, ‘I want to see an
end to Saddam Hussein.’ (Time expired)

Senator BARNETT—Mr President, I ask
a supplementary question. The minister has
carefully outlined the tragic abuses of
women and children under the Iraqi regime.
Is the minister aware of any further impact
that this has had on the Muslim and Iraqi
communities in Australia?

Senator VANSTONE—In addition to Mr
Sadiq Musawi, who went on to point out
that, like all of us, he too was apprehensive
about civilian casualties, his son was so mo-
tivated that he apparently stated that he
wanted to join the Australian Army to fight
in Iraq. When Andrew Denton on the ABC
program Enough Rope asked, ‘What would
you like to see happen to Saddam Hussein?’
Guzin Najim said:
Every Iraqi—every Iraqi, 22 millions Iraqi—they
want to see him die. He harms us.
Importantly, she added:
He kills everything nice in our spirit, in our lives.
A Canberra Times article last Friday outlined
the views of the President of the ACT Multi-
cultural Council, Mohammed Omari. He
believes that the war against Iraqi is justified
if it rids the world of Saddam Hussein,
whom he described as an ‘evil, heartless
butcher’. He goes on to say:
I don’t know whether Hitler reached this stage ...
Saddam is a butcher with a lot of blood on his
hands.

Senator Lightfoot—How can anyone
support a beast like that?

Senator Cook—Why didn’t the Ameri-
cans—

The PRESIDENT—Order! Senator
Cook!

Senator Carr—You traded with them for
12 years.

The PRESIDENT—Order, Senator Carr!
One of your colleagues is on her feet trying
to ask a question. The very least you can do
is remain silent while she does. Senator
Crossin.

Iraq

Senator CROSSIN (2.53 p.m.)—Thank
you, Mr President. My question is to Senator
Vanstone, the Minister Assisting the Prime
Minister for the Status of Women. Minister,
since you did not utter one word about the
plight of Iraqi women in your 19 years as a
senator in this place until 6 March this year,
what conclusion can the people of Australia
reach about, in your own words, the ‘appar-
et display of disinterest in the difficulties
suffered by women—

Senator Ian Macdonald—Mr President, I
raise a point of order.

The PRESIDENT—I think I know what
you are going to say.

Senator Ian Macdonald—Could you ex-
plain to the senator that she must address her
remarks through you?

The PRESIDENT—I was going to re-
mind the senator.

Senator CROSSIN—I am happy to start
my question again, Mr President, if you
would like me to.

Opposition senators interjecting—

The PRESIDENT—It would be very
nice to hear the question again, if your col-
leagues would keep quiet and let you ask it.

Senator CROSSIN—Thank you, Mr
President. Minister, since you did not utter
one word about the plight of Iraqi women in
your 19 years as a senator in this place until
6 March this year, what conclusion can the
people of Australia reach about, in your own
words, the ‘apparent display of disinterest in
the difficulties suffered by women in Iraq
under the Saddam Hussein regime’ shown by you over last 19 years? Why have you suddenly—

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

The PRESIDENT—I know what you are going to say.

Senator Abetz—This really is a very poor display—

The PRESIDENT—I remind Senator Crossin: you are to address your questions through the chair and not at the minister.

Senator CROSSIN—I am sure that is happening. Why has the minister suddenly taken an interest, answering four questions within the last three weeks on the plight of women in Iraq? Minister, have you been ignorant of these important issues for the last 19 years or are you simply displaying gross hypocrisy?

Senator VANSTONE—I thank Senator Crossin for the question. I would say two things in relation to this, Senator Crossin. Dealing with the first issue of why I answered four questions in the last three weeks—

Senator Bolkus—The first issue is what have you done for 19 years.

Senator VANSTONE—gee, I just wonder if Senator Crossin realises what is happening. We have decided to send troops into Iraq—

Senator Carr—To invade!

Senator VANSTONE—we have a military intervention in Iraq, and it requires some explanation. And, as a member of the government, I am only too happy to stand here and support the explanation for why we have decided to send troops into Iraq.

Opposition senators interjecting—

The PRESIDENT—Order, senators on my left!

Senator VANSTONE—I have not the slightest concern about doing that.

The PRESIDENT—Order! Senators on my left will come to order. And, Senator Vanstone, I would remind you also to make your remarks through the chair.

Senator VANSTONE—Mr President, as I say, I am not sure where Senator Crossin has been for the last four weeks, but the government has faced a very serious situation. The country faces a situation where we have sent our sons and daughters overseas in a military intervention, and it deserves some explanation in this place. I would have thought that any parliament and any minister who did not—

Opposition senators interjecting—

The PRESIDENT—Senator Evans, I cannot hear the answer, and I am very surprised if Senator Crossin can.

Senator VANSTONE—I think it is the responsibility of the government to make sure that during this time we, as ministers, give out information, argue the case, support our decision for what we have done and explain that to the Australian people through this parliament. As for my 19 years in this place, Senator, I am confident that you will understand that you cannot judge what each person here is concerned about simply by the Hansard record of what they say.

Senator Carr—Why did you trade with them? Tell us about the trade.

Opposition senators interjecting—

Senator VANSTONE—I do not think they are interested, Mr President. I was discussing a matter with Senator Patterson only the other day and I think she advised me that she has not had an aged care question from members opposite while she has been here. Do I deduce from that that nobody over there cares about aged care? No, I do not. I am a bit surprised that we have not had a question on aged care.

In summary to Senator Crossin: as I say, you cannot judge the Hansard record as being the total encapsulation of anyone’s views over any period of time; it is more a reflection of opportunities they have and particular interests that they have a priority on at the time. As to why now, I am the Minister Assisting the Prime Minister on the Status of Women. The government believe that the Iraqi regime has perpetrated atrocities against Iraqi women. We have made a decision to send men and women of Australia into military operations in Iraq and we do
feel an obligation to make it clear to the Australian public why we have done that. My answers in this place have formed a part of that, and that is why there were four answers in the last three weeks.

Senator CROSSIN—Mr President, I ask a supplementary question. What is the minister intending to do about the systematic, gross abuses of the human rights of women in countries other than Iraq? Is the minister seriously suggesting that the routine practice in Pakistan of dousing and setting women alight suspected of infidelity and the stoning to death of Nigerian women under sharia law are best dealt with by Australia invading those countries as well?

Senator VANSTONE—Senator Crossin, there are many, many evil things in the world, and I would think that amongst the senators in this chamber we could possibly agree on what they are. Where you and I might part company, Senator, is that I am not under the mistaken impression that I have a magic wand to address all the evils that I see in the world at any one time. Unlike you, Senator, I am still in touch with this galaxy, I still have my feet on the ground and I still understand that when you get an opportunity to do good you do it. It does not mean that you will be able to fix every evil in the world.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Iraq

Senator HILL (South Australia—Minister for Defence) (3.01 p.m.)—I indicated to Senator Evans that I had some further information on a question he asked yesterday. In relation to the question he asked today, I will read the relevant part:

There have been no reported communications problems between our F/A-18s and either coalition partners’ aircraft or ground systems. Compatibility between systems has not been raised as an issue.

I seek leave to incorporate the rest of the answer that I have.

Leave granted.

The document read as follows—

Does the Minister have any information on whether the RAF Tornado aircraft deployed to the Gulf are fitted with identification friend or foe (IFF) systems that are fully compatible with US systems?

As a prerequisite for participating in the operation, all coalition aircraft have IFF (Identification Friend or Foe) equipment that enables other units, both ground and air, to identify them as friendly. The RAF Tornadoes are no different. The incident that caused the RAF Tornado to be shot down could have been caused by a number of factors and this remains the subject of an inquiry about which it would be inappropriate to comment further.

Can the Minister provide an assurance that our F/A-18s have all necessary equipment to prevent such a horrific accident.

Our F/A-18s have the most modern IFF equipment that is compatible with all other coalition partners, including US ground-air missile systems such as Patriot. There are also operational procedures that can be followed in the case that this equipment becomes faulty during a sortie. In addition to compatible IFF equipment, our F/A-18s have the ability to interrogate other aircraft’s IFF and determine whether they are “squawking” the correct IFF codes. Our F/A-18s are one of the few aircraft in the Gulf with this capability and therefore provide an added degree of safety for themselves and for other aircraft in the vicinity. Our F/A-18 aircraft have the best equipment and training available and that will minimise the risk of friendly fire accidents.

Can the Minister provide an assurance to the Australian community that IFF capability fitted to the F/A-18s is 100% compatible with the US missile defence systems?

The F/A-18 IFF system is completely compatible with the US missile defence systems.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Iraq

Senator BOLKUS (South Australia) (3.01 p.m.)—I move:

That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

It has been less than a week since we invaded Iraq, and in that period it is fair to say that we are already facing a humanitarian crisis of major proportions. It has been less than a week and already we can see the im-
pact in some of the consequences of this invasion. It is obviously too early to make finite judgments, but I think we can draw some early conclusions and try to learn from them. Firstly, we can say that this war is going to be longer and harder than the optimists in the US administration and in this government were telling the world it would be; secondly, we can see that resistance within Iraq is going to be stronger than these same people expected; and, thirdly, already we can see that the humanitarian consequences are grave, will become graver and could turn out to be a disaster.

We can also see that, from this country’s perspective, this government has not been adequately prepared for the hard war and is particularly ill prepared for the humanitarian problems its actions are creating. For instance, it is still working out who is running what. It is still working out who will be running the relief programs after this war is over. Operational details are still being bashed out. This first week’s experience also alerts us to one major problem that has not been factored into this government’s thinking or the thinking of the US administration—a problem that is on the horizon and a problem that could very well be with us for a long time. The fundamental question that needs to be addressed by this government, by the coalition and probably, in turn, by the global community is how the coalition will administer the regime change—a change which must now be seen as being more difficult to achieve and to maintain.

There is much greater resistance than the government expected. They expected that by now there would be some welcoming of the coalition forces. That has not happened. This greater resistance is an omen that this issue will not go away and that administration under a new regime will be much harder than has been factored into the coalition’s thinking. We have to note that a coalition will have responsibility under international law to meet the humanitarian needs of all the inhabitants, not just the displaced. An occupying power must also provide security. Those two objectives will be a lot harder because of the signs of resistance shown within Iraq already. The signals are that any takeover of Iraq’s administration and any maintenance of a new regime is going to be, as I say, a lot more bloody and repressive than the coalition thought. The coalition went in expecting that the red carpet would have been laid out by now, but it has not been. If there is one, it will be a carpet of blood red. As I say, a new regime will have enormous problems.

Senator Ferguson—You must have written this before you came in.

Senator BOLKUS—Senator Ferguson shakes his head in disbelief—

Senator Ferguson—At what you are saying.

Senator BOLKUS—but I think we should fear that what may happen is that we will end up with a new regime in the model that the world is so often used to seeing in South America—one of those repressive regimes that we have seen in El Salvador, Guatemala and those sorts of countries. This coalition did not even heed its own warnings. In 1996 current Vice President of the United States, Dick Cheney, said:

To have brought the Gulf war into the populous Iraqi capital of Baghdad ... would have put large numbers of Iraqi civilians and hundreds of thousands of our troops at risk of being killed.

That is what Vice President Cheney, as he is now, said just a few years ago. What is this coalition about to do? They are about to do just that. Unfortunately for the coalition, they are not ready to do it. They are outside the gates of Baghdad and they have not got the resources to go in. Some experts predict that it may take them two weeks before they are adequately equipped to go in, to maintain and to achieve what they want. For instance, the United Nations estimates that there could be 10 million civilians, including more than two million refugees and displaced persons, at risk of hunger and disease and in need of immediate assistance.

The dimensions of this problem have not been factored in by this government. Humanitarian problems are one problem. Humanitarian problems in the context of an easy access and easy takeover are one dimension. During a lunchtime briefing in the Parliamentary Library, it was Hugh White who said that we could reasonably expect
that this is going to be a lot harder and a lot more difficult to achieve. *(Time expired)*

**Senator FERGUSON** *(South Australia)*

*(3.06 p.m.)*—Senator Bolkus conveniently quoted Hugh White when, in fact, there are a number of people who have made significant contributions to assessing the impact of this war on civilians and the length of the war. One thing that Senator Bolkus does not know, having come in here and read his prepared speech, is what resistance the government expected. He is not in a position to know anything of what the coalition of the willing or the government expected, so how can he come in here and make the claims he has made, along with other claims made by him and other members of the Labor Party, that there would be hundreds of thousands of casualties in the first week? I notice Senator Bartlett in the chamber, and I think he may also have suggested that the number of civilian casualties in the first week be up to the hundreds of thousands.

Senator Bolkus chose to quote some of the words that Vice President Dick Cheney used in 1991 about one of the reasons why the coalition did not move further into Baghdad and remove Saddam Hussein at that time. He said: ‘Because it would put a lot of people at risk’. Mr Deputy President, you and many other people in this chamber know that the technical ability of the weapons that are used in 2003 is simply beyond comparison with that of weapons used in 1991. We know, for instance, that the accuracy of the weapons being used today is far greater.

**Senator Carr**—They are really good on British jets, aren’t they?

**Senator FERGUSON**—Where are the hundreds of thousands of civilian casualties that you said there were going to be, Senator Carr? They have been so accurate that they are able to target Baghdad, bomb selected targets and still leave the lights, the power, the water and all the essentials for the people who are living in Iraq untouched. For all the bombing that has been done in Baghdad, they have still been able to keep the lights on all the time and keep power connected to the homes of the ordinary civilians. Sewerage and all of the other essential services have not been touched, due to the strategic and technical ability of the weapons that they have to fight Saddam Hussein with.

Senator Bolkus raised a number of issues. He said the coalition was not expecting resistance. Where Senator Bolkus gets his information from I do not know. Some commentators may have said that, but the only people who really know what was expected by the coalition when they made the decision to go into Iraq are those who have had all the intelligence made available to them by the military chiefs of staff who accept that intelligence and analyse it—that is, by those who plan the warfare that is to go ahead.

Senator Bolkus chooses to refuse to believe all the reports where those who are in command of the coalition say that the resistance they are meeting is what was expected and that things are still going to plan. Senator Bolkus does not believe that, because it does not suit his argument. We all know that, whenever a military action like this is undertaken, nobody can plan with certainty for what might eventuate, and so there are always a number of scenarios put in place—sometimes by those who are informed but, more often, by those who are uninformed. Senator Bolkus is one of those who is very ill informed. I am quite sure he has never been briefed by the intelligence agencies, the military chiefs or the people who have some understanding of the situation in Iraq today. We can certainly take most of his remarks with a pinch of salt.

When it comes to humanitarian needs, of course we are concerned. The Australian divers are currently making sure that they can get humanitarian aid through the port to those places where it is needed. I am thinking particularly of Basra and the port areas where the Iraqi forces have mined the entrance, making it impossible for humanitarian assistance to even get to those places. The Australian government has made a concerted effort. It has shiploads of wheat just off the coast, but we simply cannot deliver that humanitarian aid until such time as it is safe for vessels to get into the port. I am very pleased to say that the Australian diving team, which is highly regarded, has made it possible for that to happen very soon. *(Time expired)*
Senator KIRK (South Australia) (3.12 p.m.)—I rise to speak about answers given by Senator Hill in question time today. We have heard a lot from Senator Ferguson in the last five minutes about the Iraqi population being unharmed by the acts of aggression of the coalition forces in Iraq. What remains unanswered is what response the government will make to the dire warnings that have been given, by bodies such as the World Health Organisation, about the major humanitarian crisis facing the population of Iraq and, in particular, the town of Basra.

During the time I have available today, I will put before the Senate some of the facts that have emerged about the crisis looming in the town of Basra. The World Health Organisation, for one, has said that it is worried about the impact that the lack of access to potable and clean water will have on the health situation in Basra. The situation could deteriorate quickly. Dysentery and diphtheria could be major health problems. The WHO says:

In similar situations in Iraq in the past, diarrhoeal disease has accounted for between 25% and 40% of deaths during the acute phase of an emergency, and 80% of deaths in children under the age of two.

Women and children will be the most affected groups. Local employees of the United Nations have expressed particular concern about the city of Basra, where the lack of water that I referred to has raised the spectre of disease for up to 1.7 million residents, especially the 100,000 children under the age of five.

Members of the United Nations relief agencies have said that disease could affect up to tens of thousands of peoples in their homes, hospitals and care institutions, as they attempt to cope and find whatever water they can from the river and other sources. As is well known, the people in Basra are now drinking from the Shatt al-Arab River, which is full of untreated sewage. This is the reason for the serious health implications facing the people of Basra. UNICEF also spoke out about this issue, in its lead role as the agency for water in emergency situations. It said that this is the third day on which Basra has been reported to be without water—and this was two days ago—because of the frequent power cuts that have come about as a consequence of the acts of aggression in the area.

UNICEF spokespeople have said that not only are the population suffering from high rates of malnutrition but, in Basra, there is also the very real possibility of child deaths, not only from the conflict but from the additional effects of diarrhoea and dehydration to which I have referred. We have a most serious situation in Basra. The question that remains is: what is the Howard government doing about this? What is the government’s response to the warnings that been provided by organisations such as UNICEF and the World Health Organisation? Given that Australia is one of three—a core element—of the occupying coalition forces in Iraq, we have to ask the government: what is it doing to ensure that full access is made available for international humanitarian organisations to restore safe water supplies to Basra to, hopefully, avert this looming crisis? The onus does fall on the occupying coalition forces in Iraq to meet their obligations to civilians under international humanitarian law.

Secretary-General Kofi Annan has stressed that the United Nations is prepared to do all it can to provide humanitarian assistance to the Iraqi people. However, he has said that the UN will have only limited capacity to do so until security conditions allow for the safe return of its staff to affected areas. Until such time as this occurs, humanitarian assistance would have to be provided by the United States and its coalition partners, including Australia, in those areas under their control, consistent with their overall responsibility under international law. (Time expired)

Senator McGAUrán (Victoria) (3.17 p.m.)—I would like to challenge some of the statements the previous speaker, Senator Kirk, made about Basra. Utterly ill-informed comments were made about Basra, laying the blame upon the coalition forces for the humanitarian crisis now occurring there. The truth of the matter is quite the opposite. What is happening is that the British troops have surrounded Basra, but the Republican Guard, or Saddam Hussein’s elite militia, have been intimidating the Shi’ite Muslim community
inside Basra—so much so that the British held off going into Basra. The British troops, the coalition troops, were not responsible, despite the previous speaker’s assertion that they caused the humanitarian crisis inside Basra—that the water was cut off by them.

Senator Carr—The British, wasn’t it?

Senator McGauran—Is that what you are asserting, Senator Carr? Are you asserting that? What you, Senator Carr, and the previous speaker may or may not know is that what is happening in Basra right now is a popular uprising against the Republican forces inside that city, so much so that it has forced the coalition to make it a military target. What that means is they are now going to go into Basra and liberate the Shi’ite Muslims, who have suffered, who have been massacred in the past by the regime, and who are currently being intimidated by the forces within Basra. To blame the coalition troops that stand outside Basra at the moment for any of the problems inside Basra is utter misinformation and mischief at its best.

Senator Carr—Who bombed the pumping station?

Senator McGauran—Senator Carr keeps blaming the coalition forces. That has been the tone, for the whole week, from the opposition—twisting and turning, slipping and sliding, ducking and weaving, to make political gain from this war. It is quite legitimate that we should debate this matter. But once a decision was made in the United States, the American Senate passed a resolution supporting their President and their armed forces in their quest. The support was 100 per cent. In the House of Commons in the British parliament, a similar motion received 75 per cent support. There was, of course, the 25 per cent within the Labour ranks of extreme hard Left—the Carmen Lawrences, the Senator Webbers of the House of Commons—who would not support it.

If we proposed a similar motion in the Senate, do you think we would get a majority? The answer is no. That is the tone that the Labor Party bring to Australia’s commitment to our armed forces. They are confused. We saw the confusion and the angst of the opposition in regard to this matter boil up when Senator Cook, unrestrained in his temper and rage, exemplified the confusion and the angst in the opposition ranks on this matter. On the Left you have the ‘no war’ position led by Senator Lawrence and Senator Carr—no war at any cost. Forget the war on terror. Forget the protection of Australian citizens. It is no war at any cost. Forget about the liberation of the Iraqi people. On the Right, of course, you have the Senator Forshaws and the Senator Bishops who cannot accept that position. You have an opposition torn and in turmoil.

Time does not permit me to go through just how frustrated, how out of tune, the opposition are. In regard to the polls, they tell us to listen to the Australian people. They say, ‘If you listened to the Australian people and watched the polls you would not make this decision.’ Well, the polls seem to have turned around. And now what are they saying? They are going to pay a very high price for their political opportunism and their desertion of the Australian troops.

Senator McLucas (Queensland) (3.22 p.m.)—Senator Hill today said that innocent people are not our target. I am sure we all agree with that. Of course innocent people are not the target of anyone in war, and that is certainly the case, but the net result and something which he cannot deny is that the action that is being taken in Iraq at the moment results in innocent people being affected. We are facing a humanitarian crisis of enormous proportions in Iraq. Once war began, like everyone else in this place I was hopeful of there being a very ‘short and sharp’ campaign resulting in as few casualties as possible. Unfortunately, and I think it is very unfortunate for all of us but especially the women and children of Iraq, this seems less and less likely.

The people of Iraq are facing a crisis of horrific proportions. Prior to the invasion, 15 million Iraqis out of the 24 million people of that country depended on food rations through the oil for food program for their welfare. Iraq’s water and sanitation system was on the verge of collapse because it was dependent on electrical supplies that were crippled during the 1991 air strikes. Eleven
years after the Gulf War, it was estimated that one-third of the national power supply was still down and two-thirds of the houses connected to water were connected with untreated water. In cities, trucks that were used to empty the cesspits and septic tanks were no longer being used due to the lack of tyres, batteries and other spare parts; so sewage was flowing back into the homes. Forty per cent of the population of Iraq is under 15 years old and, as such, they are very vulnerable to waterborne and airborne diseases like diarrhoea and chest infections—

Senator Hill—Respiratory infections.

Senator McLUCAS—Thank you. This was known by all of us prior to the invasion of Iraq, but it is clear that the planning to provide the humanitarian aid was not undertaken. That is not just the view of commentators and politicians; it is certainly the view of aid agencies.

Prior to the invasion, humanitarian aid agencies expressed real concern about the lack of planning and coordination and provision of funds. In early March, agencies said that the US military had only recently given licences to aid agencies to provide humanitarian aid should a war break out. Also, planning for dealing with refugees was, according to Gil Loescher of the International Institute for Strategic Studies, ‘woefully inadequate’ and agencies had tried to start to make contingency plans in countries such as Iran and Jordan.

Over the past two weeks, Senator Hill has regularly said that the principal responsibility for the suffering of the Iraqi people lies with Saddam Hussein. In the context of Senator Hill’s comments, I would like to provide the Senate with some of the details of a report that was released in February of this year by the Medical Association for the Prevention of War. This study was called ‘Our Common Responsibility: The Impact of a New War on Iraqi Children’. It was written by the International Study Team with the intention of providing the international community, including the Security Council, the government of Iraq, and all of us with information that would encourage those entities to take into account the plight of Iraqi children when considering the alternatives to war and the

continued weapons inspections. It is devastating for the women and children of Iraq that that advice was not heeded. The report says:

... Iraqi children are still in a significantly worse state than they were before the 1991 Gulf War ... because most of the 13 million Iraqi children are dependent on food distributed by the Government of Iraq, the disruption of this system by war would have a devastating impact on children who already have a high rate of malnutrition. The state of the physical well-being of Iraqi children thus makes them much more vulnerable to war today than they were in 1991.

War has done the children of Iraq no good. We did that in 1991; we knew that then and we have not heeded history. (Time expired)

Question agreed to.

Iraq

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.27 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Bartlett today relating to an approval to import anthrax vaccine for Australian Defence troops.

The question asked by Senator Crossin at the end of question time was a particularly cogent and appropriate one. The Minister for Defence, in answering the issues raised by the Democrats, is either not fully appreciating or not revealing some of the gaps in the information that has been provided to date. It is worth mentioning again that an importation of vaccines sufficient for 10,000 armed forces personnel is a very large importation—certainly larger, as far as I am aware, than any single importation in the past.

As the minister has said, this reflects a more dangerous world in terms of the potential use of chemical or biological weapons. Again, I emphasise that the Democrats are not in any way suggesting that the Department of Defence should not do what it can to ensure the wellbeing of our defence personnel. But the fact remains that we do have only 2,000 personnel in Iraq. That number is not going to be increased. According to the minister, there will not be replacement or rotation troops for the SAS or the Air Force; that will only be for the Navy, who have
been on rotation there for 12 years. So we are only talking about 1,100 people at most, assuming the Navy commitment remains the same. Getting 10,000 vaccines purely for 1,100 Navy personnel on rotation for, say, periods of six months means you are getting enough vaccine for three or four years at least, and that seems quite extraordinary to the Democrats. Unless there was a special bargain basement deal on with Anthrax "R" Us in the UK, it seems a fairly implausible amount for the department to order. That begs the question whether there are other anticipated uses.

Anthrax vaccine is not something you just import and then stick in the fridge under the house for a few years just in case you need it. The Department of Defence imports it only if there is a credible likelihood of the need to use it, as it should and as is sensible. So it does raise doubts. I do not think the minister’s answers have removed doubt or the prospect that this vaccine is in part intended for other Australian personnel either in Australia or serving in other parts of the world. That potential expansion of anthrax threat to Australian troops is significant and should be noted in the context of growing global threats and instability, particularly given that one of the so-called rationales for undertaking this war is to reduce the threats from chemical weaponry and to reduce insecurity in the region and around the world. That is clearly not happening if the risk is increasing sufficiently for a large increase in the import of anthrax vaccine. That is a clear concern for the Democrats.

The other aspect of the minister’s answer that needs noting is his statement about SAS troop deployment numbers. We currently have around 500 SAS and ground personnel as part of the special forces task group. The minister has said they will not be rotated, which means they are obviously going to be left there either until the task is done or until the government decides to withdraw them. There is the growing likelihood that this war will be a drawn out one—and I note evidence provided at a seminar today that suggests that drawing it out is likely to reduce civilian casualties at least directly from military activities, although possibly not in terms of health problems—rather than a quick one which will probably only be achieved through massive ramping-up of the military offensive into civilian areas. There is now the real prospect—if the conflict is drawn out beyond, say, June—that our SAS will need to be withdrawn. You cannot leave the same people deployed indefinitely, but we have indicated that we are not going to replace them with other SAS. That is a significant issue that needs to be kept an eye on in terms of future actions. (Time expired)

Question agreed to.

PETITIONS

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

General Agreement on Trade in Services

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

The Petition of the undersigned shows our concern that:

(a) all “requests” under the General Agreement on Trade in Services (GATS) must be lodged by 30 June 2002;
(b) formal offers must be concluded by March 2003;
(c) the Australian Government has so far not revealed what it proposes to put on the table at GATS;
(d) our democracy and the future of our public services are under threat from other countries which are pressuring Australia to open up telecommunications, postal services, water supply, health and education services, banking and the professions to foreign corporations, and to accelerate privatisation of services which should be publicly monitored and accountable and which may deteriorate when left to private interests seeking first profit and near monopoly rather than reliable and equitable social and environmental interests.

Your petitioners respectfully ask that the Senate urgently request the Australian Government to publicly release all demands and concessions it proposes to make to other countries for opening up trade in services as part of negotiations on a new General Agreement on Trade in Services (GATS).

by Senator Cherry (from 45 citizens).

Petition received.
NOTICES

Presentation

Senator Greig to move on the next day of sitting:
That the Senate—
(a) congratulates the Australian Capital Territory Legislative Assembly on the recent passage of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002, and the Discrimination Amendment Bill 2002 (No. 2);
(b) notes that the considered and mature debate on this legislation saw it pass the Assembly without dissent;
(c) welcomes the Australian Capital Territory in now joining with Western Australia, New South Wales, Victoria and Queensland as jurisdictions with partnership laws to recognise same-sex couples;
(d) notes that the parliaments of Tasmania and South Australia are currently giving positive consideration to partnership laws for same-sex couples;
(e) regrets that the Commonwealth has failed to address this matter under federal law, and as a consequence is out of step with the states and has fallen behind most comparable international jurisdictions in this area; and
(f) calls on the Government to implement national legislation to end discrimination against same-sex couples.

Senator Hill to move on the next day of sitting:
That, on Thursday, 27 March 2003:
(a) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with; and
(b) the routine of business from not later than 4.30 pm shall be government business only.

Senator Ian Campbell to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend legislation relating to health, and for related purposes. Health and Ageing Legislation Amendment Bill 2003.

That the following bill be introduced: A Bill
for an Act to amend legislation relating to health, and for related purposes. Health Legislation Amendment Bill (No. 1) 2003.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) notes the release of the annual Native title and social justice reports by the Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas;
(b) further notes that:
(i) the social justice report shows that Indigenous women are currently incarcerated at a rate higher than any other group in Australia, with their prison population increasing 255 per cent in the decade since the Royal Commission into Aboriginal Deaths in Custody,
(ii) this over-representation of Indigenous women occurs in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty,
(iii) removal of Indigenous women from the community has significant consequences and potentially exposes children to risk of neglect, abuse, hunger and homelessness,
(iv) once imprisoned, recidivism statistics show that Indigenous women are at a greater risk of returning to jail;
(c) welcomes the Government’s revision of the National Indigenous Justice Strategy, as an important step in addressing these issues;
(d) notes that the Legal and Constitutional References Committee inquiry into progress towards national reconciliation has commenced and is due to report on 17 June 2003; and
(e) urges the Government to treat Indigenous issues as a national priority, and to put reconciliation back on the national agenda.

Senator O’Brien to move on the next day of sitting:
That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 30 June 2003:
The circumstances surrounding the application, approval and expenditure of funding under the Dairy Regional Assistance Program for the construction of a new building and the installation of additional machinery at the Moruya Steel Profiling Plant in New South Wales in the 2001-02 financial year.

Senator Brown to move on the next day of sitting:

That the Senate supports the establishment of a free, viable and independent state of Palestine.

Senator Bartlett and Senator Stott Despoja to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Defence Act 1903 to provide for parliamentary approval of overseas service by members of the Defence Force, Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that 27 March 2003 marks what the Burmese regime calls ‘Armed Forces Day’, but which the Burmese people still celebrate as ‘Fascist Resistance Day’, in opposition to the illegitimate military rule still in force in that country;
(b) recalls on this day the Senate resolution of June 2000 calling for the cancellation of Australian Government sponsored human rights training in Burma;
(c) calls upon the Government:
   (i) to comply with this resolution, cancelling the planned human rights training, and
   (ii) ensure that any future projects, including the proposed 3-year humanitarian assistance and training programs, be undertaken in full consultation and cooperation with National League for Democracy and ethnic nationalities parties;
(d) recognises the Committee Representing People’s Parliament as the legitimate body to convene a democratic Parliament in Burma, according to the 1990 election result;
(e) calls upon the Government to exert economic and diplomatic pressure, including targeted sanctions, a tourism boycott, a downgrading of diplomatic relations, against Burma until the regime enters into official dialogue with Daw Aung San Suu Kyi; and
(f) calls upon the Burmese regime to immediately release Min Ko Naing and all political prisoners and restore democracy.

COMMITTEES
Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.35 p.m.)—I present the fourth report of 2003 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator FERRIS—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 4 OF 2003
1. The committee met on Tuesday, 25 March 2003.
2. The committee resolved to recommend—
   That—
   (a) the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report on 25 November 2003 (see appendix 1 for statement of reasons for referral);
   (b) upon its introduction into the House of Representatives, the provisions of the Aviation Transport Security Bill 2003 and the Aviation Transport Security (Consequential Provisions) Bill 2003 be referred immediately to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report on 16 May 2003 (see appendix 2 for statement of reasons for referral);
   (c) upon its introduction into the House of Representatives, the provisions of the Civil Aviation Amendment Bill 2003 be referred immediately to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report on 16 May 2003 (see appendix 3 for statement of reasons for referral); and
   (d) the Australian Security Intelligence Organisation Legislation Amendment (Ter-
rorism) Bill 2002 [No. 2] not be referred to committee.

**The committee recommends accordingly.**

3. The committee considered a proposal to vary the order of the Senate of 5 February 2003 adopting the committee’s 1st report of 2003 to provide that the provisions of the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002 be referred immediately to the Community Affairs Legislation Committee for inquiry and report on 15 May 2003, but unanimously resolved that the bill not be referred.

**The committee recommends accordingly.**

4. The committee deferred consideration of the following bills to the next meeting:

**Bill deferred from meeting of 20 August 2002**


**Bills deferred from meeting of 19 November 2002**

- Workplace Relations Amendment (Award Simplification) Bill 2002
- Workplace Relations Amendment (Choice in Award Coverage) Bill 2002.

**Bills deferred from meeting of 4 March 2003**

- Family Law Amendment Bill 2003
- Workplace Relations Amendment (Compliance with Court and Tribunal Orders) Bill 2003.

(Jeannie Ferris)

**Chair**

26 March 2003

Appendix 1

Proposal to refer a bill to a committee

**Name of Bill**

Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002

**Reasons for referral/principal issues for consideration:**

Examination of the provisions of the Bill with specific reference to:

(a) the adequacy of Australia’s management regime of invasive species;
(b) the economic and environmental costs currently being incurred due to invasive species and likely future costs;
(c) the need for a comprehensive national legislative regime to address the economic and environmental threats of invasive species; and
(d) whether this Bill is an effective and adequate mechanism for dealing with these issues.

**Possible submission or evidence from:**

- Weeds CRC
- Farming and agriculture organisations
- Plant Nurseries
- Pet and aquarium businesses
- Environment Groups

**Committee to which Bill is referred:**

Environment, Communications, Information Technology and the Arts Legislation Committee

**Possible hearing date(s):** July/August 2003

**Possible reporting date:** November 2003

(sign)

Senator Lyn Allison

Whip/Selection of Bills Committee member

———

Appendix 2

Proposal to refer a bill to a committee

**Name of Bill:**

Aviation Transport Security Bill 2003


**Reasons for referral/principal issues for consideration:**

To allow the committee to consider the provisions of these proposed important reforms to the aviation security framework and the benefits for aviation security.

**Possible submissions or evidence from:**

- Australian Airports Association
- Board of Airline Representatives of Australia
- Major airlines and airports
- Department of Transport and Regional Services

**Committee to which bill is to be referred:**

Upon introduction of the bill into the House of Representatives, the provisions of these bills be referred to the Senate Rural and Regional Affairs and Transport Committee

**Possible hearing date(s):** to be determined by the Committee

**Possible reporting date:** 16 April 2003

(sign)

Senator Jeannie Ferris

Whip/Selection of Bills Committee member

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Appendix 3
Proposal to refer a bill to a committee
Name of bill: Civil Aviation Amendment Bill 2003
Reasons for referral/principal issues for consideration:
To allow the committee to consider the provisions of this Bill.
Possible submissions or evidence from:
Aerial Agricultural Association of Australia (AAAA)
Aircraft Owners and Pilots Association of Australia (AOPA)
Airservices Australia (AsA)
Air Safety Australia
Australian Airports Association (AAAL)
Australian Association of Flight Instructors (AAFI)
Australian Federation of Air Pilots (AFAP)
Australian and International Pilots Association (AIPA)
Australian Licensed Aircraft Engineers Association (ALAEA)
Aviation Maintenance, Repair and Overhaul Business Association (AMROBA)
Aviation Safety Foundation Australia (ASFA)
Department of Transport and Regional Services (DOTARS) and Civil Aviation Safety Authority (CASA)
Guild of Air Pilots and Air Navigators (Australian Region) (GAPAN)
Helicopter Association of Australia (HAA)
Qantas Airways Limited
Regional Aviation Association of Australia (RAAA)
Royal Federation of Aero Clubs of Australia (RFACA)
Virgin Blue Airlines Pty Ltd
Individual authorisation holders
Committee to which bill is to be referred:
Upon introduction of the bill into the House of Representatives, the provisions of the bill be referred to the Senate Rural and Regional Affairs and Transport Committee
Possible hearing date(s):
to be determined by the Committee
Possible reporting date: 16 April 2003
(signed)
Senator Jeannie Ferris

Whip/Selection of Bills Committee member
NOTICES
Postponement
Senator BROWN (Tasmania) (3.36 p.m.)—by leave—I move:
That general business notice of motion no. 423 standing in his name for today, relating to a proposed aluminium smelter in Iceland, be postponed till the next day of sitting.
Question agreed to.
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 today, relating to the disallowance of items [2356], [2357] and [2358] of Schedule 2 to the Migration Amendment Regulations 2002 (No. 10), postponed till 27 March 2003.
Business of the Senate notice of motion no. 2 standing in the name of Senator Stott Despoja for today, relating to the disallowance of the Customs (Prohibited Exports) Amendment Regulations 2003 (No. 1), postponed till 27 March 2003.
Business of the Senate notice of motion no. 1 standing in the name of Senator Brown for 27 March 2003, relating to the disallowance of Amendment 41 of the National Capital Plan (Gungahlin Drive Extension), postponed till 14 May 2003.
General business notice of motion no. 53 standing in the name of Senator Greig for today, relating to the introduction of the Sexuality Anti-Vilification Bill 2003, postponed till 27 March 2003.
General business notice of motion no. 430 standing in the name of Senator Nettle for today, relating to the proposed Liquefied Natural Gas Plant at Wickham Point in Darwin Harbour, postponed till 27 March 2003.

BUSINESS
Rearrangement
Senator FERRIS (South Australia) (3.37 p.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:
That the presentation of the report of the Economics Legislation Committee on the provisions of the Corporations (Fees) Amendment Bill 2002 and two related bills be postponed to a later hour of the day.

Question agreed to.

FUEL: ETHANOL

Senator O’BRIEN (Tasmania) (3.37 p.m.)—I move:
That the Senate—
(a) notes that:
(i) on 16 October 2002 it agreed to an order for the production of documents relating to the Government’s consideration of an ethanol excise and production subsidy,
(ii) on 21 October 2002 the Parliamentary Secretary to the Treasurer (Senator Ian Campbell) advised the Senate that, ‘the Government intends to comply with the order as soon as possible and fully expects to be in a position to do so shortly’,
(iii) on 12 December 2002 Senator Ian Campbell advised the Senate that, ‘consideration of the documents is close to conclusion’ and committed to tabling the requested documents out of session by 17 December 2002,
(iv) on 5 February 2003 Senator Ian Campbell advised the Senate that, ‘the Government is seeking to conclude its consideration of these documents and its compliance—albeit very late—with the order of the Senate’,
(v) on 4 March 2003 the Senate noted the Government’s failure to comply with the order of the Senate and called on the Government to comply by 6 March 2003, and
(vi) more than 155 days have passed since Senator Ian Campbell gave the Senate a commitment that the Government would ‘shortly’ comply with the Senate order; and
(b) calls on the Government to comply with the order of the Senate no later than 5 p.m. on 27 March 2003.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.38 p.m.)—At the request of Senator Heffernan, I move:
That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Dairy Industry Service Reform Bill 2003 and a related bill be extended to 27 March 2003.

Question agreed to.

HAND OF PEACE EXCHANGE

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.38 p.m.)—At the request of Senator Stott Despoja, I move:
That the Senate—
(a) notes that:
(i) the ‘HOPE’ Hand of Peace Exchange was launched on 18 March 2003,
(ii) this project aims to highlight the plight of children in Iraq and other regions in humanitarian crisis,
(iii) the ‘HOPE’ Hand of Peace Exchange will involve the exchange of handprints between children all around the world, as a show of solidarity with the Iraqi children caught in the war, and
(iv) the United Nations estimates that there are currently more than one million malnourished children in Iraq; and
(b) urges the Government to increase Australia’s foreign aid budget, specifically our aid to Iraq, after the war.

Question agreed to.

IRAQ

Senator BROWN (Tasmania) (3.39 p.m.)—by leave—I move the motion as amended:
That the Senate:
(a) reiterates its opposition to the war with Iraq and urges the safe withdrawal of Australian troops from Iraq;
(b) urges Australians opposed to the war to continue to voice their opposition to the
Government’s decision through peaceful and democratic means; and
(c) expresses its full support for Australian troops, and urges all Australians to maintain their support for Australian troops during and after the current deployment.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.41 p.m.)—At the request of Senator Brandis, I move:
That the time for the presentation of the report of the Economics Legislation Committee on the Designs Bill 2002 and a related bill be extended to 13 May 2003.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.42 p.m.)—by leave—I move:
(1) That, on Wednesday, 26 March 2003—
(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 to 11.10 pm;
(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 10.30 pm.

(2) That, on Thursday, 27 March 2003—
(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 pm to adjournment;
(b) the routine of business from 7.30 pm shall be government business only;
(c) divisions may take place after 6 pm; and
(d) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below, or a motion for the adjournment is moved by a minister, whichever is the earlier:
Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002
Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002
Copyright Amendment (Parallel Importation) Bill 2002
Energy Grants (Credits) Scheme Bill 2003
Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003
Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 (consideration of message in committee of the whole)
Taxation Laws Amendment Bill (No. 7) 2002
Migration Legislation Amendment Bill (No. 1) 2002
Inspector-General of Taxation Bill 2002 (consideration of message in committee of the whole)
Appropriation Bill (No. 3) 2002-2003
Appropriation Bill (No. 4) 2002-2003
Dairy Industry Service Reform Bill 2003
Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003
Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Bill 2002
Industry, Tourism and Resources Legislation Amendment Bill 2003
Corporations Legislation Amendment Bill 2002
Corporations (Fees) Amendment Bill 2002
Corporations (Review Fees) Bill 2002
National Blood Authority Bill 2002
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002
Crimes Legislation Enhancement Bill 2002 [2003]
Family and Community Services
Legislation Amendment Bill 2003
Veterans' Affairs Legislation Amendment Bill (No. 3) 2002.

I thank all my colleagues for doing me the courtesy of granting leave to move this motion. The motion is extensive; that is why we have circulated it, and I hope everyone has a copy. The terms of the motion reflect an agreement made at a meeting of party leaders and whips at lunchtime today. It addresses the fact that the government has a program of legislation that cannot, in any reasonable expectation, be concluded in the hours that we have already set down to meet, particularly as the Senate, quite appropriately, devoted almost all of last week to debating Australia’s involvement in the Iraq conflict. We, effectively, have to do two weeks work in one week.

We very quickly reached an agreement with the Australian Labor Party and all the minor parties—the Democrats, the Greens and the Independents—on a program to sit until 10.30 tonight and until approximately midnight tomorrow night to deal with the program of legislation. The motion outlines the bills that the government needs. We have conceded a few that we can do without before Easter. Before giving a number of undertakings which should be on the record, on behalf of the government I thank the Australian Labor Party, the Democrats and the other parties for their cooperation on this. I know that some senators were offended by a press release I issued on the weekend about obstruction. I make it absolutely clear that the press release that I issued was in relation to the negativing of bills. I respect the right of any party in this place to do that, but could they respect my right to feel a little sense of frustration and, dare I say, anger about having bills negatived. We like having our bills voted for. We understand that the Senate will not always do that, and from time to time I will express my frustration at the government’s program being stopped because of the Senate voting bills down.

I think it is appropriate to have a robust debate about the Senate’s voting patterns on the bills. I in no way intend to reflect on the cooperation we have received from the opposition and other parties in the Senate in terms of getting the program dealt with in a sensible and practical way. The record over the past two or three years certainly has been of parties showing a willingness to cooperate with getting votes on bills. We have got to a stage where we tend to agree on a list of bills that need to be considered and voted upon. We have been able to do that over recent years with cooperation. I genuinely thank the Manager of Opposition Business in the Senate and the other leaders and whips for facilitating that. I think we have reached a stage of maturity in this place where, regardless of how we feel about the particular measures on the program, we can at least give the Senate a chance to vote on them. Please forgive me for my frustration when sometimes the votes do not go the way I like. I think we all, as politicians, get upset when the votes do not go the way we like. That is politics.

The government’s motion asks us to deal, as a Senate, with a range of bills which we have agreed. There is continuing negotiation over which bills can be considered during the Thursday lunchtime timeslot, which has become known as the non-controversial legislation timeslot. As has occurred in the past, if parties believe that some of those bills we are putting forward do need amendments or are controversial, then of course they will come out of that timeslot. This motion will not interfere with that.

Secondly, the government’s intention is that the Senate will adjourn prior to midnight tomorrow night. I think it is actually quite doable. It is quite possible that we could adjourn quite a lot prior to midnight tomorrow night. For the sake of all of our health and the quality of the decision making that gets done, it would be desirable to move the program along and get out of here. I have put the outer limit at sitting until midnight. The downside, however, is that, if we have not finished by midnight and there is still a chunk of legislation to do, we would have to sit on Friday. Again, it is certainly something I do not want to do and I do not think anyone would want to do if we can avoid it. If, however, it is around midnight tomorrow night and we have a little bit to do, such as half an hour or an hour’s work, I think most senators
would agree—and I have the agreement of the opposition on this—that we would seek to wrap it up rather than come back to do it on Friday morning. That is the practical approach that the government bring to this. We are keen to conclude the business by midnight tomorrow night and, hopefully, significantly earlier than that. I reiterate my appreciation for the cooperation of all political parties and Independents represented in this place in achieving this agreement.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (3.48 p.m.)—The opposition has had negotiations with the government and the minor parties about ensuring that the legislative program of the Senate can be completed within the available hours that have been placed within this motion. I suspect that, with the cooperation of the Senate, which is usually forthcoming, those outstanding pieces of legislation can be dealt with.

Senator Ian Campbell made some additional remarks about the legislative program. Senator Ian Campbell can of course get a little bit irate about the opposition rejecting the bills on the program, but it should be borne in mind that that is by far the least usual action that is taken. My examination of statistics reveals that in fact bills rejected, as a percentage of bills considered from about 1996 to 2002, make up about two per cent, so perhaps Senator Ian Campbell might be crying crocodile tears in relation to that issue. The percentage of bills referred, as an overall percentage, is about 33 per cent. Of that, there are not a significant number of bills that actually are referred, so I am not sure whether the view Senator Ian Campbell has adopted in relation to the matter of committees being overburdened is particularly accurate either.

In terms of bills rejected since 1996, you are only looking at something in the order of 27. What we do from the opposition’s perspective is take a hard look at the policy behind the bill and some of the issues. If it is a bad policy, we will reject it rather than amend it. In most instances, the opposition will seek to amend it and these bills generally do pass. It is worth also noting the comments made about the reference of bills in the report of the Senate Select Committee on Legislation Procedures in December 1988. Senator Ian Campbell might be concerned about the number of references that are made, but back then it was said:

The reference of bills to committees was envisaged as an essential part of the committees system established by the Senate in 1970.

I use the 1988 date because it is helpful to put it in perspective. It is still current, even if it was some time ago. The report also said:

When bills have been referred to committee in the past, results have been recognised as an improvement in the legislative process in that they have led to more effective legislation.

What the report also went on to say—which is the point that Senator Ian Campbell has, I think, missed in the debate; in fact he may have reversed it by accident, and I felt it was my duty to set that straight—was:

Moreover, governments appear to consider that the passage of legislation through the Senate is an unnecessarily protracted and painful process.

That seems to be the point Senator Ian Campbell has made. The report goes on to say:

There is often a large backlog of legislation in the Senate at the end of each period of sitting, a matter to which the committee was required to give its attention. Although this is usually regarded as a result of slowness on the part of the government and the Public Service in introducing legislation, there can be no doubt that it creates a government perception of dilatoriness on the part of the Senate in dealing with legislation.

It might be worthwhile also looking at your side of the argument; this is what the government said back in 1988. So it might be worthwhile looking at your own history to examine these reasons as well. The report also went on to say:

The supposed conflict between more thorough examination of legislation and expeditious enactment of government policy may be an imagined problem rather than a real one. The effect of examination of legislation and the greater expedition in legislating may be perfectly compatible goals. Intensive committee consideration of bills may help by revealing defects in proposed legislation. The consideration of bills by a number of committees may also speed up the overall legislative process because, while the consideration of
each individual bill may be extended, a number of bills can be considered simultaneously.

I invite Senator Ian Campbell to reflect on those remarks. Whilst he might feel aggrieved, he should complain only about those issues which deserve to be complained about. With respect, I think that the issues he has raised are without substance and that there is no complaint to be made.

I do have a complaint that has some substance and it would be remiss of me not to take this opportunity to raise it. There are in the order of 21 failures by this government to respond to orders of the Senate. I have not had time to check whether that is a record, but this government has consistently and for a long period failed to respond to production of documents orders. On page 31 of the Notice Paper for today it sets out those 21 failures that I have referred to. These orders originate not only from the concerns of opposition senators but from senators from the minor parties as well. I took the opportunity of raising this with the government some time ago, and I think Senator Ian Campbell was in the room when I raised that the last time. This time I would like to impress upon Senator Ian Campbell that we are running short of patience in having those matters dealt with.

We are now going into an extended period where the government can take the opportunity to raise it. There are in the order of 21 failures by this government to respond to orders of the Senate. I have not had time to check whether that is a record, but this government has consistently and for a long period failed to respond to production of documents orders. On page 31 of the Notice Paper for today it sets out those 21 failures that I have referred to. These orders originate not only from the concerns of opposition senators but from senators from the minor parties as well. I took the opportunity of raising this with the government some time ago, and I think Senator Ian Campbell was in the room when I raised that the last time. This time I would like to impress upon Senator Ian Campbell that we are running short of patience in having those matters dealt with.

I want to mention the statements made by Senator Ian Campbell not only today but also in a press release which he put out over the weekend. I understand the political reality of people wanting to make political points and create public perception. I am sure that the well-informed people we are blessed with in
the press gallery here would not, for a second, fall for Senator Ian Campbell’s spin. The suggestion that this Senate is somehow obstructive is one that I am sure our press gallery and media representatives around the nation are smart enough to realise is a complete furphy; nonetheless, this needs to be put on the record—and I think Senator Ludwig has done a good job with that so I will not repeat his words. The fact is that only an incredibly small percentage of bills are rejected by this Senate. In the case of some bills that have come up recently, the Senate has rejected them only because the government is bringing them up specifically to stack up double dissolution triggers. In some of these bills, the government is no longer making an effort to get improvements or consider amendments.

The aspect of Senator Ian Campbell’s statement that probably concerned me the most in some ways was that, beyond the usual tactic of pointing to bills that are opposed and saying, ‘That is obstructionist,’ he quite clearly implied that referring bills to committees is being obstructionist. I think that, if anything, referring bills to committees is a way of trying to save the time of the Senate as a whole by considering issues outside this chamber in the committee process. I find it a very worrying precedent that referring bills to committees is now being perceived as an obstructionist action. I am not going to be completely disingenuous and suggest that that is not an occasional tactic that we all might use—to refer a bill to try to delay consideration of it—but it is not very common. Certainly, from the Democrats’ point of view—and, I would suggest, from those of all sides—most of the time it is a genuine concern about the bill and an attempt to use that committee process to get more information to examine those concerns and see whether they are legitimate enough to need to amend the bill or, in extreme circumstances, oppose it. Any fair reading of the record would show that.

The vast bulk of references to committees are not attempts to obstruct the process. They are effective attempts to enhance the process. I am sure that Senator Campbell is not suggesting—although one is worried that people might infer it—that the very effective processes to refer bills that we have now established with the Selection of Bills Committee has worked quite well in a cooperative sense. For very short references people usually accept brief hearings and do not take up extended time except when a bill is particularly complex. That was proven again, just before Senator Campbell rose to speak, with the latest Selection of Bills Committee report. The dates there are fairly short for all of them, except for a private senator’s bill—a very good one, I might add—of my own which has a longer date.

Indeed, in Senator Campbell’s statistics he says that Labor, the Democrats and others have been the most negative and obstructionist opposition in modern times by referring another 501 bills to committees in the past seven years. To be honest, it is not just Labor, the Democrats and the other crossbenchers; it includes the government. Just today, unless I am completely misreading the signature on the bottom of the referrals, we had two referrals of bills to committees by the government. There are three bills in those two referrals. In effect, Senator Campbell is accusing his own people, his own whip, of being obstructionist today by referring those bills to committees. I think that, if anything, he at least owes Senator Ferris an apology for that slur on her motivation.

The other aspect is that, whilst I can understand the political point of Senator Campbell wanting to say we are being obstructionist by opposing bills, to say that we are uncooperative is not particularly helpful or in his interests when, quite clearly, the only way he gets motions like this through or gets the time he wants to get bills debated is by the cooperation of the Senate. It only takes one of us—as all of us know, to our occasional great frustration—if we really want to buggerise things around, to drag out things virtually indefinitely. Certainly two can literally do it indefinitely without any difficulty at all if they have the stamina. The government gets things through here only because of an enormous amount of cooperation of goodwill. Particularly at a time when a lot of heightened emotions about the conflict in Iraq and a lot of senators being op-
posed to the war make life extremely difficult for the government, it does not help to go making public statements saying that we are obstructionist, negative and basically uncooperative. I think I have made that point, and Senator Ian Campbell will hopefully take it on board.

I have two other points. Firstly, I reiterate that the Democrats’ view is that, rather than revisiting this sort of thing time and time again, the real answer is to have extra sitting weeks, to get back to the average number of sitting weeks that we used to have some years back—particularly, as I say, given that the number of bills has actually increased, sometimes quite significantly. The fact that we sat for only 63 days last year, three or four of which were condolence days or given to special business, which makes less than 60 days considering legislation, and that from memory we passed about 150 bills—although I might be wrong, but it was certainly more than two a day, on average—suggests that we are doing pretty well at churning through legislation. In fact, it is probably churning through at such great speed that one could suggest it is detrimental to the interests of the Australian people.

I would like to concur also with Senator Ludwig’s comments about failures on returns to order, and those are mounting up enormously. I think that is an issue that the non-government parties need to look at a bit more closely in terms of whether we should take some specific action in response to those frequent contempts of the Senate. I know another one is due at four o’clock today. I do not know whether that order is going to be complied with or not. Obviously it has not been, as it is after four o’clock, but I recognise that is because I have been speaking. It is an issue that is of growing concern to the Democrats, and certainly I would indicate an interest in discussing with the main opposition party whether there are prospects for taking some action that might indicate our displeasure in a more specific, clear-cut and concrete way that might more openly discourage the government from continuing along that line.

We will not oppose this motion. I hope that the Manager of Government Business in the Senate is aware of the discussions that occurred in the leaders’ and whips’ meeting earlier today about needing to ensure that any crucial votes are not distorted by the absence of Independents, particularly. I have no doubt that it is not the government’s intention, but we need to ensure, as the Manager of Government Business in the Senate does his very difficult job of juggling all the legislation with a range of ministers all lining up to twist his arm in different directions, that we do not have one of those contentious votes that does not reflect the genuine will of the Senate because of an absence due to this unanticipated extension of sitting hours, at very short notice.

Senator HARRADINE (Tasmania) (4.06 p.m.)—I will be very brief. I ask for the Senate’s indulgence to spare a thought for the Independents. For example, today I was up at 6.15 a.m., and my first meeting here was at 7.30 a.m. I had a Senate Foreign Affairs, Defence and Trade References Committee meeting at 8.30 a.m., and then another meeting at 10 o’clock. That is not counting the representations that were fitted in, and listening to the various debates. I had another meeting at 12.15 p.m., and another at one o’clock. It is difficult as an Independent. I am concerned about the extension of hours and the pressures that that puts on our staff in particular, let alone us, as Senator Bartlett said. Nobody worries about us! But consideration for the staff is important. They do an extraordinary job under difficult circumstances, because we have to get through every piece of legislation. When hours are extended, if you are not there, somebody on staff is there monitoring what is going on.

I most wanted to raise my concern about the logjam. Always at this time—and also just before Christmas—there is a logjam of bills. There is a need to get those bills attended to, but I am concerned that this could react against proper consideration of legislation. For example, the medical indemnity matter is going to seriously affect the medical profession in my state of Tasmania, but I am more concerned about the patients. It is going to seriously affect patients in my state. If ever there was a measure that called for a committee reference, that is one. Yet the
government goes to the opposition and says, ‘Unless we get this through today or tomorrow, there will be a great deal of problems. It has to come in on 30 June, and we won’t have time to make the arrangements.’ I question that, but I do believe that it is unfortunate that the opposition have caved in on this—I thought that they would not. They were going to support the reference, which is absolutely essential. I regret that these circumstances all combine to put pressure on the opposition to just let it through, irrespective of the damage that is done. I do not intend to make a deal of this, or oppose the measure if it is now agreed upon all round, but I do ask that consideration be given to the matter that I raise in respect of staff, particularly the staff of Independent senators.

Senator BROWN (Tasmania) (4.11 p.m.)—I think we should be sitting an extra week, but we are not. I have been speaking with the government and the opposition about the allocation—which the opposition very kindly gave to me—for private members’ time tomorrow to discuss the very important Constitution amendment bill that I have before the Senate to allow for a referendum to change the Constitution so that the five million or so Australians who currently cannot stand for parliament without resigning their jobs would be able to do so. I think we have been able to come to a happy arrangement whereby the bill will not be debated tomorrow but in May—I will speak with Senator Faulkner about that when we next sit—with the intention that it be brought to a third reading vote so that there is a vote on the matter by the Senate. In turn, that makes me very content, and I hope it will expedite matters tomorrow so that the debate will not go quite as late as it otherwise would.

Senator MURPHY (Tasmania) (4.12 p.m.)—I would like to briefly reiterate what has been said with regard to the available time and the pressures that are on people. I think that in terms of the Senate’s operation it is not good that we have consistently reduced the number of sitting days each year. I am not speaking just from an Independent’s point of view; it is not good from a government point of view of dealing with the legislation this place has to deal with. We have a very hefty amount of committee work and, in dealing with some of the issues that come before committees—whether in the form of legislation or a reference—it is very difficult to give justice to the concerns that the public have when we are running on such a tight frame.

Then we get into a situation where we try and jam a significant number of bills into a very limited number of hours. I just do not think that does justice to the parliament. The people expect the parliament to do its work and do that work well. I suggest that the number of sitting days is something we have got to really look hard at for the future. Frankly, we ought to be sitting for longer periods of time. We have a significant break coming up, and there is no reason why we could not have included an additional period of sitting within that time. When we get to the end of each year we are adding on a day here or a day there, which seems ridiculous when there are significant periods of time throughout the year when we do not sit at all and do not deal with any legislation. The public have a right to expect that we use some of that time to give appropriate consideration and deliberation to the task we are expected to do.

Senator Harradine raised the issue about the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002. I have not had the opportunity to look at it in detail, but I am concerned about the fact that it was supposedly going to be referred to a committee. There is a way in which it can be done that might take up considerable time of this Senate. I say to the government that maybe it is something that they might consider for the future if they do not want to see efforts being made to take up the time of this place to a greater extent in endeavouring to give proper consideration to these things from a public point of view.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.15 p.m.)—I want to make two points in response to some of the
points that have been made. I firstly thank all honourable senators for agreeing to the motion and for the advice that I have been offered as well on the management of the Senate. Firstly, the logjam that was referred to in Senator Ludwig’s reference to the 1988 committee has become a feature of Senate deliberations. But in fact, if you look at the program we are debating right now, it is one of the more reasonable programs that we have ever seen. In terms of logjams, there are not many logs in it—it is quite reasonable. The medical indemnity bill was considered by the Scrutiny of Bills Committee and the committee unanimously decided not to refer it.

Senator Mackay—Selection of Bills Committee.

Senator IAN CAMPBELL—Selection of Bills Committee—an excellent committee, with extraordinary members on it.

Senator Chapman interjecting—

Senator IAN CAMPBELL—Senator Chapman is keen to introduce a report and he is provoking me to give a full 10-minute reply to all of the wonderful points that were made. If you interject, I am just going to keep going.

Senator Mackay—You’re wasting your own time here.

Senator IAN CAMPBELL—No. To finish on Senator Murphy’s point, if the will of the chamber was to refer that bill, it would have been referred, but it was not—the will of the chamber was not to refer that bill. As Senator Bartlett and, I think, Senator Ludwig have said, 33 per cent of bills are being referred to committees. That is a very high percentage historically—significantly higher than under the previous governments. But I do agree with Senator Bartlett in many respects. Many committee references do allow the parliament to create better legislation, but even Senator Bartlett did admit that some references are motivated as a way of delaying the bill for political reasons. Certainly bills that have been to committees and through the parliament once already and then get referred back to committees to delay their consideration until the next period of sittings, I think, can be an abuse of the system. I think even Senator Bartlett has agreed that there are abuses. I am happy for there to be a debate about it. I am happy to provoke a debate about it, but I am a great supporter of the Senate having sound and adequate scrutiny of legislation. As a member of the opposition prior to the 1996 election, I did involve myself in references.

Senator Sherry—Yes, you did, on many occasions.

Senator IAN CAMPBELL—Yes. But history will show that generally, when this party was in opposition, most legislative references occurred through the Selection of Bills Committee process. The committee would sit on a Friday, take evidence on the bill, and report back on the following Monday or Tuesday. Practice has evolved—that is not the normal process now. The length of the references was a lot shorter and the number of bills referred was much lower.

In relation to comments about sitting days and sitting weeks, I am happy to incorporate the statistics—I think I have done that already. The parliamentary sitting pattern, going all the way back to 1977, shows again that this year is an entirely normal sitting year. Last year was an entirely abnormal year. We sat about a week later because of the election and we had the sittings truncated because Australia hosted the Commonwealth Heads of Government Meeting, which is something we do once in probably every quarter of a century. It was decided—I think by all parties—that it would be inappropriate for the parliament to be sitting while that meeting was going on. It was an unusually short year and that did create a pressure on the program which is unusual. But this year, if you look at the statistics, in terms of the number of sitting weeks and the number of sitting days, you will see that it is an entirely normal schedule.

What creates the biggest pressure in terms of a legislative logjam at the end of a session is that at the beginning of a session the Senate—because it is the master of its own destiny in these things—tends to devote a lot of time to some bills. That is entirely its will. Last year or the year before—Senator Brown would remember—we had a very long debate about the RFA legislation. I suspect we
spent two or three sitting weeks on one bill and then we had about 40 bills to consider.

Senator Brown interjecting—

Senator IAN CAMPBELL—I might be wrong. I am just giving that as a very broad example—I do not have the stats in front of me. But the Senate can decide to devote two or three weeks, as we did for the native title legislation—and Senator Minchin is here with me at the moment—which senators had a deep, passionate interest in for all sorts of reasons. I think we devoted something like 65 sitting hours, which is the equivalent of five sitting weeks, to one bill. The Senate can do that—it is within the gift of the Senate as to what speed it handles legislation—but, if you handle one bill over five or six sitting weeks, that will leave only a few sitting days to do all the rest. As a group of people, we basically have to decide how much time we give to each piece of legislation. My experience is that, if you provide extra sitting days, it does not—

Senator Mackay interjecting—

Senator IAN CAMPBELL—I am getting the wind-up from my friendly Opposition Whip, and it is quite an appropriate wind-up. But these points do need to be made because there are misconceptions about what creates legislative logjams. It really is in the hands of the Senate to reduce the logjam. I accept criticism that on occasions ministers and the bureaucrats, dare I say, and the House of Representatives tend to give us legislation towards the end of the program. But I do make the point, and I think it has been accepted, that the way that the Senate has performed in the last couple of years is a significant improvement on the years before that. There is much better coordination and there is much better—and I reiterate this—cooperation in terms of handling the program in the Senate. I repeat what I have said today and on previous occasions: the cooperation of the Australian Labor Party, the Greens, the Democrats and independent senators in allowing this flexible approach at the end of sessions has created a considerable improvement which is appreciated by the government, although I reserve my right to retain my frustration at the number of bills that get negatived while respecting the democratic right of senators to vote against our bills.

Question agreed to.

COMMITTEES

Scrutiny of Bills Committee

Report


Ordered that the report be printed.

Senator McLUCAS—I move:

That the Senate take note of the report.

In the interests of accommodating the government’s timing problems, I seek leave to incorporate my tabling statement in Hansard. I encourage senators—ministers in particular—to take the opportunity to have a look at that statement, especially the issues to do with the short title of bills that are canvassed in the report and in particular the use of numbers to identify bills. I think that issue has concerned our committee for some time and we would like some ministers, especially ministers to do with taxation matters, to have a look at that. I would also like to bring to the attention of the Senate that in the Alert Digest of this week the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No.2] is addressed.

Leave granted.

The statement read as follows—

The committee’s Third Report of 2003 which I have just tabled advises that the committee will write to the Attorney-General and to the First Parliamentary Counsel about the short titles of bills, in relation to which the committee has noted some possible problems.

The committee is particularly concerned about bills with sequential numbers in their title whose passage overlaps two or more calendar years of a session. The committee has observed that the present arrangements for the re-titling of such bills might not be the optimum outcome, resulting in a lack of clarity and transparency which has at least the potential to confuse Senators and the public.
One instance of these difficulties is the eight taxation laws amendment bills introduced in 2002, each of which was differentiated only by a sequential number. The last three of these bills did not pass in that year, so the Taxation Laws Amendment Bill (No. 4) 2003, introduced early in 2003, suggests that it is the fourth bill for that purpose introduced this year and not the first. In addition, the bill refers to the Taxation Laws Amendment Act (No. 2) 2003, although no bill for an act with that title is before the Parliament. The bill in question was in fact the Taxation Laws Amendment Bill (No. 7) 2002. In these circumstances it is easy to see how the public might find it a problem to track the course of a bill.

The committee initially wrote about these matters to the Treasurer, who asked the Minister for Revenue, Senator Cooman, to respond. The Minister replied promptly, advising quite reasonably that everything was in accordance with normal practice. The committee, however, has decided that it may be possible to improve this practice.

The present arrangements are that government bills introduced into either House but not passed in the same year are amended by the Chairman’s amendment procedures to replace references to the previous year with references to the present year. The amendments also include any consequential changes advised by the Office of Parliamentary Counsel and, importantly from the point of view of the present exercise, any necessary sequential re-numbering of bills.

These arrangements nevertheless result in a lack of certainty and transparency which may perplex both Senators and those people affected by the bills. One problem is that at present, unless there is another print of the bill such as a third reading print, the new title of a bill including a sequential number might not be in the public domain until the bill receives Royal Assent. The situation is particularly unsatisfactory in relation to bills which might not be passed until months into the new year.

The committee has therefore written to the Attorney-General and to the First Parliamentary Counsel, suggesting that the problem might be alleviated by the greater use of descriptor or explanatory words in parentheses in the titles of bills. The committee asked whether it would be possible to include explanatory words in the titles of more bills whose passage may overlap more than one year and which have the same title numbered in sequence. The change of year and any consequential amendments could continue, as at present, to be the subject of Chairman’s amendments.

The committee will report again after it has considered the replies to these letters.

The committee would also like to draw attention to one of the indicators of its effectiveness, which is the number of amendments made or other action taken in response to its comments. The can be illustrated best by several brief examples.

The committee’s scrutiny of the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] identified a number of provisions which may have breached its principles. These include absolute liability, strict liability and the creation of criminal liability by declaration. In this instance the committee decided that the issues were significant enough to justify a briefing by the Attorney-General’s Department on this and related bills, which were a package intended to strengthen Australia’s counter-terrorism capabilities. Following the briefing, advice from the Attorney-General and a report by the Legal and Constitutional Legislation Committee, the committee reported that it continued to draw Senator’s attention to the provisions, which may breach personal liberties. Subsequently, the Senate amended the bill to remove the provisions which the committee had identified, illustrating the Chamber acting in relation to matters commented upon by the committee.

The committee has often reported on deficiencies in Explanatory Memoranda and has recently written to the Minister responsible for the Legislation Handbook, asking whether it would be possible to issue a special Legislation Circular setting out the requirements in this area. For instance, the Explanatory Memorandum for the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002 was so defective that the committee suggested it would be advantageous to table an additional Explanatory Memorandum including all necessary information. The Minister advised that he would be happy to do this, which is a welcome instance of a Minister acting to meet the concerns of the committee.

In total, during the last 12 months action has been taken in relation to 10 bills to improve aspects of personal liberties or parliamentary propriety identified by the committee. This is quite encouraging and the committee will continue to monitor and report on this important aspect of its activities.

Question agreed to.

Corporations and Financial Services Committee
Report

Senator CHAPMAN (South Australia) (4.25 p.m.)—I present the report of the Parliamentary Joint Statutory Committee on Corporations and Financial Services on the
review of the Australian Securities and Investments Commission, together with the Hansard record of proceedings.

Ordered that the report be printed.

Senator CHAPMAN—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Public Works Committee Report

Senator McGAURAN (Victoria) (4.25 p.m.)—On behalf of Senator Ferguson and the Parliamentary Standing Committee on Public Works, I present a report on the proposed fit-out of the new leased premises for the Bureau of Meteorology. I move:

That the Senate take note of the report.

I seek leave to incorporate the tabling statement in Hansard.

Leave granted.

The statement read as follows—

The report addresses works associated with the relocation of the Bureau of Meteorology’s Head Office and Victorian Regional Office to leased, purpose-built premises at 700 Collins Street in the newly-developed Docklands area of Melbourne. The estimated cost of the works is $22.8 million.

The Bureau of Meteorology has occupied its current leased premises at 150 Lonsdale Street, Melbourne, for some thirty years. The Bureau believes that a move to new premises is needed to enable it effectively to fulfil its role as Australia’s national meteorological monitoring, research and information service, and to meet its international obligations as one of only three World Meteorological Centres. Specifically, the move to new premises has been necessitated by:

• the imminent expiry on 31 March 2004 of the Bureau’s lease at its current premises; and—more importantly—
• the inability of the current premises to meet the Bureau’s operational requirements beyond 2003.

Issues with the current premises include the quality of accommodation and the high costs associated with maintaining acceptable levels of service in an aging building; and the inability of the current premises to accommodate the Bureau’s essential supercomputer.

The works investigated by the Committee under the fit-out proposal included:

• fit-out of a new Central Computing Facility;
• general office fit-out;
• construction and equipping of special-purpose, shared-use facilities such as the National Meteorological Library and the Bureau of Meteorology Research Centre;
• storage facilities;
• electrical, mechanical, hydraulics and fire services;
• security provisions; and
• specialised IT fit-out.

The Committee conducted an inspection of the construction site at 700 Collins Street and held a public hearing in Melbourne on the seventh of February, 2003. Written submissions to the inquiry and verbal evidence provided at the public hearing raised three major issues in relation to the proposed works.

The first of these issues related to project timing and contingency planning. The handover of the tenancy at 700 Collins Street is scheduled to take place in March 2004, allowing the Bureau time to establish operations at the new premises prior to the expiry of its current lease on 31 March 2004. The Committee was concerned to ensure that the Bureau was prepared to meet any additional financial burden that may arise should there be a delay in relocating to their new premises. In the event of a delay, the Bureau would need either to renew their current lease or move to interim premises before final relocation—both of which are costly options.

To this end, the Committee recommended that the Bureau produce a formal contingency plan, containing details of cost provisions and accommodation options, to come into effect should relocation to 700 Collins Street be delayed beyond 31 March 2004.

The Committee also noted a degree of uncertainty surrounding a number of significant elements of the proposed project budget. The Committee held the view that this was not acceptable in a project soon to go to tender, and recommended that the Bureau of Meteorology review and refine the project budget, and supply a revised copy of the budget to the Committee as soon as possible.

Witnesses at the public hearing into the proposed works included representatives of industrial organisations, who expressed dissatisfaction with the level of staff consultation undertaken by the Bureau throughout the planning process. Specifically, these witnesses raised issues relating to work-space allocation for Australian Public Sec-
tor level one to six employees and to parking provisions for shift-workers in the new building.

The Committee questioned the Bureau of Meteorology about their consultation process and noted that something of an impasse had been reached between the Bureau and the industrial bodies in respect of the issues raised in relation to the proposed relocation.

In order that outstanding staff concerns relating to space allocation and parking be resolved, the Committee recommended that the Bureau of Meteorology establish a separate and formal mechanism to effect meaningful consultation with staff and industrial organisations.

As stated previously, the Committee has recommended that the works proposed for the fit-out of new leased premises for the Bureau of Meteorology at 700 Collins Street proceed, pending the fulfilment of the recommendations made in this report.

Mr Speaker, I wish to thank the many people who assisted the Committee during the course of the inspection and public hearing in Melbourne, and also my Committee colleagues for their support and contributions.

On behalf of the Committee, I also wish to thank the staff of the secretariat for their support throughout this inquiry.

I commend the Report to the House.

Question agreed to.

MINISTERIAL STATEMENTS
Building and Construction Industry: Royal Commission

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.26 p.m.)—I table a statement on behalf of the Minister for Employment and Workplace Relations on the Royal Commission into the Building and Construction Industry, together with volumes 2 and 12 to 22 of the report, and I seek leave to make a short statement about the availability of copies of the report.

Leave granted.

Senator MINCHIN—The government has arranged for all senators to receive copies of the volumes on CD-ROM. The first batch was distributed this morning and the second batch will follow tomorrow after tabling in the other place. A limited number of hard copies of the volumes is also available on request from the Senate Table Office.

Senator SHERRY (Tasmania) (4.27 p.m.)—by leave—I move:

That the Senate take note of the documents.

I rise to make a few remarks about the tabling of the first report of the Cole Royal Commission into the Building and Construction Industry, and I understand another will be tabled tomorrow. Australians are people of common sense. They know the building industry is tough and that it probably has more than its fair share of undesirable characters. It is commonly understood that cash payments and tax evasion are rife in the industry and that that presents many opportunities for money laundering. Anyone involved in supplying the industry with products or services knows how difficult it can be to get paid, whether you are a small business owner or an employee. Indeed, it is probably the industry that presents the most examples of so-called phoenix companies, where businesses are placed into insolvency to avoid obligations to workers—such as their pay and conditions and superannuation—and small business creditors, only to rise from the ashes in another guise shortly afterwards. Australians also know that in some areas there is a widespread use of illegal immigrant labour, with associated safety problems, and Australians are understandably deeply disturbed by horrific accidents that all too frequently still occur in this industry. On average, one worker is killed every week in the building industry in Australia.

For $60 million—that is the cost of this royal commission—Australians are entitled to expect that these issues would have been addressed in some detail in the report. From reading the first instalment today they would be very disappointed, if not astonished. This first instalment reveals a staggering statistic: almost nine out of 10 of the royal commission’s specific findings of unlawful conduct are against workers and unionists. By contrast, approximately just one out of 10 concerns employers. It beggars belief that any fair and balanced inquiry into the building industry could decide that workers and unionists are responsible for approximately nine out of 10 findings of unlawful conduct in this industry. Yet, when you add up the
specific findings, that is exactly what this inquiry suggests.

As I mentioned, this is an industry in which a life is lost to workplace accidents almost every week. Yet this report makes only two specific findings of breaches of health and safety laws by employers. Incredibly, there is not a single specific finding of unlawful conduct relating to underpayment of workers’ entitlements, debts to small business, avoidance of tax, sham subcontracting or phoenix company restructuring in the building industry. There was not a single specific finding on these areas of widespread abuse in this industry.

As I said earlier, Australians know the building industry is a tough industry, and they expect their government to be an appropriate regulator—not an agitator or provocateur. Fair-minded Australians would cringe at some of the behaviour that occurs on both sides of this industry, and I think they recognise that the industry would be far worse if there was no union presence at all. At the end of the day, Australians recognise an effective and decent union presence can be a civilising influence in respect of fairness, accountability and safety. Insofar as there are problems, Australians expect the government to be diligent and genuine, not partisan and political, when inquiring into unlawful conduct in the building industry or, indeed, in any industry.

Australians will be rightly outraged if they think the Liberal Howard government has spent $60 million just to bash building unions while ignoring corporate misbehaviour. The Labor opposition has always said anyone found to have committed illegal or criminal acts must face the law. We stand ready to consider any genuine proposal to address criminality or corruption in this or any industry. But we will not see this report used by the Howard Liberal government as a political tool to advance a divisive industrial relations agenda. Such an agenda is fundamentally shortsighted, and it will not achieve long-term productive outcomes.

Few objective commentators would agree with the minister’s statement that this has been a ‘model royal commission—swift, thorough, efficient and fair’. It is well known that 90 per cent of public hearing time was dedicated to anti-union subjects; indeed, around 81 per cent of the time was spent attacking the CFMEU in particular. Only three per cent of hearing time was occupied with subjects that might have adversely reflected on employers. Just seven hours was spent with a worker in the witness box, while employers or their representatives were in the witness box for around 293 hours—and that was not because there was a shortage of complaints from employees. Counsel assisting took evidence from employers 663 times, but from workers only 34 times. As I emphasised earlier, it was not because there was a shortage of complaints from workers.

Is it any wonder that detailed findings on broader issues confronting the industry are lacking? I appreciate that we are involved in a political debate but I think any fair-minded observer would reach the same conclusion. Whilst on fair-minded observers, I do note comments by that well-known radio broadcaster, Mr Alan Jones, a couple of weeks ago in the *Sydney Morning Herald*. He said:

It’s an enormous waste of public money ... That is what he said about the $60 million royal commission which investigated corruption in the building industry. He described it as a ‘cynical political attack on the powerful Construction, Forestry, Mining and Energy Union’. Of the Minister for Employment and Workplace Relations, Mr Abbott, Mr Jones said he is a:

... good friend ... I’ve told him to his face 100 times, ‘Tony, you’ve simply got it wrong.’

He is not a renowned supporter of the Labor Party or the labour movement, yet here we have a well-known Australian, Mr Jones, accurately describing what has occurred in this case. I note the minister referred to commission evidence and said that some workers in the commercial construction industry can earn $100,000 per year with overtime and allowances. What the minister did not refer to was the fact that the great majority of workers in a dangerous occupation, often in extremely poor conditions, can earn considerably less than $20 per hour.

Talking about wage payments, this royal commission was a real racket. I am sure I
can say with confidence that the average Australian would be quite astonished by the legal bill paid from this royal commission. Lawyers were paid $21 million—some of them at the rate of almost $20,000 per week. The minister has the hypocrisy to abuse workers in this dangerous industry who earn a reasonable wage for what is a hard day’s work. As for the fairness of this commission, there has been widespread criticism of the procedures adopted by it. A number of potential witnesses who were prepared to give evidence about broader problems facing the industry were overlooked as counsel assisting the commission focused primarily on those who were prepared to attack the building unions. The commissioner himself admits in his report that:

Some of the material that was led during hearings would not have been admissible in either a civil or a criminal trial. Despite this the opportunity to cross-examine commission witnesses was severely limited even where serious allegations had been made by these witnesses against certain individuals. Anyone wanting to cross-examine was first required to submit their own statement on which they were cross-examined by counsel assisting before a determination was made to allow them to cross-examine. Quite an incredible process, and I doubt the star chamber even came up with such a procedure as this. The commission was conducted by way of careful selection and filtering of information and, regrettably, it is clear from the report that selection had a predetermined focus to attack building industry unions rather than address broader issues.

My colleague in the other place Mr McClelland gave some examples. At no stage have we excused, or will we excuse, any person that is engaged or has engaged in criminal activity. We should note, however, that it does not take a $60 million inquiry to refer individuals to prosecuting authorities. A 25c phone call would do the trick. As responsible legislators in the 21st century, it is incumbent on us to do something about the fact that there is still one death almost every week on work sites in the building industry. Nor can we ignore the extent to which decent tax paying Australians are subsidising massive tax evasion in the building industry. All too little was said, referred to or concluded on in regard to these particular issues in this royal commission report.

Senator MURRAY (Western Australia) (4.37 p.m.)—The Cole Royal Commission into the Building and Construction Industry was an expensive one. Today the Senate gets its first look at half, or perhaps a little less than half, of its reports and documents. Some 12 volumes landed on my table this morning. I will get the same number tomorrow, and I am expected to comment on 12 volumes which, added to those arriving tomorrow, will reach nearly a foot high. Frankly, I am not prepared to do so. The reason I am not prepared to do so, in any sense, is quite simply this: we know there will be a contest of wills between the coalition and the Labor Party on this issue. The Labor Party has a close relationship with the unions, as we know. We know that this issue will be quite fiery. We know the opinion of the hard Left will be to support the unions, right or wrong.

Our position is that we are neither beholden to business nor unions. We will evaluate the issue on its merits. We will end up perhaps being in the middle, when we look at the legislation that will result from this. We will need time to evaluate those reports fully and we will take weeks rather than days to do so. If there is anyone in the media who is going to try to push me into a position of commenting on this in any depth right now, they are going to get nowhere—and I hope they get that message.

The things I want to say, while I have the call, are those that are immediately apparent before us. The first is that one thing the Australian Democrats will not agree to is any attempt, hint or effort to deregister the unions concerned. We take the view that, if there is malfeasance in the industry, it will not be union wide or business wide. We further take the view that the role and participation of the unions and employer organisations in that industry are absolutely vital and essential to the health of that industry.

The second thing is that we thoroughly agree with Mr Beattie’s remarks, as reported by AAP. My own remarks in my statement issued today were:

We are pleased that instances of criminal behaviour will be investigated for potential prosecution.
It is important that these allegations be resolved in our justice system beyond reasonable doubt.

Mr Beattie, Premier of Queensland, said the same thing. He is reported as saying:

But at the end of the day we don’t support anyone breaking the law. If people break the law they should feel the full force of the law.

Mr Reynolds, the CFMEU Secretary in Western Australia, said, quite succinctly, in his usual style:

... let them get on and charge us. Put up or shut up.

That is as he was reported and that is how it should be. Frankly, if there are going to be allegations of criminality, let us get on with the prosecution and have it tested at law, beyond reasonable doubt, so that we can put aside allegations that such things are not dealt with, that they are widespread or that they pose great difficulties.

I want to move on to some of the criticisms enunciated by Labor. They are quite clear on the face of it: it has been a very expensive commission, it has focused most of its time and effort on the unions and it has been criticised for some of its processes. I am not in a position now where I can comment on that in any great depth, but I can say that in the end we will have to consider not what the royal commission has said but what the government’s response will be—what the legislative response will be—and how we should react to that based on the evidence, the findings and the recommendations of the Cole royal commission. For us to take any position on those recommendations—and I do not even know what they are, frankly—right now would be very difficult.

The Cole royal commission has, according to the statement by the Minister for Employment and Workplace Relations, found 392 separate instances of unlawful conduct: 230 of them in my state of Western Australia, 58 in Victoria, 55 in Queensland, 25 in New South Wales and 13 in Tasmania. So the figure is pretty low in New South Wales, relative to the size of the industry, and quite large in my own state, relative to the size of the industry. The Cole report is apparently likely to recommend a national authority to enforce the law, and that will be a key thing to look at. It will recommend a specialist tribunal, and we will have to have a look at that. It will recommend an industry restructure, and that, too, will require careful study. The Cole report is likely to recommend an increase in the powers of an interim building task force. That, too, will deserve analysis. In any situation of regulation, it is appropriate to target any industry or any circumstance where it is believed that there are problems which require constant oversight. My problem with it would be, automatically, if it were ever biased and not examining employers with the same vigour with which it examines employees’ organisations. The inquiry has been categorised as a witch-hunt. It obviously has a particular motivation from the coalition’s point of view, but the outcome will end up being determined by the Senate of Australia, which represents all the people of Australia and which will judge the matters on their merits at that time.

Senator NETTLE (New South Wales)

(4.44 p.m.)—We have known all along that this royal commission was set up by the government as an opportunity to have a go at trade unions in the lead-up to the last federal election, when this government was looking for a leg-up and was in a tight spot. Journalist Jim Marr commented:

It was set up not as an inquiry but as a prosecution of a single party within the industry.

Eighty-one per cent of public hearing time was devoted to attacking one particular trade union. Not one statement was obtained by investigators and presented to the commission that presented unions in a positive light. From the outset, Murdoch newspapers such as the Australian wrote:

Is the royal commission a political stunt? Yes.

Journalist Ashley Crossland said:

It’s as if someone devised the perfect mechanism for destroying the public standing of building unions. Unfortunately, the Cole royal commission may also end up the perfect mechanism for destroying the already threadbare authority of royal commissions.

A US study found that productivity for unionised contractors compared with non-unionised contractors was 30 per cent higher for commercial buildings, which is what this royal commission focused on.
The greatest impediments to an increase in productivity growth in the Australian construction industry are a falling level of employer investment in training and the proliferation of small undercapitalised businesses. This proliferation results in companies going bust and being unable to pay workers’ entitlements. They then often re-emerge as another company with the same work force. The Cole royal commission investigators failed to come up with one witness statement alleging these phoenix operations anywhere in New South Wales. The Australian Tax Office, however, identified it as a problem for the industry, and has 30 staff dedicated to a special phoenix project dealing with hundreds of cases. Yet somehow Minister Abbott manages to describe this as a model royal commission.

In the year ended June 1999, the construction industry lost over 95,000 weeks due to workplace injury—five times the amount of time lost to industrial disputes. Yet the Cole commission investigators did not produce a statement from a single person in New South Wales alleging illegal or inappropriate practices with regard to workplace safety. And it has continued to be called a model royal commission. The treatment of unions and employers was vastly different. Employers were given weeks to prepare for allegations to be raised in the commission, whereas union officials were not given any advance notice of allegations. Does the minister truly believe that this is the sort of legal process we should be aspiring to in royal commissions in this country? The control of the media exercised by the royal commission was phenomenal and it was used to smear trade unionists. Throughout the royal commission there were constant examples of biased treatment and blatant lies against trade unions and trade unionists. There was nothing model about this royal commission unless, of course, the minister means a model for bashing unions.

Senator SANTORO (Queensland) (4.47 p.m.)—Volumes 2 and 12-22 of the report of the Royal Commission into the Building and Construction Industry have today been tabled by the Minister for Employment and Workplace Relations in the other place, and in the Senate only a few minutes ago. These volumes relate to the royal commission’s findings of fact in the states and territories. The report by Commissioner Cole shows a consistent pattern of illegality in the building industry across the nation. It needs to be very carefully noted from the outset, particularly in view of comments made by other speakers before me, that Commissioner Cole is an eminent jurist. He applied the highest judicial standards to his inquiries. On this side of the chamber, we will not hear any of the lame excuses that we have just heard from the Labor Party and the previous speaker, who like to trot them out to excuse the conduct of their union mates.

The report by Commissioner Cole is not union bashing; it is a forensic examination of widespread ills in the construction industry in this nation. That industry—as we have long suspected and now know—is a notoriously compromised industry in which illegality is endemic, malpractice is found widely and intimidation by unions is a fact of life that no one can escape or deny. From evidence gathered by the royal commission during public hearings conducted between October 2001 and October 2002, Commissioner Cole found and identified 392 separate instances of unlawful conduct committed by individuals, unions and employers; 25 different types of unlawful conduct; and 90 types of inappropriate conduct. And this is far from being the quantum of the illegality and inappropriate conduct. What has been revealed is only the tip of the iceberg.

Obviously there are many instances that have not been examined, because the evidence to force an examination was not discovered. There was, and still is, good reason why additional evidence has not been discovered. It is because of intimidation and threats that would be made and executed against people who would need to be more brave than those who did make presentations to the commission. On the evidence that Commissioner Cole has discovered through exhaustive inquiry, we now know that our understanding of what goes on in the building and construction industry is very far from being the full picture.
One volume of the report has not been tabled on the commissioner’s recommendation. It deals with matters on which the Attorney-General will refer 31 individuals to the relevant authorities for possible criminal prosecution. The report finds that unlawful conduct in the building and construction industry is most prevalent in Western Australia and Victoria. In New South Wales it found that the rule of law and legal obligation have been replaced by commercial expediency. In Tasmania there is widespread inappropriate conduct. In my own state of Queensland the commission found a culture of disregard for the law. On a national scale what the commissioner has found is nothing short of a national scandal.

When he tabled these documents in the House of Representatives this morning, the Minister for Employment and Workplace Relations said:

...Commissioner Cole’s report reveals an industry which all too often operates as a kind of conspiracy by big unions and big business against small business and consumers … [and] on large building sites the CFMEU … is a quasi-monopoly supplier of labour. The big union rent seeking that we have seen revealed by Commissioner Cole, principally involving the CFMEU—the ubiquitous and apparently iniquitous CFMEU—comes at horrific cost. That cost is not just to Australia’s reputation as a place in which to do business, unmolested by corrupt individuals and certain—not all, but certain—union organisations; the financial cost is very much part of the flow-on impact of the nationwide pattern of illegality exposed by Commissioner Cole.

This additional cost is easily illustrated by just one instance. In the late 1990s, Woolworths commissioned two almost identical buildings in Melbourne and Sydney. The Sydney warehouse was completed on time and—only—$5 million over budget. The Melbourne warehouse was seven months late and $15 million over budget because of industrial practices—if that is the term we can attribute to those practices. These industrial practices included routine breaches of certified agreements, chronic failure to observe safety dispute settlement procedures, the use of three different workers from three different unions to operate machinery usually operated by two workers, demands to employ union nominated activists and illegal picketing. I will repeat one of them: chronic failure to observe safety dispute settlement procedures.

I would just like to respond briefly to Senator Murray, Senator Nettle and Senator Sherry in relation to workplace health and safety. A senator stated that there were only 92 complaints in evidence on workplace health and safety. Honourable senators should be aware that there is abundant legislation in every state which every day successfully prosecutes irresponsible individuals, whether they be employees or employers, for breaches of workplace health and safety. A very strong body of law already exists and is very efficient—that is the reason workplace health and safety issues barely came up at the Cole commission hearings.

The head contractor in the case that I quoted obtained a Supreme Court injunction against a picket line, but still found it had to make a $50,000 payment to a Victorian Trades Hall trust account before the picket was withdrawn. That is a fact. Perhaps this is an opportune time to make the observation that it is almost understandable—though still not forgivable—that building companies do deals that are regarded as repugnant by most building industry managers but which are viewed as essential to the progress of their project. They would simply go broke if they did not settle. It is clear, too, that the CFMEU is a serial offender. As the minister said in his tabling speech today:

This near anarchy in the commercial construction industry ultimately impacts on everyone. An Econtech report, published last week, shows that commercial construction tasks typically cost 10 per cent more than comparable tasks in domestic construction.

Labor productivity in commercial construction is some 13 per cent lower than in home building, mainly because of overmanning, demarcations and frequent work stoppages. That gives the lie to, or contradicts, the comments made by Senator Nettle when she
quoted the US experience. The minister went on:

Most importantly, this research showed that housing industry standard labour productivity in commercial construction would produce a 1 per cent boost in GDP, a 1 per cent cut in inflation, and $2.3 billion worth of benefits to consumers every year.

If we could achieve that it would well and truly justify the $60 million that the commission of inquiry cost. So there you have it, Mr Acting Deputy President: the cost to our country of paying off big-union muscle in the construction industry is $2.3 billion a year and a drought sized drag on GDP.

In terms of the findings of unlawful conduct made by Commissioner Cole, it should be noted that he interpreted the word ‘unlawful’ to include all civil wrongs, including torts and breaches of contract, contraventions of statute and illegal acts contrary to the criminal law. A finding that an individual, company or organisation has engaged in unlawful conduct does not necessarily mean the individual, company or organisation has committed a crime. Some or all of any material placed before a royal commission—which is an administrative inquiry, not a judicial hearing—may not be admissible in a court of law. So it is no surprise that those statements were made in the commissioner’s report and at the inquiry.

But, that caveat aside, Commissioner Cole’s findings are stark. In Western Australia he made 230 findings of unlawful conduct against two unions, 28 representatives of three unions, three companies and one representative of a company. In Victoria he made 58 findings against one union, 18 officials and stewards representing three unions, six companies, two representatives and three employees of five companies, and one individual. In New South Wales he made 25 adverse findings; in Tasmania, 13; and in the ACT, one. In Queensland he made 55 findings of unlawful conduct against five unions and eight representatives of three unions. They are very specific findings.

I am encouraged by the comment made by the Premier of Queensland, as told to this place by Senator Murray, that he will treat the findings of illegality and unlawful conduct seriously and assist in referring them to the appropriate authorities. I also agree with the comment made by the CFMEU representative in WA to ‘put up or shut up’. You can rest assured that this government will be putting up rather than shutting up, because the findings by Justice Cole, an eminent jurist, are very clear and very transparent. They are findings that will be able to be understood by most Australians, who will absolutely reject the suggestions that have been made here that this was simply a political exercise. If members opposite do in fact have instances of employer corruption and malpractice within the building industry that for some reason were not able to be put before the commission, they have the privilege and protection of this place to be able to bring them up in here.

I did not realise I was meant to be summing up the debate and therefore commenting on some of the points that have been made by honourable members.

**Senator Hutchins**—You can sit down if you like!

**Senator SANTORO**—No. You will like this quote I want to read out because it indicates the mentality of the union movement in particular in response to this inquiry. This is what Mr Kevin Reynolds, the guy held up as a bit of a hero by people across the chamber, said this morning on Perth radio:

What people have got to understand is that it is capital versus labour—the bosses have got it and the workers want a bit of it and the only way the workers are ever going to achieve anything is to fight for it.

That is what it comes down to in the end as a result of the mentality of people opposite. It is a class struggle and they will do whatever they have to do to get a little bit, including committing all of the illegalities, all of the inappropriate actions, all of the adverse findings that Commissioner Cole found in his report. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
The ACTING DEPUTY PRESIDENT (Senator Brandis) (4.57 p.m.)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 35 of 2002-03—Performance Audit—Fraud Control Arrangements in the Australian Customs Service.

IRAN: ILLEGAL IMMIGRATION

Return to Order

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.58 p.m.)—by leave—I make this statement on behalf of the Hon. Philip Ruddock MP, the Minister for Immigration and Multicultural and Indigenous Affairs. The order arises from a motion moved by Senator Bartlett, agreed by the Senate on 25 March 2003, which requests a copy of a Memorandum of Understanding on Consular Matters—an MOU—between the government of Australia and the government of the Islamic Republic of Iran. I wish to inform the Senate that the government does not consider it to be in the public interest to table the MOU in the Senate. The MOU, which deals with sensitive immigration matters, was signed on the understanding that it is a confidential agreement between governments that will not be released publicly at this time.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.00 p.m.)—by leave—I move:

That the Senate take note of the statement.

About an hour ago in this place Senator Ludwig listed 21 returns to order in order that the government has failed to comply with in recent times. Even though he said that he had not had time to research to see whether that was a record, I can almost guarantee that it is—

Senator Patterson—It might be a record number of returns to order, too.

Senator BARTLETT—in part because there is a record number of returns to order happening. I agree with that statement of Senator Patterson. It is still a very large number and an indication of what is in effect a contempt of the Senate, in my view and in the Democrats’ view. That is perhaps reflected by the words of the minister’s statement, which were that the Senate resolution ‘requested’ a copy of the document. It is not a request, it is an order; that is why it is called a return to order. It is a defiance of an order of the Senate to fail to do so. Once again, we have the totally undefinable and catch-all defence of ‘It is not in the public interest to say why this document can’t be tabled.’

The minister then said—no doubt words given to her by the Minister for Immigration and Multicultural and Indigenous Affairs—that the matter contains sensitive immigration information and there was a guarantee given at the time it was negotiated that it would not be made public. The government should not give guarantees like that; they should not be negotiating with the intention of keeping documents secret and then relying on that intent to justify not releasing them. It is very much in the public interest for the public to know what sort of agreement the federal government have reached with the government of Iran—a government, let me remind the Senate, that is part of President Bush’s axis of evil and that is frequently criticised for significant human rights breaches.

We have had the government in this place today and in recent times making lots of statements about the terrible human rights abuses in Iraq and how concerned they are for the people in Iraq. Iran might not be up at that level but it is certainly pretty high up in terms of nations that have significant human rights breaches inflicted on its people across the board. Yet this government have negotiated an agreement with that nation to make it easier for them to return people to that very nation. The minister will say that they are people who have been proven not to be refugees and therefore have no legitimate fear of persecution. Two things need to be said in response to that. Firstly, the hurdle for being recognised as a legitimate refugee under Australian law is fairly high. There is a very tight definition. Secondly, the issue of persecution is much wider than that just under the
refugee convention. There are plenty of other ways you can be persecuted than the ways outlined in the refugee convention.

Senator Patterson—That is absolutely untrue. More people get through. It would pay you to get your facts straight.

Senator BARTLETT—The minister wants to interject about people not getting their facts straight, yet they hide behind secret documents that they will not let the public see. It is an absolute undeniable fact because it is clearly on the public record that there are many ways to be persecuted other than under the definitions in the refugee convention, which are very specific. You can be persecuted for a lot of reasons other than those outlined in the refugee convention. If Minister Patterson is not aware of that it is a great tragedy given her former role as parliamentary secretary.

Senator Patterson—This is misrepresentation.

Senator BARTLETT—I know you have been misrepresenting me but that does not mean I am not going to respond. The convention against torture, the Convention on the Rights of the Child and the Convention on Civil and Political Rights require Australia to ensure that people’s safety is protected. The convention against torture in particular requires us not to send people back to situations where they may face persecution for any reason, not just the narrow reasons contained in the refugee convention. Yet that is the situation faced by virtually all the Iranians who are in detention in Australia now, at whom this MOU is aimed. This MOU with Iran was adopted specifically with the aim of enabling the deportation of Iranian detainees. It will enable easier deportation of all people to Iran, of course, but that was the intent, that was the driving force behind the government’s desire to adopt it.

Once again we have it being used as a form of psychological pressure, adding to all the other psychological pressures used on detainees: ‘We’ll give you a financial incentive to return home. That incentive is available for only a short period of time. If you do not take it then we now have this new secret MOU—nobody knows what is in it—that says we can send you back anyway.’ That is an ongoing part of the psychological pressure that is being brought to bear repeatedly on detainees, not just from Iran but also from Afghanistan and Iraq. The effect of that psychological pressure is being seen every day in terms of the almost epidemic—literally—levels of serious depression and psychiatric disorders created directly as a result of the prolonged detention that this government inflicts on those people. There are ample testimonials from psychiatric experts, mental health workers, health workers who have worked in the camps and others that have quite directly drawn the link between the ill health, the mental illness, the psychiatric disorders and the depression generated by the detention regime and by the continual pressure because of the fear of being sent back to a place where people have a legitimate fear of persecution.

Nobody is going to sit in a jail in the desert for years on end rather than go back to somewhere where they feel quite safe. People have a genuine fear of the sorts of things that this government has outlined in great detail about Iraq in recent times. After the sorts of things the government has been saying the entire Iraqi people are afflicted with, why would anybody in their right mind be thinking it is safe to go back there? Yet that is the sort of line that this government is trying to suggest to the Australian people—that it is safe for people to return. There is a big difference between not meeting the narrow definition of the refugee convention and absolute safety. There are some basic humanitarian issues involved there.

The government have made great play in recent times about their immense humanitarian concern for the civilians of Iraq. Well, here is a simple way for them to demonstrate that humanitarian concern: let them into the Australian community. It would not cost the government a dollar; in fact it would save them quite a lot of money because of the outrageous cost of detention, and it would cease the immense psychological trauma that is literally driving these people mad, driving them to despair and to suicide. That should not be tolerated in a humane society.
Because the government has refused to table the document, which contains so-called ‘sensitive immigration matters’, this means that nobody knows the legality or the extent of the agreements that the government has reached with Iran. Once again, as in so many other areas in refugee and immigration law, this government is putting itself outside the law, outside the reach of scrutiny, above and beyond the rule of law. It is the latest in a long line of legislative amendments and actions by this government in the immigration area to totally remove itself from any public scrutiny.

I imagine that most, if not all, of these people would have put in section 417 requests to the minister seeking his intervention. The rationale for his decisions and the nature of the consideration given to those requests are completely private. They are not made public in any way beyond whether the minister has made a decision to agree to intervene. The only thing that is made public is what the decision is.

The degree of total secrecy and the total lack of transparency in life and death areas is simply shameful. Now we have a so-called ‘historic’ memorandum of understanding with the Iranian government—widely acknowledged as a government involved in, or overseeing, a nation that has significant human rights abuses—aimed at enabling an easier return of people to that regime. The fact that, as we speak, Iranians in detention are being pressured even more by the department to accept so-called ‘voluntary’ return makes it absolutely critical that this document be made public. Nobody can confidently rely on the process used to legitimise these deportations if that process relies on a secret agreement. It is a fundamental issue in terms of the accountability of government decision making in an area that is literally one of life and death.

Anybody that has taken the trouble to meet the individual people or to read some of their testimonies or reports by health workers and others sees the massive human trauma and human cost that occurs as a direct result of this government’s policy—a policy that, admittedly, builds on the policy of the previous Labor government in relation to mandatory detention. The psychological pressure that is put on all these people to sign a piece of paper saying they return voluntarily is enormous. That is why we are seeing so much trauma, so much disorder and so much depression in these centres. We are suppos-edly trying to say to these people, ‘This is all legitimate. It is fine. We have your best interests at heart,’ yet the government will not even release the agreements it has made with Iran about this issue. When you have genuine and legitimate concerns about people being returned to a place where they have real fear for their safety, to say that that return is conducted on the basis of a secret document is a pretty bad principle.

Let us leave aside for a moment the problem of the government showing contempt for the Senate by ignoring returns to order—serious though that is—we should not even need to do returns to order to get documents like this made public. It should be part of open government. The fact that the government from the outset has obviously had the intent to keep it secret because that was part of the negotiations, according to the minister’s statement, highlights again the whole culture of secrecy and the lack of transparency and accountability to the law and to basic principles of governance and human rights that so pervades the area of immigration in particular. Once those basic principles are seen as able to be ignored in certain circumstances, then it is quite easy to say, ‘We have done it in this area, why can’t we also do it here? Why can’t we do it in another area?’ The whole practice of secrecy and lack of concern for particular principles when they are not convenient can then permeate all other areas of government activity. I think we have seen evidence of that in recent times. That is why it is so important to make these points, to stand up on these matters and to try to hold the government accountable.

There are people today suffering enormously, literally on the edge of breakdown and in complete despair. They are being affected directly by this document. Their futures are fundamentally intertwined with this MOU. Their very survival may be intertwined with this MOU, and yet it will remain a secret document between this government...
and the Islamic Republic of Iran. I think that is a very worrying scenario. It is one that the Democrats deeply regret and strongly condemn. We will continue to advocate on behalf of those people in detention because they deserve to know that there are people in Australia who do have concern for their wellbeing, who do believe that basic humanity is something that needs to be acknowledged and stood up for.

I send out the message to those people who are suffering as a direct consequence—indeed, as a deliberate consequence—of government policy that there are many people in the Australian community, the Democrats among them, who do support you and are doing everything they can to try to end your suffering. It is a deliberate intent on the part of the government to make these people suffer, because that is a key way, in its view, to make them return to other countries—that is, to break them down so that they have no hope, see no future and say, as many of them do, ‘I may as well die quickly back where I was born rather than die slowly in a jail in Australia.’

The fact that our nation has deliberately executed, and continues to deliberately execute, a public policy with that outcome is simply inexcusable. I think it is incumbent upon the Australian public and everyone in this place to do what we can to turn that policy around. There is no doubt that, for people who do not wish to return home voluntarily to countries like Iran and Iraq, the deliberate intent of the regime of detention and the other ways that people are treated is to destroy all of their hope until they feel that they have no future and no hope and that they may as well go home voluntarily to face the very horrors and fears that they fled from. The fact that Australia is doing that is a tragedy. The refusal to make public the agreements that the government has reached with Iran compounds again the outrageous behaviour of the government in this whole area. This is an issue the Democrats certainly will not give up on, and I know many other Australians will not either.

Question agreed to.

COMMITTEES
Foreign Affairs, Defence and Trade References Committee

Membership

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

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.17 p.m.)—by leave—I move:

That Senator Kirk be appointed a participating member of the Foreign Affairs, Defence and Trade References Committee for the committee’s inquiry into the performance of the government agencies in the assessment and dissemination of security threats in South-East Asia in the period 11 September 2001 and 12 October 2002.

Question agreed to.

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

First Reading

Bill received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.17 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.18 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This Bill makes a number of amendments to the Health Insurance Act 1973 in relation to the payment of Medicare benefits for diagnostic imaging and radiation oncology services.

The amount of Medicare benefits paid to patients for diagnostic imaging and radiation oncology
services is substantial—in the order of $1.3 billion annually or about 16% of total Medicare outlays. The Government needs to therefore ensure accountability for expenditure in this area while giving patients access to these services whenever they need them.

The Bill contains three measures that are designed to continue to facilitate accountability for the cost-effective provision of diagnostic imaging and radiation oncology services for all Australians.

The first measure establishes a scheme for the registration of practice sites that undertake diagnostic imaging procedures. These procedures include diagnostic radiology, ultrasound, computed tomography, magnetic resonance imaging and nuclear medicine. Registration also applies to practice sites that render radiation oncology services. These sites will need to be registered in order for Medicare benefits to be payable.

The registration system will provide a mechanism for the Commonwealth Government to collect further information about the rendering of diagnostic imaging and radiation oncology services.

Two of the key pieces of information to be collected from a registered practice will be the numbers and type of equipment located at the site and proprietorship details of the site and practice.

This will allow the Commonwealth, in association with the medical profession, to monitor the nature of services provided by a number of different factors, such as practice type, size and structure. For example, we will be able to look at whether a practice is a stand-alone practice; co-located with a primary care practice, a public hospital, or a mobile service.

There is a perception that the changing ownership structure in medical practice may lead to pressures on practitioners to adopt methods that favour corporate profits to the detriment of access to, and quality of care. These pressures may encourage, for example, high throughput of patients, unnecessary return consultations, and/or excessive ordering of diagnostic imaging services.

The information collected through the registration of practices will enable the Commonwealth to monitor activity in this area to ensure that patient access and high quality care are maintained.

The information will also help to address overservicing, claiming errors and inappropriate practice in general. It will also enable the assessment of compliance for benefits by ensuring that the equipment used in relation to a Medicare claim meets the eligibility requirements.

The monetary savings made in addressing these issues can be then re-directed back into the Medicare program to improve access.

Information collected under the new system will therefore help the Government to plan and develop programs to maintain the key objectives of Medicare. These objectives are of course to:

• make health care affordable for all Australians
• give all Australians access to health care services with priority according to clinical need, and
• provide a high quality of care.

The need to introduce a means of identifying physical practices in diagnostic imaging was identified as part of the collaborative agreement between the Commonwealth and the Royal Australian and New Zealand College of Radiologists and the Australian Diagnostic Imaging Association. This agreement allows the Commonwealth to manage Medicare expenditure in diagnostic imaging in collaboration with the diagnostic imaging industry. Other groups of medical practitioners who regularly provide diagnostic imaging services were consulted with in the development of this measure as well.

A similar registration and information collection system already exists under Commonwealth Health Program Grant requirements for radiation oncology, however, these apply to private radiation oncology practice site only.

While this provides comprehensive information on those sites, there is very little data available on public radiation oncology facilities, which form the majority of service providers. This restricts the ability of providers and government to adequately plan and provide appropriate access to these services.

The introduction of LSPNs for radiation oncology practice sites was recommended by the Radiation Oncology Inquiry Committee in its report of 8 June 2002. This will bring public and private facilities under the one umbrella to help address planning, service provision, workforce, age of equipment and other issues identified in the report.

Once registered, all that practice sites will need to do is advise of changes to the information on the register. It is envisaged that practices will also be annually sent details of the information on the register for the practice to confirm or change details on a periodical basis. The impact of this measure on practices will therefore be minimal.

The second measure in this Bill implements recommendations of a review commissioned by the Government in July 2000 in relation to the refer-
ral arrangements for diagnostic imaging services. The review committee included representatives from the Royal Australian and New Zealand College of Radiologists, the Committee of Presidents of Medical Colleges, the Australian and New Zealand Association of Physicians in Nuclear Medicine and the Royal Australian College of General Practitioners.

The committee’s recommendations being addressed in this Bill are:

- allowing a provider to substitute a more appropriate imaging service where the provider feels that the patient has been referred for an inappropriate service;
- requiring a further referral where a service provider deems additional services to those specified in the original referral are necessary and those services are of the type that would have otherwise required a referral by specialist; and
- making it unlawful for all diagnostic imaging service providers to station diagnostic imaging equipment or employees at the premise of another practitioner. This measure currently applies to specialist radiologists only.

So that patients are not disadvantaged by this last recommendation, exemptions to this provision will be provided in identified areas of need, for example, in remote areas.

These new arrangements will streamline referral arrangements in diagnostic imaging, making it easier for patients to access, and the provider to deliver, the most appropriate services.

The final measure seeks to redress an anomaly relating to the referring arrangements for osteopaths.

Under the current legislation, practitioners registered as chiropractors under State or Territory registration laws can request specified diagnostic imaging services under the Medicare arrangements. Osteopaths registered as chiropractors under those laws are also able to participate.

However, some States now have separate legislation governing the registration of chiropractors and osteopaths which means that osteopaths in those States are unable to access the referring arrangements for diagnostic imaging services.

The amendments will restore the rights of affected osteopaths. They will also allow State or Territory registered osteopaths who were not previously registered as chiropractors under State or Territory legislation to request these services.

Debate (on motion by Senator Crossin) adjourned.

ENE\y\ ENERGY GRANTS (CREDITS) SCHEME BILL 2003

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

First Reading

Bills received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.18 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.19 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

ENERGY GRANTS (CREDITS) SCHEME BILL 2003

This bill establishes an Energy Grants Credits Scheme that provides for payment of a grant to persons who are entitled to an off-road or on-road credit.

This bill gives effect to the commitment made by the Government in May 1999 under Measures for a Better Environment to replace the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme with a single scheme called the Energy Grants Credits Scheme.

Under the provisions of the bill, a person will be entitled to an off-road credit when purchasing diesel fuel for use in eligible activities that are the same as those activities currently eligible for a rebate under the Diesel Fuel Rebate Scheme. Similarly, a person will be entitled to an on-road credit when purchasing fuel for use in activities that are the same as those activities that were eligible for a grant under the Diesel and Alternative Fuels Grants Scheme. In this way the Energy Grants Credits Scheme will maintain benefits equivalent to those available under the existing schemes.
The Energy Grants Credits Scheme will be administered under the administrative and compliance framework contained in the Product Grants and Benefits Administration Act 2000. Claimants will be responsible for correctly self-assessing their entitlements and maintaining records to substantiate their entitlements.

The Energy Grants Credits Scheme will apply from 1 July 2003.

The Measures for a Better Environment package also noted that the Energy Grants Credits Scheme will provide encouragement for the conversion to cleaner fuels. The Government is committed to pursuing options to achieve this and is doing so by examining the issue as part of the consideration of alternative fuels within the Energy Task Force.

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

I commend this bill.

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

This Bill is a companion bill to the Energy Grants Credits Scheme Bill 2003.

The purpose of this bill is to amend or repeal a number of acts to facilitate the enactment of the Energy Grants Credits Scheme Act.

Full details of the measures in this bill are contained in the explanatory memorandum already presented.

I commend this bill.

Debate (on motion by Senator Crossin) adjourned.

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

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002

Report of Employment, Workplace Relations and Education Legislation Committee

Senator FERRIS (South Australia) (5.20 p.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Tierney, I present the report of the committee on the provisions of the Workplace Relations Amendment (Termination of Employment) Bill 2002, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

MEDICAL INDEMNITY (PRUDENTIAL SUPERVISION AND PRODUCT STANDARDS) BILL 2003

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

Second Reading

Debate resumed.

Senator HUTCHINS (New South Wales) (5.20 p.m.)—The purpose of the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002, as outlined in the explanatory memorandum, is ‘to ensure that health care professionals have access to medical indemnity cover that is provided by properly regulated insurers’. The government’s failure to deal with the medical indemnity insurance crisis must be viewed in the context of its failure in other areas of the health care system. This government has overseen a steady decrease in the rate of bulk-billing. Fewer than 70 per cent of visits to general practitioners now are bulk-billed, yet the Minister for Health and Ageing has hardly admitted that it is a problem. This same government has twice introduced legislation to increase the cost of essential medicines. This place has twice rejected those proposed increases. The bills before us represent a belated attempt to deal with a crisis that has been public knowledge for nearly a year. More than that, medical practitioners themselves have been concerned by the increased costs of medical indemnity insurance for well over two years.

The public first became aware of the medical indemnity insurance crisis in April 2002, when United Medical Protection sought provisional liquidation. Today, almost one year on, the government is still introducing legislation to attempt to resolve the issues surrounding the collapse of UMP and
the resulting failure of insurers to protect doctors from financial ruin. But the writing was on the wall for a considerable time before that. In July 2000, which is now a year and a half ago, the President of the AMA, Dr Kerryn Phelps, highlighted the fact that medical indemnity insurance was blowing out as a concern for the health industry. In November 2000, United Medical Protection announced that in the 1999-2000 financial year over $95 million had been paid to 1,035 claimants. A day later, the AMA and individual doctors publicly voiced their concern that the expected, and later realised, ‘call’ by UMP to increase fees would inhibit their ability to continue practising medicine. By mid-2001 Dr Phelps said that specialists were being driven out of practice by rising costs in medical indemnity insurance.

The Australian Labor Party realised that something needed to be done. That is why the then opposition leader, Kim Beazley, and Jenny Macklin, the member for Jagajaga, held a press conference on 31 July 2001 to announce Labor’s policy to address medical indemnity insurance. But it was not until 19 December 2001 that the Prime Minister called for a summit on the matter, which finally convened on 23 April 2002. Before the summit began, the minister for health said that the government’s role was only to bring the relevant groups together. Perhaps it is that attitude that sees us debating policy which attempts to address a crisis that still has not been resolved. In fact, the government introduced medical indemnity insurance legislation into the Senate for the first time on 19 November last year—seven months after UMP went under. The government’s handling of this matter has been at best sporadic and at worst disorganised. During 2002 it became clear that the Prime Minister, the Treasurer, the Assistant Treasurer and the minister for health did not agree on the manner in which the crisis could be averted, nor on who was to take the blame.

The most concerning element of the medical indemnity insurance crisis has been its particular effect on doctors in the bush. For a long time there has been concern surrounding the number of doctors in rural and regional areas, and the increase in medical indemnity insurance costs has only served to make the matter more pressing. There have been significant flow-on effects from the medical indemnity insurance crisis. We have seen bulk-billing rates in Australia drop through the floor. Anecdotal evidence would suggest that there is a link between increased insurance costs and the now snowballing decline in bulk-billing. Many GPs, particularly in regional and rural areas, do not make buckets of money and, as in any business, increased costs are inevitably passed on to the consumer. But health care and medical advice, unlike many other services, are essential services that all Australians should have equal access to.

The government’s inability to deal with the medical indemnity insurance crisis has made health care less accessible, has placed an extra burden on the hospital system and has made doctors’ professional futures uncertain. In Bathurst, a town of 32,000 people, there is only one doctor who offers full bulk-billing services. People who used to be able to visit their doctor and simply present their Medicare card now have to make a copayment, which is on average $12.78 per visit. It is no great stretch to see a link between increased insurance costs for doctors and the decline in bulk-billing services. A New South Wales health department survey found that only 28 per cent of GPs on the Central Coast of New South Wales intend to offer full bulk-billing services in less than six months time. The equitable provision of health care services should not be taken lightly. But that is precisely what the coalition government has done, firstly, by denying responsibility for the medical indemnity insurance crisis; secondly, by failing to introduce appropriate legislation in time to prevent the crisis from affecting Australian families; and, thirdly, by failing to consult the relevant stakeholders in time to ensure that any legislation does not cause the problems that may occur in places like Tasmania and Queensland.

This government has an unforgivable record on health care services. In addition to letting the medical indemnity insurance crisis get out of hand, it failed to control the rapid decrease in bulk-billing services and it has twice attempted to increase the cost of essen-
tial medicines by 30 per cent. Labor and the minor parties have ensured that the PBS remains accessible by making sure the government’s legislation has been blocked. But governments are elected to govern, and it is wholly the responsibility of the government to fix the bulk-billing and medical indemnity insurance crises. The Australian Labor Party will not oppose these bills. We believe that medical defence organisations have justifiable concerns regarding these bills and that the most effective way of dealing with those concerns would be to refer the bills to the relevant Senate committee. However, due to the government’s inactivity on the matter, there is quite simply not enough time to apply the rigorous analysis these bills require.

The medical indemnity insurance crisis has been public knowledge for nearly a year now. Anyone who follows the medical indemnity insurance industry has known the potential for the system to break down for over eighteen months. But today, due to the government’s ignorance of the issue, the Senate is compelled to pass legislation which may not address the issues effectively. At the eleventh hour, the government has listened to the concerns of doctors on the matter of run-off cover and has decided to provide them with at least an element of what they need to go about their business without worrying about claims in their retirement.

These bills are long overdue. They may not be ideal and they may not be the result of open and effective consultation with the relevant stakeholders, but we need legislation to ensure that we do not see a repeat of the United Medical Protection collapse. I support the bills but condemn the actions of the government in failing to appropriately deal with the crisis. Australians rely on this government to legislate for unexpected eventualities. In this case, they have failed to do so and the Australian health care system has suffered the consequences.

Senator LEES (South Australia) (5.30 p.m.)—I want to place on record my disappointment at the way the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 have been handled by government, and particularly my disappointment that they have not been able to be referred to a legislative committee for full examination. There are some very serious concerns held by doctors. They believed that the government was listening to those concerns, and it was not until late last week that it was finally obvious to them that the government was indeed not listening or that it had dismissed their concerns. Had we been aware of that earlier, I would certainly have pressed on to have a full committee hearing. Indeed, given the seriousness of some of these concerns I think we will have to do something at committee level on this entire issue at some stage down the track.

Part of the government’s argument is that we have to separate the whole issue of costs from actually getting this done and getting the prudential supervision model in place. I would argue very strongly that we cannot separate out costs so neatly and so cleanly, because, if doctors find it unaffordable, they will simply not practice. We are already seeing that in my home state of South Australia. I was given examples earlier this week of a number of GPs, particularly those working part time, who have decided that it is all too hard and too difficult now and that they are moving on, in some cases to quite different professions and in other cases into either the bureaucracy or the health servicing area.

If we had been sitting a few more weeks—at least another week—in the first part of this year, I think a lot of the pressure that these bills are now under would have been off. I think the government has in fact created an unnecessary atmosphere of pressure. I do not believe that we need these bills to go through today, and I would like to quote from an email that I have from the President of the Medical Protection Society of Tasmania, William Turner. He says:

Government speakers to the Bill that I have heard appear to place great emphasis on the urgency of passing this legislation. There is no imperative for it to be passed this session or even in the budget session. The facts are that medical indemnity coverage will remain available from the current providers under the present system whether or not they offer insurance contracts. It is far more important to satisfactorily resolve the outstanding
issues such as run off cover and cover for claims in excess of the insurance cap. It is not good enough for the Government to offer to establish a task force to look at these problems subsequently. I say again to government that we really did not need to be rushing this through today. Obviously, the general aim of these bills is commendable. We have to make sure that medical defence organisations are prudentially regulated and comply with APRA's minimum standards. The doctors agree with that. The issue at stake is how we do it and whether or not there should be some choice for doctors as to how this is done and how they want to insure themselves.

I certainly want to thank those people who have contacted me to explain the reason that they do believe the bill needs to be passed. I thank the department for the briefings and I thank the minister's office, but I still remain unconvinced that there is this level of urgency. As I have said, I have also been contacted by many, many people, including individual doctors and doctor organisations—they include the AMA and the divisions of general practice—who do not see the need for the haste and indeed want to be able to put their case publicly to government.

According to the provisional liquidator of UMP Ltd, delay or deferment of the bill presently before parliament would have had disastrous consequences for UMP and the doctors it presently insures. This is the issue that I think has swung others in this chamber to letting this legislation go through today, but this is the very point that many doctors are arguing about. The AMA says its members are concerned about the impact of moving to a contractual form of insurance on the issues of retirement cover and what they call blue-sky provisions. These are the very rare but unfortunately very large claims made against doctors. I realise there are some provisions that the minister has outlined, but the AMA as at this morning would have very much liked to see this bill go to committee. I know these are not easy issues; hence, we have had a long period of time between when the original crisis happened and when we actually see legislation. But I reiterate my belief that it would be much better to allow doctors to bring these concerns to a Senate committee before we actually pass this bill.

I have been assured by some that changes made by this bill will not result in substantially higher insurance premiums, but I have also been told that many GPs are not in any way convinced of this. Indeed already, with premiums forecast to rise, some are leaving altogether. The last thing Australia needs right now is doctors, particularly GPs, leaving the system. The situation that we have with the number of GPs—and it is not just the distribution; it is the number of GPs in this country—is reaching crisis proportions.

The GPs are not a happy lot. They may be incredibly dedicated, but they are also extremely overworked. As we know, as has already been said as we debate this bill, and as has been said time and time again, bulk-billing is declining. This means the financial pressure on doctors is reaching the point where they simply cannot bulk-bill. Some doctors say they are bulk-billing to try to reduce the pressure in the waiting-room and to try to reduce the pressure on their secretaries. Some doctors' services now simply have an answering machine message that says: 'If you are a regular in this practice, press 1. If you are trying to join us as a new patient, press 2.' Pressing 2 usually leads you to an incredibly long queue or, indeed, a refusal to see you, on the basis that the practice books are already full.

We need to look at some of the real statistics involving general practice. Eighty per cent of practices would like to put on another GP if they could find one. It is not good enough to look just at the hundreds and hundreds of advertisements we have for doctors across the country—and these are certainly not just for rural and remote areas. You need to look at all those practices who would like some more help but for whom there is no point in advertising; they know they are not going to get anybody.

More than 50 per cent of doctors now going into GP training are overseas trained. We cannot get enough Australians who even want to enter general practice. We are not training enough doctors in our universities. We need many more funded GP places in our medical schools. I have received an estimate...
this week that, in Queensland alone, 1,200 GP places are vacant that could have a doctor in them if one was available. If we look at some of the statistics—I recently got a very helpful paper from the library—as at the year 2000, 23 per cent of GPs were over the age of 55. Teaching is getting to this stage. In my home state of South Australia it is at about 48 per cent and the crisis button has been pushed. Nearly a quarter of doctors are over 55 years of age and AMWAC is still telling us, ‘Don’t worry; everything is fine. We have got enough doctors.’ In fact, one of the library papers tells me that AMWAC claims that we have something like 1,000 doctors too many. When is AMWAC going to take a look at how GPs are working, what the structure of their working week is, how many are working full time and how many working part time, and get some realistic figures so we can start looking at how many doctors we actually should have?

If you look at TRDs plus OTDs plus the vacancies—all those practices wanting more help—I estimate we would need at least 300 extra funded places in our universities for doctors to be training year after year. Remember that it is six years before we see any results of extra training. If you look at some of the ways that GP shortages have been dealt with overseas, it is not just about finding more GPs; it is actually about supporting the ones that you have got. Putting this level of insurance costs on them is certainly not a way of supporting them. It is good to see the Minister for Health and Ageing, Senator Patterson, here and I hope that she will look at some of the solutions that she already has in place in rural Australia, which ensure that GPs have access to practice nurses. It is a very limited opportunity. You need about five doctors to get the wage of one practice nurse for a week—I think it is around $8,000 per doctor. We need to assist in getting some of the pressure off doctors, by practice nurses being available for all doctors, and also by more access to allied health professionals, whether they are dieticians, physiotherapists or diabetes educated professionals. In rural South Australia Aboriginal health workers are being supported under this program. There is a long list of other support people who should be supported by the Commonwealth to assist in taking some of the pressure off GPs.

To return to the legislation that is before us, the Australian Divisions of General Practice have raised quite a number of concerns about the impact of this bill and have been working very hard to have it looked at in committee. The government claims that the majority of MDOs in Australia are supportive of this bill. It would appear that a couple of the larger ones are, but the smaller ones are not. I will read through a list of concerns that they would have liked to have expanded on in committee. They argue firstly that the bill has been drafted with undue haste and fails to achieve the stated objectives. Secondly, it exposes patients of doctors to significant risk of going uncompensated in cases of medical negligence. Thirdly, it will have a significant adverse impact on bulk-billing and medical services generally. Fourthly, it will have a profound impact on medical manpower—particularly in general practice—as medical practitioners will refuse to continue to work under the proposed changes. Their fifth concern was that it would increase the cost of medical practice substantially. Lastly, they say it is anticompetitive.

As to the question of whether this legislation needs to be passed by 30 June, they argue it will not have the impact that the government has suggested, because the provision of medical indemnity cover is already sorted out for 2003-04. It strongly argues that the legislation be referred to a committee in order that appropriate measures can be introduced to safeguard doctors and their patients. In view of the time, I will not read through the executive summary of a report done by the Allen Consulting Group entitled *Insuring medical defence: what will it cost?* This was a report prepared for the Medical Indemnity Protection Society. I have circulated it to all whips and I seek leave for it to be incorporated in Hansard.

Leave granted.

The report read as follows—
INSURING MEDICAL DEFENCE: WHAT WILL IT COST?

Executive Summary

A sense of crisis in medical indemnity protection was crystallised with the provisional liquidation of United Medical Protection or UMP. This appeared to leave nearly 60 percent of Australia’s doctors stranded without medical indemnity protection. This in turn appeared to place the health care system at risk and leave patients potentially without means to recover damages that resulted from medical negligence.

These dramatic events spurred rapid action by the Commonwealth Government. Government investigation into the industry seems to have involved a number of surprises including the realisation that:

- Medical Defence Organisations (MDOs) have been struggling to deal with the escalation of claims and costs arising from increased litigation against doctors;
- some MDOs have not made full provision for the liabilities arising from incidents that had incurred but not reported (IBNR);
- MDOs were not subject to prudential supervision;
- the indemnity cover provided by MDOs is discretionary and is not an insurance contract and so is not covered by the protections that legislation applies to insurance; and
- commercial insurers have found it very difficult to compete in the medical defence industry and insurers are particularly worried about threats to viability including increased liabilities and uncertainty.

The Commonwealth Government has developed a broad package of measures in response. As the Prime Minister noted when he announced it, the measures are to ‘address rising medical indemnity insurance premiums and ensure a viable and ongoing medical indemnity insurance market.’

This study has conducted an independent review and evaluation of these measures. It has looked at their expected impact upon the medical defence industry, doctors and the community at large.

A key finding is that regulatory supervision of the medical defence industry is desirable. This activity, similar to other insurance activities, is subject to market failure which requires government intervention and prudential supervision. Of course, if theory is not sufficient, the failure of UMP should seal the argument about the implications of the current approach in practice. The Australian Prudential Regulatory Authority (APRA) appears to be the appropriate entity to supervise the industry.

An important aspect of the approach proposed by APRA is to replace MDOs with insurance companies or to require MDOs to become insurance companies.

In APRA’s words:

In future, all medical insurance in Australia will have to take the form of insurance contracts between individual doctors and APRA-regulated insurance companies. MDOs will have to cease writing insurance on their own account or convert to a licensed insurance company. Either way, the traditional and outmoded practice of discretionary insurance will cease.

APRA media release, 23 October 2002

Some MDOs are concerned that, at its core, forcing MDOs to become insurers is based on a false premise—that there is no alternative. This appears to have been accepted without question and without regard to the broader implications. With the benefit of some time to analyse the approach seven key issues now present themselves.

1. Have the costs of the proposal been fully identified?
2. What are the additional costs?
3. Does the proposed approach deny choice and reduce competition?
4. Does the approach ‘fix’ or ‘break’ the medical protection product?
5. Is the approach really sustainable?
6. Does the arrangement still leave doctors and ultimately patients uncovered?
7. Will the proposed approach lead to a further wave of doctors exiting bulk billing?

Key findings from the investigation of these issues are summarised below.

The costs of the measures have not been fully identified by the Government. It is not clear that the Government has fully examined the impact of the measures upon the medical defence industry at large. In addition to identifying costs to the budget, the Government appears to have focused on raising the viability of UMP and giving it the opportunity to trade out of difficulties. It has not, however, analysed the impacts regarding the industry at large. There is no evidence of a thorough evaluation of the sort required by Government under the COAG Competition Principles Agreement examining whether the proposed regulation restricts competition, whether the restriction is the only way of achieving the objec-
The measures

tive and if so, whether the restriction is justified as being in the public interest.

The results of the analysis conducted in this study suggests that the additional costs are significant. The reconfigured medical defence industry is estimated to face additional costs including:

- establishment implementation costs—$7 million;
- operating costs—$55 million per annum; and
- capital costs—rising to $35 million per annum.

These costs are largely an attribute of APRA’s choice of corporate structure to apply in the new regulated medical defence industry. Most would not be incurred under a framework that simply applied and raised capital requirements and other prudential controls. They are therefore avoidable.

The measures deny choice and reduce competition. The direct impact of the measures is to block the continued operation of MDOs unless they become insurers. MDOs have provided vigorous competition in the industry for decades. In essentially banning MDOs from ‘writing insurance’ APRA’s proposed approach imposes a fundamental restriction on competition. The case has not been made why this is the only or best option.

If the Government has the power to ban MDOs it also has the power to regulate them. It seems poor public policy to remove choice and competition just to make it easier to fit medical indemnity within the largely existing regulatory framework. It is not clear that changes cannot be made to the regulatory framework to accommodate MDOs. It is notable that regulators blocked entry of mutual funds from banking for some time reflecting similar arguments, and that removal of this prohibition and the accommodation of mutuals within the banking legislation enhanced competitive pressure in that industry to the benefit of consumers.

The measures ‘break’ rather than ‘fix’ the medical protection product. While it is not always popular, discretionary protection is an effective means of dealing with the moral hazard problem in insurance. MDOs use it to promote best practice and manage risks proactively rather than adopt the passive contractual approach involved in traditional insurance.

It is not clear that the measures will place the medical defence industry onto a sustainable footing. There is a profound weakness in implementing as a solution broadly the same model that failed. The absence of even a single insurer willing and able at this time to commit substantial capital reserves to the industry should raise alarm bells about the approach. Of course, one is not enough. Efficiency and lower premiums can only be assured if there is vigorous competition in the industry. Any less than seven insurance providers (the number of MDOs currently in the market) should be viewed as a failure to lock in sustainable competition.

The arrangements leave doctors and ultimately patients with less coverage. They will shrink the breadth of protection currently provided to doctors (while raising costs). If insurers come to dominate, as intended, the industry will shrink the service base to insurance of medical malpractice liabilities alone. This will leave doctors unprotected over most of the wide range of areas where doctors face threats. The expense of long tail insurance for the run-off as doctors exit the industry or retire poses additional problems. There is risk that doctors will ‘run bare’ as they retire leaving injured patients without scope to recover damages for negligence.

The measures will lead to doctors exiting bulk billing arrangements. Increased costs for MDOs will have to be passed on in full to doctors if they are to be viable. These costs imply a significant burden upon doctors of about $1,800 per annum. This would be on top of other measures such as the IBNR levy and outstanding call payments owed by UMP and other MDO members. Unless Medicare arrangements are adjusted quickly to fully reflect this change in doctors costs, doctors will have a pressing incentive to exit bulk billing so that they can pass these costs on. This will compound the current trend decline in the proportion of doctors who bulk bill.

A further wave of doctors exiting bulk billing can be expected to have adverse consequences for the weakest and most vulnerable parts of the community. It is likely to impact most heavily upon medical practices that are already at the margin in economic terms, including those in rural and remote communities.

The study has also examined the economy wide implications of the avoidable aspects of the medical indemnity package, especially the change away from MDO structures towards insurance.

The economy wide picture differs from the partial view. Naturally, evaluation of a change in public policy should get to the issue of how it impacts upon welfare. It is insufficient to merely look at the cost to government, or to industry where these costs are passed on to households (through taxes or changes in prices). The economy wide perspective takes into account that one industry’s costs are another’s income, that changes in budget balances have to be financed with impacts upon tax-
payers, and that there are sometimes complex connections that produce unexpected results.

The MONASH model of the Australian economy has been used to evaluate the policy change. The MONASH simulation indicates that while this is a small change in terms of the economy at large, there would still be significant macroeconomic implications once the additional costs imposed upon the medical defence industry have worked their way through the system. This includes:

- a contraction in real GDP of around $30 million per annum;
- a contraction in employment by some 400 jobs; and
- an economy wide reduction in real consumption of $54 million per annum.

The reduction in consumption is equivalent to saying that there would be a contraction in economic wellbeing or welfare. Looking at the next decade the forecast implies a loss of around $400 million in net present value terms.

There are also some macroeconomic implications. These include:

- an increase in activity and therefore employment in the insurance sector; and
- a very small expansion in employment in export oriented industries and some job losses in industries that are consumption oriented.

Reflecting these impacts, it would seem appropriate to reconsider the approach. In particular, it would seem desirable to review the potential to bring the medical defence industry within a rigorous supervisory framework as intended by APRA, but without blocking continued involvement of MDOs structured as mutual funds and offering discretionary protection. This would preserve vigorous competition, enhance consumer choice and place the medical defence industry upon a genuinely sustainable position.

Senator LEES—I thank the Senate. In closing, the way this is seen by general practitioners is quite different from the way it is seen by some who work in specialty areas. I think the biggest issue facing us today, as we look at the overall health of Australians, is the issue of the medical workforce. Whether the issue is a shortage of nurses, a shortage of doctors or a shortage of appropriate allied health professionals and the ability to pay for that, it all comes down to us waiting very anxiously to see the next Medicare agreement and hope that in the budget some of the outstanding issues for the support of doctors will be dealt with.

Senator HARRADINE (Tasmania) (5.43 p.m.)—This has been a rather hectic day. I understood that the Senator Lees may have been moving that the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 be referred to a committee. I understand what she has said on the matter. I wanted to formally move that the matter be referred to committee, and at present I am hurriedly getting a proposition drafted so that this can be done. It would be more appropriate, though, that it be done at the end of the second reading debate. I do not intend to repeat what I said in the debate on the Medical Indemnity (Consequential Amendments) Bill 2002, Medical Indemnity (Enhanced UMP Indemnity) Contribution Bill 2002 or the Medical Indemnity (IBNR Indemnity) Contribution Bill 2002. I made an intervention on the matter on 10 December 2002; I am not going to repeat it in this second reading debate.

I want to speak to a proposed amendment that I will move, if nobody else does, at the end of this second reading debate. We have to be honest—we have to be honest with the patients and also with the medical profession and other health professionals. But we are not being honest if this has not been forwarded for proper consideration by the committee. I am absolutely astounded that the ALP should roll over on the completely baseless assumption that if this matter is referred to a committee then patients will be without relief. That is not the case at all.

To date, a case has not been made by the government to convince us that this is the most appropriate way forward. The Medical Protection Society of Tasmania has been advised that, should this legislation fail to pass by 30 June 2003, it will have no impact on the provision of medical indemnity cover for the profession in 2003-04. Did you hear that? I heard some members of the opposition saying that it would. Tell us how it would! It is a false assumption. Supporters of the government’s model are already offering insurance
products. Reinsurers have indicated that any delays will have no adverse effects upon premiums. Did you hear that, Madam Minister? Supporters of your government’s model are already offering insurance products, and reinsurers have indicated that any delay will have no adverse effects upon the premiums. Therefore, why not allow referral of the legislation to a committee to fully and properly explore the most appropriate measures to safeguard both doctors and patients? That has been urged by a wide range of people, including the Australian Medical Association’s federal council and, of course, the Tasmanian branch of the AMA.

If we do not have the urgency of the 30 June deadline, it is incumbent upon the Senate to ensure that the legislation we pass is far-sighted enough and the least restrictive as possible. The legislation needs to be user-friendly in the interests of the health system. We cannot be seen as favouring one approach over another when the case for the former has not been made. What is the government frightened of if the matter goes to a committee? It is the normal course for measures such as this, which are contentious and which will have a dramatically adverse effect on patients and the medical profession in my state.

Let us not forget that within this debate are the long-term care costs for people who are disabled as a result of medical services. This issue itself has not had enough discussion in this place. Whose interests are we trying to advance here? Whose interests are we, as elected members of parliament, trying to advance? Is it in the patients’ interests or is it in the interests of an organisation that has gone belly-up? At the end of the day we must put the interests of people who have been left disabled as a result of medical misadventure first and foremost in our minds as we look at any of these changes.

We also need to bear in mind that none of us want a situation where obstetric services begin to vanish in rural and regional areas. It is clear that there are at least two conflicting views on how to move forward. However, it is also clear that a broad coalition of medical protection interests contend that this legislation is not ready to be passed. As a legislator, this rings too many alarm bells for me to be prepared to say, ‘Yes, let’s rush this through—get it through without exposure to a Senate committee and without examining the aspects that are being raised.’

As I said, many doctors have expressed the view that the legislation has been drafted with undue haste and fails to achieve the stated objectives: that it could expose patients to a risk of being uncompensated in ongoing cases of medical negligence; that it would have a negative impact on bulk-billing and medical services in general; that it would lead to a shortage of medical practitioners as many would refuse to continue to work under the proposed changes; that it would increase the cost of medical practice substantially; and that it would deny choice and reduces competition. These are the sorts of issues which should be explored by a Senate committee hearing.

The robust commercial nature of some of the MDOs has been questionable. At the same time, what is being put as a solution raises a number of questionable issues. Is there an alternative? Has the evaluation been done by the Commonwealth? Can the government put any evaluations on the public record? In my view, and this has been backed up by better informed views, we could still have an inquiry and a report delivered by 30 June, but even if we do not it is not going to endanger the situation of indemnity. So I am proposing to move an amendment and I will do so formally at the end of this debate—or can I do that now, Madam Acting Deputy President?

The ACTING DEPUTY PRESIDENT (Senator McLucas)—You can foreshadow your amendment but you cannot move it at this point because we already have an amendment on the books.

Senator HARRADINE—Yes, I understand, so I am foreshadowing an amendment—

The ACTING DEPUTY PRESIDENT—After the second reading debate.

Senator HARRADINE—I will leave it until after the end of the second reading debate.
Senator MURPHY (Tasmania) (5.54 p.m.)—In this debate on the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the associated bill, I wish to reiterate some of the points that Senator Harradine has made because, from a Tasmanian perspective, this issue is critically important. I am not going to claim to have a huge knowledge of this issue but I know it has raised concern amongst the people I have spoken to. It is interesting to look at some of the issues that have been raised by the report that was conducted by the Allen Consulting Group, which the government has used on a number of occasions. I will be listening with interest to see whether the government responds to these issues because I think they are of fundamental importance.

Let us look at just some of the things that have been raised in the report about insurance matters. The report alleges there will be a reduction in competition and that there will be a denial of choice. It alleges that there has been no explanation from the government as to why the government’s proposition is the best and/or only option and that the measures proposed by the government break rather than fix the medical protection product. The report says:

It is not clear that the measures will place the medical defence industry onto a sustainable footing. There is a profound weakness in implementing as a solution broadly the same model that failed.

It goes on to say:

The arrangements leave doctors and ultimately patients with less coverage. They will shrink the breadth of protection currently provided to doctors (while raising costs). If insurers come to dominate, as intended, the industry will shrink the service base to insurance of medical malpractice liabilities alone. This will leave doctors unprotected over most of the wide range of areas where doctors face threats.

It has been put to me that doctors, particularly part-time doctors, will leave and no longer provide services. How can that be a good solution not just from a Tasmanian perspective but from any perspective? I am not sure why the government is not prepared to have the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 referred to a committee for the purposes of having an inquiry and allowing senators to actually hear arguments as to why the government proposals in respect of this matter are unsatisfactory. I think it would have been a very useful exercise to allow that to happen. I understood that it was the opposition’s view that this ought to be referred to a committee. Whilst I have not been made aware of why that view has changed, I would be interested to know why it changed.

I will support the amendment that is to be moved by Senator Harradine in respect of the referral of this matter to a committee. The bill can proceed to be dealt with, but that referral would allow people to put their case, particularly in respect of some of the MDOs, and ensure that we do have competition. By all accounts, some of them have operated very effectively and would continue to operate very effectively and provide an insurance product that would be superior to that which we are likely to end up with. At the moment, I do not see the logic in the government’s approach but I will listen with interest to what the minister has to say to see whether there is a response to some of the allegations contained within this report which was prepared for the Medical Indemnity Protection Society. It seems to me that they are very serious allegations which should be responded to.

Senator BROWN (Tasmania) (5.58 p.m.)—The medical indemnity insurance issue that we are dealing with is a very major matter. It affects the lives and livelihoods of many medical practitioners and, therefore, untold thousands of their patients. I am indebted to the Australian Medical Association and their officer in Tasmania, the Hon. Doug Lowe, for much of the information I will give to the Senate today. I will also be supporting the amendment that Senator Harradine has flagged.

The Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 that we are dealing with are not of themselves the whole answer to the question of medical insurance—they are a long way short of it. The medical indemnity crisis was sparked by the
financial collapse of UMP in New South Wales, which was the largest medical defence organisation in the country. It had achieved that position by recklessly pursuing additional client base without corresponding prudential safeguards to meet increasing claims.

In seeking a solution, the federal government has relied on Treasury to set a new policy for the medical defence organisation recovery strategy in consultation with the Department of the Prime Minister and Cabinet. The Health Insurance Commission, which supervises the structure under which the vast majority of medical services are obtained, was given no real opportunity to provide policy alternatives, nor was the federal health department—maybe the minister can either countermand that or give details. While UMP in New South Wales provides medical indemnity cover for the vast majority of medical practitioners, mutual discretionary medical indemnity organisations provide indemnity cover for the majority of medical practitioners across Australia generally. The vast majority of these mutual discretionary MDOs have provided reliable medical indemnity cover by following sound prudential practice and adhering to the strict accountability requirements and transparent reporting provisions of the respective state corporation codes, which are mutually consistent across the nation.

The Medical Protection Society of Tasmania, MPST—and this is the case in point for those of us from Tasmania, but it does apply to other organisations—provides medical indemnity cover for about 85 per cent of all medical practitioners. It has consistently provided reasonably priced medical indemnity cover but, of course, it is by no means the lowest, because it has been very prudent in its operations. The transfer to an insurance based product for Tasmanian doctors would mean an 85 per cent increase in medical indemnity costs. This legislation aims to give them no choice. It will take away what they have got, insist they go to insurance based cover and costs will increase by 85 per cent and those costs will inevitably be passed on to the patients of the doctors.

If the medical indemnity crisis is to be resolved satisfactorily for the community, our parliament needs to ensure the retention of a high level of competition in the provision of medical indemnity cover through the retention of not-for-profit mutual discretionary MDOs operating in competition with the profit based insurance companies, which include medical indemnity cover with their portfolios. Measures which have been put in place by the federal government to enable the medical profession to continue to function through 2003 are both short term and biased to UMP—the troubled organisation based in Sydney.

The current federal government strategies, which are embodied in these bills, do not provide a solution to the issue of blue skies or run-off cover upon retirement. Many people would not have thought that doctors retain liability or are exposed to liability long after they retire. They do and, therefore, they need cover. On that basis alone, this current legislation is fundamentally flawed. An examination of the legislation by the relevant Senate standing committee—which is what Senator Harradine is enabling us to opt for—will enable a review of the fundamentals of this legislation for the purpose of ensuring it meets its policy objectives in a cost-effective manner. That is pure commonsense. The mutual discretionary MDOs are not seeking to be excluded from APRA’s prudential supervision. They are simply seeking to ensure that APRA is sufficiently authorised to establish alternative prudential requirements for the not-for-profit mutual discretionary MDOs as compared to the profit based, shareholder owned insurance companies, which is the stated objective of the federal government’s current policy.

The stated urgency—Senator Harradine spoke about this as well—upon which it is claimed the ALP has been driven to make a decision to support this legislation does not exist. UMP is guaranteed by the government until 31 December and the status quo will continue to exist for all other providers up until 30 June next. It is anticipated any recommendations from a Senate standing committee could be dealt with by the parliament well before that deadline. Senator Harradine
has proposed a reporting date of 12 May; he may care to look at whether that should be 13 May when we come back for the budget. I commend Senator Harradine on his amendment.

I note that a month or two ago in this place I moved a similar amendment. On that occasion, I was supported by Senators Nettle, Lees, Harris and Harradine. We would have been there by now had that amendment been supported; we would have had this inquiry. I ask the Senate: how can we make a decision to support the profit based insurance companies, and effectively extinguish the mutual organisations which give indemnity to doctors without a profit, without hearing from the latter? Should we not be prudent ourselves? Should we not listen to what they have to offer? On the face of it, not only is it extremely good theoretically, but it has worked practically. These organisations have not got themselves into the trouble that UMP has got itself into. In fact, on the face of it, they offer a better option. Yet here we have legislation that says, ‘Let’s opt for a profit based, insurance company based indemnity scheme and extinguish those schemes which have been sailing along through prudence, transparency and good management without that trouble.’

The Senate committee system exists to ensure that we do not make mistakes. I submit to the Senate, and not least to the Labor opposition, that we will be denying ourselves the opportunity to have the insurance that we do not make a mistake if we do not listen to these mutual organisations. The way to do that is to have a Senate committee which they can appear before. It could report back at the next day of sitting after tomorrow, which is 13 May. I say to both sides of the Senate—and the government must be included in this—that that is proper procedure. To deliberately say that as a Senate we will not listen to these organisations, that we will deny them access to the committee system, is very poor practice indeed. It frightens me. It is tantamount to studied ignorance. This is a very important matter. We should be as prudent as we would expect medical indemnity organisations to be. We must have a committee before which the mutual organisations and, indeed, all other interested parties can appear.

Everybody knows that medical insurance is a top problem in these days of rapidly escalating cost. It is a problem for doctors, for patients and for the insurance industry. The mutual organisations have been handling that well for many decades, but we are saying: ‘You’re not the answer. We are going to remove you from the scene and bring in a single prescription—which are for-profit insurance organisations—to deal with this problem.’ We must allow the mutual organisations the opportunity to put forward the alternative which they not only have as a theory but have practised, and have practised well.

Senator Harradine’s amendment is absolutely critical. We should come back informed, on the next sitting day after tomorrow, with the committee able to report to us so that we can vote on this matter with that information at hand. At the moment we cannot do that. I appeal to the Labor Party and to the government to think very seriously about supporting Senator Harradine’s amendment. It must be supported.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.10 p.m.)—I thank my colleagues for their contributions to this debate. The primary purpose of the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002 is to ensure the long-term financial sustainability of medical indemnity providers. The bills give effect to the Prime Minister’s announcements on 31 May and 21 October last year, which essentially aimed to bring all of the insurance business of MDOs into the prudential framework for general insurers. The bills also give effect to the Prime Minister’s announcement on 19 March 2003.
There are two main components to the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003, which I will hereafter refer to as the bill. Firstly, it provides that medical indemnity cover is only to be provided by general insurers and only under contracts of insurance. Secondly, it provides for minimum product standards for medical indemnity insurance contracts. A minimum cover amount of $5 million, or such other amount as may be prescribed by regulation, will be required. There are also minimum product standards set down in the bill to offer doctors retroactive cover in certain circumstances.

The bill also establishes a framework to specify minimum run-off cover via regulations. My press release of 24 March indicated that it is the government’s intention to regulate, in advance of 1 July, to require that appropriate interim run-off cover is offered to medical practitioners, consistent with conditions in the reinsurance market and the type of cover that MDOs are able to offer. To help assist the medical indemnity industry adapt to the prudential reforms contained in the bill, the government has offered a generous transition period of five years, from 1 July 2003, from the minimum capital requirements for MDOs currently providing medical indemnity cover that wish to become authorised insurers and that do not already meet minimum capital requirements.

The consequential bill is designed to support the measures contained in the primary bill. Importantly, it will ensure that data must be provided by the MDOs to the Australian Prudential Regulation Authority and will prohibit MDOs with discretionary liabilities from becoming authorised insurers. This prohibition is included so that legacy liabilities—the long-tail liabilities—of MDOs are quarantined from the new insurance business being issued from 1 July 2003.

The government sees the passage of these bills as an important element of a broad strategy that has several parts to stabilise the medical indemnity insurance market in Australia. In addition to the guarantee, to 31 December 2003, provided to United Medical Protection and its wholly owned subsidiary Australasian Medical Insurance Ltd—combined UMP-AMIL—that broad strategy has seen the government already implement a premium subsidy scheme to assist high-risk doctors with their premiums, a high-cost claims scheme to assist with reinsurance and a scheme to fund unfunded incurred but not reported liabilities of MDOs to be recouped by a levy on doctors of participating MDOs over time. These measures will address the safety of doctors and their patients as well as stabilise the industry.

This legislation that we are considering before the Senate will ensure that doctors and their patients can have greater certainty in their indemnity arrangements, better access to appropriate and adequate indemnity arrangements and better information about those arrangements. I urge all members of the Senate to support the passage of these bills in a timely fashion to ensure that doctors have the certainty they need in indemnity arrangements and in the entities that provide those arrangements, thereby ensuring that adequate medical services will continue to be available to all Australians.

I know that in the debate—not all of which I have been able to hear—there have been some concerns raised about a couple of issues: run-off cover and blue sky. I will just say a few words about them. I want to put on record that the government acknowledges the concerns of doctors about the availability and affordability of appropriate run-off cover for doctors on retirement. However, I should also put on the record that this is not a simple issue to resolve and it requires a response which will adequately take into account both the concerns of doctors and the ability of medical indemnity providers to offer this cover in a way that does not jeopardise MDOs’ ongoing commercial viability.

It is the government’s understanding that the provision of run-off cover by MDOs in the past—either through claims-incurred cover over the working lifetime of the doctor or through the provision of free run-off cover upon retirement for doctors with claims-made cover—may not have been supported by appropriate reinsurance arrangements. Quite frankly, if there are not reinsurance arrangements, there are unacceptable risks.
The arrangement could place MDOs at considerable financial risk.

In recognition of what I must say are the legitimate concerns of doctors about certainty in retirement and the commercial difficulties of ensuring safe, sustainable retirement cover for the providers of that cover, an amendment was made to the bill in the other place to remove the more prescriptive elements of the bill relating to run-off cover. The provisions have been replaced with an ability to prescribe run-off cover requirements by regulation. I am now putting on record that it is the government’s intention to regulate, in advance of the 1 July 2003 commencement of the bill, to require that appropriate interim run-off cover is offered to medical practitioners consistent with the conditions in the reinsurance market and the type of cover that MDOs are able to offer, so that doctors will have greater flexibility in specifying the type of run-off cover that they can get.

The Prime Minister announced last week that the federal government will commission a study of options to examine the broader longer term retirement cover issues, particularly in relation to cover for medical practitioners who may not retire for many years, to supplement the minimum standards allowed for under the bill. The study will proceed, as a matter of urgency, in consultation with the MDOs and representatives of medical practitioners. The federal government is determined to ensure that workable arrangements are put in place to enable medical practitioners to access affordable and adequate run-off cover. It is committed to examining all options in this area as a high priority.

I now want to say a few words about blue sky claims. The bill requires that medical indemnity be offered by way of a contract. It is the government’s view that contractual cover is entirely in the interests of doctors. In the past, doctors have obtained medical indemnity by way of a discretionary promise. These arrangements are certainly not suitable in going forward because they do not contain the certainty that doctors require. Contractual cover provides doctors and their patients with greater certainty as to what they are covered for and provides an avenue to enforce that contract through the courts. Contractual cover also provides more certainty to providers of medical indemnity as to the actual liabilities for which they should hold capital and reserves. Obviously, with discretionary cover you do not have that certainty. A consequence of contractual cover is that it clearly defines the limits of indemnity provided.

MDOs have, in the past, marketed their discretionary products as unlimited, which may be a concept that is not entirely true when you look at it. Of course, unlimited cover is naturally limited by the amount of capital and reserves that a company holds, so it is only as good as the reserves it has to meet any claims. MDOs do not have access to unlimited capital so there is a natural limit upon the amount of cover they can provide. The move to contractual cover makes this limit more transparent and more explicit. As senators will appreciate, in the context of limited cover, particularly in circumstances where doctors previously had the view that they had unlimited cover, doctors have a very real concern that claims may occur which are in access of the amount for which they are insured.

The potential for claims to be made against personal assets, where insurance is insufficient, is an issue that all other professional groups have long had to grapple with. The resolution of this issue is not simple—I am not suggesting it is—and it must take account of the rights of consumers and their ability to access appropriate compensation in circumstances where they have been injured or suffered loss through the negligence of another. It must also recognise the vulnerability of medical practitioners to long tail claims. However, in all of these things there is a balance, and the government recognises that consumers are not benefited if professionals are so fearful of the potential for their personal assets to be exposed to litigation that they are not willing to continue to provide essential services to the community.

The federal government cannot determine potential solutions to this issue; it will require state and territory government involvement. This is primarily because actions for medical malpractice would, in usual cir-
circumstances, be pursued in tort in various state and territory courts. It also involves cross-portfolio interests, including the portfolios of Treasury, Health and Attorney-General’s, so it is my view that the most appropriate forum to continue the consideration of this very important issue is the Commonwealth-state ministerial meetings on liability insurance. The next ministerial meeting is scheduled for 4 April in Perth, and I have asked my state and territory colleagues that this item be included for discussion on the agenda for that meeting. I think it is appropriate that this matter be taken forward at a high level and given the priority it deserves.

I thought it appropriate to just mention some of these concerns, without taking issue with every matter raised in debate, because there may well be doctors and others listening to this debate who would expect something to be said about these issues. Apart from that, it is a package designed, as I said, to provide greater safety to doctors and consumers and to stabilise an industry in much need of attention. For those reasons I urge that the bills be passed.

Question agreed to.
Original question, as amended, agreed to.
Bills read a second time.

Referral to Committee
Senator HARRADINE (Tasmania) (6.24 p.m.)—I move:

At the end of the motion, add:

“and that:

(a) the Medical Indemnity (Prudential Supervision and Product Standards) Bill 2003 and the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002, be referred to the Community Affairs Legislation Committee for inquiry and report by 12 May 2003; and

(b) further consideration of the bill be postponed till the next sitting day following the presentation of the report mentioned in paragraph (a)”.

I will not traverse the path that I took before when I foreshadowed this amendment. I notice, however, there is no defence given by the minister for the haste which is being proposed—to such an extent, indeed, that the government has been saying to the opposition that this legislation must go through now so that it can get the start-up date of 30 June. There are two things about that. According to the Medical Protection Society of Tasmania, they have been advised that if the bill fails to pass by that date it will have no impact on the provision of medical indemnity cover to the profession in 2003-04. Supporters of the government’s model are already offering insurance products and reinsurers have indicated that any delay will have no adverse effect on premiums.

Why not put this measure to the Senate Community Affairs Legislation Committee so that these matters can be considered and it can report back by 13 May? Even under that scenario, you have still got 48 days to put the measures into effect by 30 June. That is no price at all to pay for what is normally done with pieces of legislation like this. We are denying patients, the medical profession and others the opportunity of expressing their views to our committee for report to the Senate. I think that is a denial of the duty we have as a house of review to exercise that review. I am very disappointed by the opposition’s approach to this. They have been told things by the government, and it is on a false premise that they are now voting against the committee reference when previously they were clearly in support of a committee reference. I move my motion accordingly.

Senator BROWN (Tasmania) (6.28 p.m.)—I support the motion and I believe the opposition should be speaking to it. I know there is one opposition senator from Tasmania here now. I believe the Tasmanian senators who disagree with the position Senator Harradine, Senator Murphy and I are taking on this should be responding to the request, not to endorse the mutual organisations which we believe should have their day before a committee but to endorse the sitting of a committee so that they can be heard. We are not saying: take a point one way or the other. What we are saying is that there is this valid medical defence organisation, and it has years of experience and successful functioning. It has not hit the wall—so why send it to the wall? And, if you are going to do
that, for goodness sake allow it to have its
day to make representations before the Sen-
ate before we do that. I think every Tasma-
nian senator has an obligation, if they are
going to deny that opportunity before a Sen-
ate committee, to say why. I would expect
 somebody from the opposition to get up and
say why. Indeed, I ask the minister to say
why. Senator Harradine quite generously
said that the opposition had in the past sup-
ported this position, but they did not on 6
February, when I put a similar motion before
the Senate; they voted against it. It was to a
different committee, but to the same effect.

Debate interrupted.

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

Senator BROWN—Before the dinner
break I was speaking to Senator Harradine’s
worthy amendment which would ensure that
mutual funds such as the Medical Protection
Society of Tasmania, which has been a mu-
tual fund functioning for decades to insure
Tasmanian doctors—it is not a profit making
fund—are allowed to keep going. They have
given a terrific service to doctors, and there-
fore to patients, for decades. There is a con-
cern, which I have heard from the Australian
Medical Association in Tasmania, that this
legislation effectively means that the insur-
ance companies, which are for profit, will
control medical insurance and indemnity,
and fees for doctors will increase by up to 85
per cent. Everybody knows how high fees
are as it is and somebody has to pay them. It
ends up being the community. A mutual fund
is a cooperative, effectively, serving the
community of medical practitioners, and
most of them in Tasmania are members of
the local fund. It works efficiently, it is pru-
dent and it is transparent. It has great advan-
tages for medical practitioners but it also has
the advantage of passing on much lower
costs to the patients.

The funds have indicated that they are
keen to ensure that they come under the new
regulations, the requirements of government,
under the purview of APRA. Senator Harrad-
ine’s amendment means that we allow these
funds to put their case to a Senate commit-
tee—and that would take a day or two—and
that that committee report back on the budget
day, 13 May, our next day of sitting after
tomorrow, and then we can complete delib-
erations on this matter armed with the
knowledge that comes from that committee.

There is no way of looking at the impend-
ing voting down of this amendment by the
government and the opposition other than as
studied ignorance. It is a very determined
effort not to allow these funds to have their
say. You cannot see it any other way. Is that
what the Senate stands for? Is that what the
Senate committee system is about? Of course
not. (Time expired)

Senator COONAN (New South Wales—
Minister for Revenue and Assistant Treas-
urer) (7.33 p.m.)—I would not have replied
to Senator Harradine and Senator Brown had
it not been for certain comments that have
been made which make me think that they
may have come to the debate only recently. It
is appropriate to address two issues: firstly,
the timing of the bill and, secondly, the proc-
ess of consultation with the Medical Protec-
tion Society of Tasmania. In brief, the Medi-
cal Indemnity (Prudential Supervision and
Product Standards) Bill 2003 and the Medi-
cal Indemnity (Prudential Supervision and
Product Standards) (Consequential Amend-
ments) Bill 2002 have had a pretty long
genesis and there has been extensive consul-
tation with the Medical Protection Society of
Tasmania and with other medical defence
organisations that do not share the views of
the Medical Protection Society of Tasmania.

The policy was first announced by the
Prime Minister on 31 May last year and ex-
panded on in his announcement of 23 Octo-
ber. The bill was introduced into the House
of Representatives on 12 December 2002.
Interestingly and relevantly, the Selection of
Bills Committee has twice decided not to
refer the bill to a committee. MDOs, which
provide cover to 85 per cent of Australia’s
doctors, have been undertaking extensive
preparations to comply with the provisions
of this bill by 1 July. Other providers need to
issue renewal notices on the basis of the pro-
visions of this bill in May this year, so deferr-
ing it to 13 May is not an option. The refer-
ral of this bill to a committee at this late
stage would continue the uncertainty for
medical indemnity providers and would be
commercially unsustainable. As the bill has been available for three months for consideration by the parliament, it is the government’s view that the legislation should proceed and must proceed at this point.

I want to say a couple of words about the process of consultation with the Medical Protection Society of Tasmania and other doctors’ representatives. There has been extensive consultation with MDOs and doctors’ groups on prudential regulation. It is fair to say that at all stages, however, the Medical Protection Society of Tasmania has chosen to remain outside what might otherwise be regarded as the mainstream consultation process. The consultation started in 2001 when MDOs went to the Australian Prudential Regulation Authority seeking to be prudentially regulated. The Medical Protection Society of Tasmania withdrew from this process. In addition, before the government announced its package on medical indemnity on 23 October last year, I met with all MDOs to advise them of the details of the package. It was clear from this meeting that the Medical Protection Society of Tasmania believed it would have some particular issues with becoming regulated by APRA. However, I do assure the Senate, and in particular Senator Harradine and Senator Brown, that I made a genuine effort to meet with the Medical Protection Society of Tasmania to discuss their particular circumstances. However, for their own reasons they did not do this. Instead, they chose to continue to lobby against the basic principle of prudential supervision rather, it seems, than examine how they could move towards implementing the prudential approach from 1 July and otherwise be accommodated within the five-year transition process.

As for relying on an Allen report, there has been a claim that medical indemnity could not continue to be offered by a not-for-profit mutual. This is simply not the case. The bill does not prescribe a mutual structure either for a regulated insurer or for a parent MDO. The mutual ownership status and character of the industry are indeed expected to continue. The government simply wants to make sure that they are safe and do not fall over. The other MDO groups are retaining their mutual ownership. The report, interestingly, also claims that MDOs’ costs will increase. However, other MDOs have indicated that they do not expect their costs to increase by anywhere near the rate claimed in the report. So whilst I acknowledge the concerns of the Medical Protection Society of Tasmania and will continue to work with them to ensure that they can be prudentially regulated and use the period of transition, unfortunately we cannot have some people who are prudentially regulated and others who are not. It is simply too unsafe. For those reasons I oppose the bills being referred to a committee at this late stage.

Senator MURPHY (Tasmania) (7.38 p.m.)—In speaking in support of the amendment moved by Senator Harradine and listening to what the minister has said—and I am grateful that she has made the comments she has at this point—it just re-affirmed in my mind that the government really has not listened. I think it is true that the MDOs thought the government was listening and was going to take account of the concerns they were raising, only to find out at the eleventh hour that it was not. Having not been listened to, they sought to have this matter referred to a committee to allow them to put on the record the arguments against what the government is proposing.

With regard to what the minister has said, it seems to me also that there is broad support for this. I have difficulty understanding that in terms of the government’s proposal. The report that was prepared by the Allen Consulting Group seems to have been done on behalf of a very substantial number of MDOs. I think it says it has a membership of around 49,000, which, if I read the report correctly—and I hope I am—is 98 per cent of the market. So this is not an insignificant situation. In respect of the minister’s argument about 13 May somehow jeopardising the process for the application of the bill once it goes into legislation, I also find that wanting. I just do not accept that argument.

We are dealing with a very serious matter here. Even if you only believed half of what is contained in the report by the Allen Consulting Group on behalf of the MDOs about the effect on doctors’ costs, on patient costs,
the loss of doctors particularly in regional areas and especially those in a part-time capacity—and they are so important from a community point of view—the reduction of bulk-billing and a potential further erosion of the Medicare system, which the government may well be in favour of, it seems to me to be eminently responsible to see these bills referred to a committee. If people that are so important to the process feel that their concerns have, firstly, not been listened to and, secondly, not been dealt with, then it is critical that the Senate, which has the responsibility for dealing with these issues and ensuring that the public consultation process for the parliament of this country operates in the way that it should, should refer these bills to a committee. There is no argument that the minister has provided to date that would suggest that doing so would somehow jeopardise the process and application of these bills—that it would jeopardise the insurance of doctors within this country. That is simply not the case. I would urge senators to vote in support of the amendment to refer these bills to the Community Affairs Committee.

Senator CONROY (Victoria) (7.42 p.m.)—I share Senator Harradine’s, Senator Brown’s and Senator Murphy’s frustration because this has been an absolute stuff-up from go to whoa. The government does deserve the criticism that you are making. I have been frustrated, along with my colleague Mr Smith, in trying to get answers and make progress with this bill. It has been very difficult given the tight time frame that the government has manufactured to push the debate along. So I do understand the frustration from my Senate colleagues. I wish it could have been different. Unfortunately, because of this lack of consultation and the botched process that the Senate has been subjected to, we have been put in a position where we can disadvantage 80 per cent of the industry that this affects—

Senator Lees—It is not a disadvantage.

Senator CONROY—or we can pass this bill today. Despite Senator Lees interjecting that she does not believe it is a disadvantage—

Senator Lees—It is actually an advantage to get it sorted out.

Senator CONROY—I think some of what you are saying is relevant, Senator Lees. However, there are consequences from not passing this bill—there are consequences that will cause a significant problem in other sections of the industry. It is with a great deal of regret that, on behalf of the Labor Party, I indicate that we will not support the referral to the committee but I want to reiterate that we are unhappy with this state of affairs and we share the frustration of the senators at the other end of the chamber.

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

The Senate divided. [7.49 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 5
Noes………… 40
Majority……… 35

AYES
Brown, B.J. * Harradine, B.
Lees, M.H. Murphy, S.M.
Nettle, K.

NOES
Allison, L.F. Barnett, G.
Bartlett, A.J.J. Bishop, T.M.
Calvert, P.H. Chapman, H.G.P.
Cherry, J.C. Colbeck, R.
Conroy, S.M. Cook, P.F.S.
Cooman, H.L. Crossin, P.M.
Denman, K.J. Eggleston, A. *
Ferris, J.M. Greig, B.
Heffernan, W. Hutchins, S.P.
Johnston, D. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Marshall, G.
McLucas, J.E. Moore, C.
Murray, A.J.M. O’Brien, K.W.K.
Payne, M.A. Ray, R.F.
Ridgeway, A.D. Scullion, N.G.
Sherry, N.J. Stephens, U.
Stott Despoja, N. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.
Third Reading

Bills passed through their remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.53 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 4 (Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002).

Question agreed to.

CORPORATIONS AMENDMENT (REPAYMENT OF DIRECTORS’ BONUSES) BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator CONROY (Victoria) (7.53 p.m.)—The Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002 is a significant bill as it has been a lightning rod for community concern about corporate greed. The purpose of the bill is to permit liquidators to claw back unreasonable payments made to directors of insolvent companies. In spite of its original, limited purpose, the bill has taken on a much greater purpose on account of Labor’s amendments. Labor’s amendments crack down on the disclosure of executive remuneration and empower shareholders to take on the boards around the country. This bill highlights the difference between the Labor Party and the Liberal Party. Labor backs the shareholders whereas the Howard government backs the board directors. You can always count on the Howard government to back the big end of town, and this bill is no exception. This evening I will discuss the loopholes that exist in the bill and Labor’s amendments to close those loopholes, Labor’s amendments to crack down on executive remuneration and enhance the disclosure regime, and Labor’s proposals to empower superannuation funds. The loopholes in this legislation have already been documented in the House; however, I will briefly run through them.

This bill provides that a liquidator can reclaim an unreasonable director related transaction made within four years of a company appointing a liquidator. The definition of what constitutes an unreasonable director related transaction creates a loophole for certain benefits which escape this definition. The definition does not capture all transactions between directors and companies. In particular, the bill only refers to payments made by the company, and not to benefits received by the directors. The effect is that options issued to a director are captured by the definition, but any profit made on the exercise of these options is not captured. The legislation allows the company to claw back the original value of the options, which could be a small proportion of the ultimate value of these options. Given some of the excesses that we have seen, it is to be expected that that will be a small amount. This means that shareholders and creditors are ripped off. The company has gone belly up, the creditors are seeking payment for debts and the liquidator is unable to access the real benefit of the options payments received by the directors. Labor proposes to amend the definition of ‘unreasonable director-related transactions’ to capture this benefit. We must capture all unreasonable payments made to unscrupulous executives like Brad Keeling, Jodee Rich and Mark Silbermann. Labor welcomes the recent settlement that ASIC reached with Mr Brad Keeling, whereby he is banned from being a director and being involved in the management of any corporation for 10 years. He is liable to pay compensation of $92 million to One.Tel, although he does not have to cop the whole $92 million—Rich and the others are also going to be liable—and he has agreed to pay ASIC’s costs of $750,000.

The second loophole in the bill is that it is up to the courts to determine when a payment is considered unreasonable. To give this legislation some real teeth, Labor recommends that proposed section 588FDA be amended to set out the circumstances to which the court should have regard in determining whether a transaction is unreasonable. The third loophole in this bill relates to the timing of these new provisions. If Mr Howard is serious about protecting share-
holders, investors and policyholders, the bill should apply from 4 June 2001, when the Prime Minister said he would legislate. The retrospectivity argument raised by the Howard government is a furphy. The fourth loophole in the bill was identified during the Senate economics committee hearing in relation to the bill. Professor Baxt from the Australian Institute of Company Directors said:

The way this bill is drafted, I think that if a payment were made to a director of a partly owned subsidiary it might not be caught by this legislation. ... We see so many cases of people getting off because there is a technical flaw in the legislation and the court says, ‘Sorry, there is no case to answer.’

So Labor will move an amendment to capture such payments to subsidiaries. We will also move an amendment to ensure that section 300A of the Corporations Act applies to executives, regardless of which company in a corporate group they work for. This issue was also raised by Professor Baxt during the Senate hearing.

Whilst the claw-back of unreasonable payments is supported by Labor subject to the amendments outlined above, the bill fails to address the core of the problem. That problem is excessive executive remuneration. Boards in Australia have had it too good for too long. Boards in Australia have held their shareholders to ransom. They have acted in their own interests, not in the interests of their shareholders. That well-known American investor Warren Buffet recently described the actions of US executives paying themselves exorbitant salaries as ‘piracy’ and said they treated the companies they worked for as their private banks.

Self-regulation is a green light for corporate greed. The average annual salary for the top 100 CEOs in Australia increased from $1.4 million to $2 million last financial year. That is a 38 per cent increase. This translates to a $10,000 increase per week, taking a CEO’s weekly salary up to $38,000 a week. These are the same CEOs who have been opposing an extra $24.60 a week for 1.7 million workers, increasing a worker’s weekly salary to the princely total of $456. That is right: CEOs have gone up $10,000 a week—to $38,000 a week—that is not per year, but per week—and they have been opposing workers getting an extra $24.60 a week, taking them up to $456 a week.

Senator Murray—Perfectly reasonable!

Senator CONROY—‘Perfectly reasonable!’ I am sure I should indicate for the record that that was sarcasm from Senator Murray. The Prime Minister, Mr Howard, has opposed any increase over $10 per week in each of the last seven years. That is right: in the last seven years, Mr Howard has said, ‘Workers can have no more than $10 a week,’ while at the same time executives have got an increase of $10,000 a week. There is one rule for senior executives in this country and one rule for workers. It is time for the Howard government to face up to the fact that self-regulation has failed.

Labor wants checks and balances on the setting of executive remuneration. Accordingly, Labor will today move amendments that require companies to disclose the policy behind the setting of executive remuneration. These are the same amendments which we moved in the House and which the government voted down. Labor’s amendments mean that shareholders will get a breakdown of how the compensation package is composed and how compensation relates to the company’s performance over a five-year period. We want shareholders to know whether options and equity are subject to performance hurdles. We also want shareholders to know what those performance hurdles are. This concept is not ground breaking. Already in the UK these requirements are part of the law. However, the Howard government voted down this amendment in parliament just a few weeks ago, saying that such amendments were ‘complex and overly prescriptive’.

Labor will also move today an amendment that forces companies to give shareholders a say on executive remuneration. That is right. It gives them a say—not a chance to find out what has happened after the horse has bolted and what the government has been dragged screaming and kicking to, but a real say. The amendment requires companies to put an annual non-binding resolution to shareholders on executive pay. This amendment would give shareholders a statutory right to voice their opinion on the policy upon which these
big payouts are based. Again, this is not a radical idea. British shareholders will have the ability to vote on executive salary packages from April this year. In the UK, the TUC helped encourage a shareholder vote against the obscene salaries paid at Vodafone. One in 10 shareholders voted against the chief executive’s package, and 15 per cent of shareholders refused to endorse it. With the statutory right to an annual vote starting in April this year, the TUC plans to target a series of companies where the remuneration policy is unacceptable.

Why don’t Australian shareholders have similar rights to their UK counterparts? It is simple: the Howard government voted these amendments down in the other place. But today there is a second chance. Today is a second chance for the Howard government to back the shareholder, not the board director. But we all know Mr Howard and Mr Costello do not want to empower Australian shareholders. They like the status quo. Under the Howard government, the board makes the decisions and the shareholders wear them.

Super funds in Australia have control of over $505 billion. That is almost three times what the federal government will spend running the country this year, and it is almost 39 times our annual defence budget. This is a monumental responsibility, but it is also a monumental opportunity. Labor believes that it is essential that superannuation trustees use this opportunity and vote their shares. Because of the matters on which shareholders vote—the election of directors, certain share capital transactions, certain related party transactions—voting has a direct impact on a company’s management.

Super trustees bring pressure to bear on companies which far outweighs the pressure of individual shareholders. The old response of simply selling up is the easy way out. Trustees of super funds need to engage with the companies they invest in. To date, many trustees have ignored this responsibility. In fact, some trustees of super funds have a general rule not to vote at all. The Australian Council of Superannuation Investors, ACSI, believe that such a rule is contrary to trustees’ common law obligations and believe that super funds have, at the very least, an obligation to consider whether to exercise their proxy vote. The IFSA blue book was a good start for many trustees and fund managers. However, circumstances have now changed.

Internationally, both the US and the UK have taken bold steps to increase shareholder participation. In the US, in addition to the ERISA legislation requiring private sector pension plans to vote, the SEC has adopted new rule amendments for mutual funds. In January this year, the SEC adopted amendments that require mutual funds and other registered management investment companies to disclose their proxy voting policies and procedures, and their actual proxy votes cast. In the UK, the Institutional Shareholders Committee released a statement of principles setting out best practices for institutional investors. More recently, the UK government has said that it will examine implementing the recommendations from Myner’s review into institutional investors later this year. The Myner report proposed that there should be a legal duty on funds to intervene in companies where it would be in the best interest of pension scheme members. Myner made it clear that exercising a voice is better for the economy as a whole than the current strategy of doing what is called the ‘Wall Street walk’.

In Australia, only 14 per cent of investors voted against resolutions on executive pay in the 2002 annual general meetings season. Clearly, Australia is behind the game, and it is time we caught up. How do we catch up? There are three ways: firstly, by legislating—the amendments that Labor will move today will empower super trustees to stand up to corporate Australia; secondly, by encouraging super funds to become more active; and, thirdly, as a last resort, there is always litigation. To protect workers’ entitlements, the labour movement has argued for changes to company law, better redundancy compensation and strong labour laws. These are essential restrictions on corporate behaviour. However, there is more that can be done.

It is worth remembering that the Hawke-Keating government’s introduction of compulsory superannuation changed the financial
landscape forever. It rejuvenated our capital markets and fundamentally altered our financial services sector. At that point, Australia led the world on retirement funding. It is now time for more structural changes to the industry, yet some industry participants would argue that voluntary codes of conduct are sufficient and that we should take a wait and see approach. In Labor’s view, as I have said, self-regulation has been a green light to corporate greed. Self-regulation has failed to produce outcomes that benefit the investor or the employee. That is why a more robust approach is needed.

In the UK, the Institutional Shareholders Committee’s statement of principles has been criticised on the grounds that, as they are not part of the law, it is impossible to overcome the web of conflicts of interest in the industry. Similar considerations apply in Australia. Trustees must take responsibility for protecting the assets of their members. That is why Labor is proposing to legislate in relation to voting and disclosure. Our first amendment relates to trustees of super funds. This amendment makes it mandatory for trustees of super funds regulated under the SI(S) Act to exercise their votes, disclose their voting record and explain why it was in the best interests of their clients that they voted in this manner. These amendments would only apply to investments in listed companies in Australia. The amendments would not apply to small funds like self-managed funds and some of the smaller corporate funds. Provision is made for appropriate carve-outs to be prescribed. For example, a carve-out would apply for certain pooled investment vehicles where investors are required to abide by the rules of the investment and do not have the power to direct their votes.

Labor’s second major amendment relates to fund managers. This amendment requires fund managers to disclose their voting record. Labor’s amendments will make it mandatory for fund managers in Australia to disclose their proxy voting policy and procedures, the matter voted on, whether and how the fund manager cast their vote and whether the vote cast is for or against management. Certain carve-outs can be considered. If these changes fail to increase the activism of funds managers, Labor will revisit the issue and see if more stringent requirements are needed. These amendments are intended to increase shareholder activism in Australia. They are also intended to increase transparency and disclosure in relation to proxy voting. Labor wants to ensure that boards act in the best interests of the owners of the companies—the shareholders. We believe that one of the most effective ways to do that is to empower shareholders to take an active role in company affairs.

The second way for Australian super funds to catch up with international best practice is to become more active. It is not good enough for trustees to watch passively from the sidelines. This is not a spectator sport. To see results, actions need to be taken. Trustees of super funds in Australia have got to be in the game. Very few super funds have even been fielding a team. Cbus, to mention just one, is a notable exception. Their decision in October last year to write to the chairmen of Australia’s largest 200 companies and say that they would vote against all executive option package proposals was a major break with past practice for the industry. As Cbus invests about $1.5 billion of funds in public companies, Australian boards were forced to sit up and take notice. The CSS/PSS is another example. The Australian Council of Superannuation Investments has also taken the fight up to the boardroom. Their decision to advise their members to vote against Chris Corrigan’s options package in February this year sent a shiver down the spine of directors across the country. Super trustees should be following the Cbus lead. The ACSI guidelines provide a good basis for trustees to identify the issues on which they need to focus. Also, Corporate Governance International’s guidelines on executive remuneration provide a step by step guide for investment managers and superannuation trustees—(Time expired)

Senator MURRAY (Western Australia) (8.14 p.m.)—My compliments to Senator Conroy. That was one of the best corporate accountability speeches I have heard from Labor in my time here, and I think it advances the cause very considerably. The Corporations Amendment (Repayment of
Directors’ Bonuses) Bill 2002 was prompted by the collapse of One.Tel when the directors, Keeling and Rich, had paid themselves $7½ million in bonuses in a year when the company lost—note ‘lost’—$291 million. The bill has a relatively narrow aim: to permit liquidators to reclaim unreasonable payments made to the directors of insolvent companies. The Democrats support the intention behind the bill, but it needs to be considered in a wider perspective. We have sought to include amendments to improve its significant shortcomings.

This legislation has to be seen in context, and it is the same context that Senator Conroy outlined. Executive and director remuneration is a matter of great public and private interest. It lies at the heart of investor confidence and faith in the credibility of corporations and the share market. It is a matter of great public interest because the extravagant greed of many directors and executives has not only caused a justifiable public outcry but has also contributed to major company failures and market shocks. It is a matter of great public interest because shareowners have been robbed—and I use the word ‘robbed’ advisedly—by the syphoning off of their funds through board approved salary package rackets.

I note that the Business Council of Australia discussion paper of March 2003 on executive salaries states:

There are strong lessons for corporate Australia from the current debate about executive pay: they are that companies—and in particular their Boards—must respond more effectively to heightened shareholder and community concerns on this issue, and where there is poor performance, payout must be minimised.

The Australian Democrats agree but with the force of law. Market confidence has been badly affected in the long term. The new and very large cohort of ‘mum and dad’ investors have been taught that they cannot trust auditors and accounting standards and that they cannot trust directors to do their job and to do the right thing. In the eighties and early nineties the corporate opprobrium landed on entrepreneurs who were, by definition, few in number. Now it is the corporate bureaucrats, the professionals—a whole class of business people and their advisers—who have lost public trust.

At the heart of the matter is a series of connected failures. Neither board practice nor the law prohibit arrangements where there is a conflict of interest. Those who benefit from devising clever, concealed and costly salary, bonus or option packages—which benefit the executive and director mates on the board—are the same people who approve those packages, often ticked off at the shareholder level by the chairman holding proxies. Full disclosure of executive and director packages to shareholders and the market has been poor and the bare minimum, despite Democrat and Labor legislation which explicitly forced its disclosure. Boards do not have independent directors. Directors are invariably subject to the patronage of dominant executives or dominant owners. Good democratic processes for director election are rare, and far too often it is still a mates arrangement. Accounting and auditing standards and practices have been deficient. The regulators on this particular front—ASIC, the ASX and the Accounting Standards Board—have been weak in their efforts.

The debates of 1997 and 1998, which led to the greater disclosure of pay packages, was a result of the Democrats and Labor recognising that managements and boards were conspiring to enrich themselves at shareholder expense. In the wake of what has happened since, you would not be stretching it too far to call it a criminal conspiracy, given the loss of shareholder funds by some of those people. The Democrats and Labor rightly saw that the danger of creating acceleration in remuneration from disclosure was outweighed by the right of shareholders to judge pay and performance and to have a say in determining pay for performance. Disclosure is an essential part of governance and is an essential market mechanism. Disclosure is not a privilege or some kind of motherhood statement; it is an essential market mechanism. Unfortunately, neither the law nor the regulators were up to the task of defeating the greedy. Hence, the need for more changes to the law.
In commenting on new draft ASX guidelines for disclosure of executive pay packages, an Australian Financial Review editorial on 13 March 2003 said:

... [the previous guidelines have been] notoriously porous and have allowed companies to hide details of incentive and retirement benefits until the lucky executives and directors have banked their cheques.

The problem with the ASX approach, of course, is that it is voluntary. Pathetically, the ASX says those who do not volunteer to disclose would also have to explain why in due course. We are going to introduce amendments to add some force behind such provisions which, being voluntary, are extremely weak.

Many company directors and executives have proven they are not to be trusted. Greed and self-interest govern their actions. The only antidote is black-letter law to ensure transparency. Shareholders deserve full information on which to judge pay versus performance. We welcome the fact that the government, after five years, is finally accepting the need to enforce these remuneration provisions. They have also come a long way from their earlier positions, five years ago, with CLERP 9. Hopefully it will herald a new era. The Democrats will try and ensure it is as tough as it needs to be.

Further, the penalties for nondisclosure need to be high and the regulators need to be put on notice to take an active interest. Companies have not had the morality that should motivate disclosure, the regulator was asleep, the accounting standard setter was snail-like, and the determination of boards to keep their greedy secrets meant they disregarded the present law’s penalties and, anyway, found ways around it. Alan Kohler from the Australian Financial Review on 15 March 2003 had this to say:

Companies have been blatantly breaking the law by signing or maintaining contracts that include large termination benefits and performance incentives that are not disclosed each year, and the Accounting Standards Board took years to issue an exposure draft ...

Note that he used the phrase ‘blatantly breaking the law’. These are our top companies and they are so-called ‘leaders’ in the corporate world in our society.

In the Democrats’ view, any substantial salary or performance package should be disclosed at the time it is negotiated. This should also apply to any potential redundancy payout and should include the value of shares and options. We look forward to the CLERP 9 amendments. With the benefit of hindsight, we have seen boards cleverly avoid our remuneration amendments through retirement benefits that were not fully disclosed. We intend to try to ensure that these provisions are strong and enforceable, and that the clear legislative intent cannot be circumvented by clever remuneration arrangements. The Democrats will seek to toughen disclosure requirements and to financially punish any public company that does not appropriately and promptly inform ASIC and the ASX of the employment terms of its highly paid executives.

The revelation of the Commonwealth Bank’s $32.7 million payout to Mr Cuffe once again highlighted the urgent need to improve corporate disclosure rules. When they eventually released this information to their shareholders, the company stood behind the fact that the payment was required under an existing contractual obligation arising from the Colonial takeover. That amount of money should have been in their balance sheet as a liability and should have been shown as an accruing liability. Our amendment will seek to include such commitments within the existing disclosure requirement. It will expand the disclosure of ‘emoluments’ to include accruing and unvested benefits. It will also achieve the aim of forcing companies to disclose such obligations to their auditors. In this way companies may also reveal such contingent liabilities in their financial statements. Concealing payments of that size is just totally immoral and wrong. Timely disclosure may, in some small way, have mitigated shareholder outrage, the damage to the Commonwealth Bank’s, Mr
Cuffe’s and Mr Murray’s reputations, and any negative impact on the share price.

The revelation of AMP’s multimillion dollar payouts to executives and directors also highlighted the urgent need to give shareholders the right to veto massive payments. The announcement of the extravagant bonus payments was another example of shareholders being treated with contempt by executives and company directors. We need tougher rules to empower shareholders with the right to decide whether exorbitant payments are appropriate. Due to their self-interest and greed, many directors have shown themselves incapable of showing adequate discretion. For years now, weak company directors have allowed themselves to be victims of executives’ greed. Section 200B of the Corporations Act outlines that a company must not give a person a retirement benefit without shareholder approval, as outlined in section 200E. However, it seems that major corporations—the AMP and the Commonwealth Bank being the most recent examples—are circumventing the spirit of these amendments. We are seeking to amend section 200F of the Corporations Act to stop companies from hiding behind existing contractual arrangements and thereby avoiding shareholder approval of such payments.

Our amendments will give shareholders a greater opportunity to veto payouts, particularly where there has been a significant reduction in the company value; where performance criteria have not been met in a material sense; and/or the company has made a loss or there has been a significant profit reduction. I note the amendments of Senator Conroy that attempt to ensure that super funds and other fund managers vote on their shareholding or, at the very least, outline their voting policy. I believe that is a good start but I hold firmly to the view that all institutions above a certain size and capability should be exercising their voting shares. It is a really simple argument: they hold those shares in trust, they have those powers almost of escrow over other people’s money and shareholding and they should be exercising their vote as a duty of care. Since they are not doing it, we should make them do it. I want the government and its advisers to understand that if you reject these amendments this time, when you come back with CLERP 9 they will be in front of you again and we will keep hammering you until they are law.

In respect of related companies, corporate restructuring is used by unscrupulous companies to deprive creditors, including employees, of access to assets when a subsidiary collapses. There have been examples in the recent past where employees, and creditors generally, have lost out where the company responsible for the failure has been a holding company that has washed its hands of the debts of the subsidiary company. When companies were originally conceived, it was intended that they would provide a benefit of limited liability to their owners—the shareholders. It was not intended that they would be manipulated to allow the separation of assets in one company and liabilities in another, resulting in those to whom money is owed having access to no significant assets to satisfy their entitlements.

We have again and again brought this amendment to the Senate—and we tell you again that we will keep doing this because the recommendations of the Harmer Law Reform Commission report in 1988 proposed making related companies liable for the debts of insolvent companies in limited circumstances. With those limited circumstances, it would be up to a court to consider matters like the extent to which the related company took part in the management of the insolvent company, the conduct of the related company to the creditors of the insolvent company and the extent to which the circumstances that gave rise to the winding up are attributable to the actions of the related company. Labor has supported these Democrat initiatives a number of times in the Senate but for the same number of times the coalition have refused this obvious reform. Their refusal continues to benefit the dishonest and the immoral. We again seek to include in this bill those amendments dealing with related companies.

The Joint Committee of Public Accounts and Audit Report No. 391 was a milestone for that committee. It was a milestone because it was the first time the committee had
stepped outside the public sector, government business enterprises included, and looked at aspects of the private sector. I thought its report was a very good contribution to the debate. In that report, the committee refers to independence. From paragraphs 1.23 to 1.30 in the report there is a succinct summary of independence. Briefly, independence is determined by the method of appointment and termination, the security of tenure and remuneration. It is enhanced by the best features of democracy, which are the separation of powers, full access to relevant information, high standards of process and performance, transparency, disclosure and accountability, and the full involvement of stakeholders, particularly through democratic elections. As report No. 391 says:

Independence is important to ensure that a person or group of persons undertake their work professionally, with integrity and objectivity and free of bias and undue influence.

It is notable, and a tribute to the past influence of board insiders or political insiders, I suspect, that the Corporations Law still lacks definitions or criteria for independence, yet these are fundamental statements that are continually referred to in matters of corporate law. I find it astonishing that there is this continued lack, and it is that continued lack which is at the heart of many of our major problems. So, hopefully, public outrage is now creating the right climate for more reform in this area.

The second issue I want to refer to relates to the separation of powers. The issue of corporate governance is at the heart of managerial and board accountability. Existing company law is inadequate in terms of corporate governance. Directors’ duties are very wide in respect of operational and management matters and can create situations where major conflicts of interest, mismanagement and even corruption can go unchecked. As some of the recent corporate collapses show, directors and senior management can evade their full responsibilities to the company’s shareholders, at great cost not just to the company but also to the country. As a means of improving this situation, the Australian Democrats have for the last five or six years—under my portfolio management—proposed a separation of powers so that the law gives shareholders of public companies the option of requiring a separation of the normal business and internal management functions of the board from the governance functions of ensuring openness, accountability and good process. The main board would continue to be oligarchic. It is oligarchic because it represents the oligarchy of financially dominant bodies. A main board would continue to be elected by a shareholding which represents financial power and would continue to concentrate on strategic, business and operational issues.

We propose a corporate governance board separately elected directly by shareholders and not by shareholding—that is, numerical or democratic power in contrast to oligarchic power—that would comprise not more than three non-executive directors. It should call and chair shareholders’ meetings, propose changes to the company constitution, manage the process of electing directors, resolve conflicts of interest, determine the remuneration and packages for directors and executive management and ensure independent advisers by taking the appointment of auditors and other advisers such as valuers away from the main board. That is a very practical recommendation, but I am afraid the forces of conservatism that we are up against cannot grasp the essential concept of separation of powers and of democratising companies in order to ensure the proper exercise of their responsibilities.

There is currently a great disparity between the principles of corporate democracy and the rules set out in the Corporations Act governing the internal operations of companies. For example, the existing method of electing company directors on a limited re-election basis allows dominance by control groups and inhibits the likelihood of support being expressed for particular directors or independent directors. The law does not enable minority interests to be heard through more accessible internal procedures, forcing them to rely on expensive and time-consuming formal procedures like the legal system and ASIC. Unacceptable discriminatory practices still apply, and women are still in a small minority as directors. The Democracy—
rats believe that if the ASX and ASIC do not insist on best practice election processes, in due course the Senate would have to consider legislating for the election procedures for companies.

In closing, we have to ask why we need these amendments attached to this particular bill. The Senate is faced with the second-lowest sitting week year in a non-election year since 1988—that is, in 15 years. We have bills stacked up against us. We have no idea when and if CLERP 9 will reach the Senate; we have no idea of its final content. So when you have a national crisis, as we do in this area of governance, we should take the opportunity when it arises to make the amendments to ensure that this area of law is far clearer and far more effective.

Senator WEBBER (Western Australia) (8.33 p.m.)—In rising to contribute to this debate tonight, I would like to echo the sentiments of some of the speakers in the other place on this bill—the sentiment being that this bill is long overdue. The Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002 is yet another example of the government shutting the gate long after the proverbial horse has well and truly bolted. Every time this issue has been raised in this place during question time, the minister’s response has been to sneer at the Labor senators and accuse us of envy. That is their approach—yet another wedge, it would seem. The bottom line in all of this is that the Australian taxpayers and shareholders are well and truly fed up with the extraordinary behaviour of corporate directors and senior executives. This behaviour and their extraordinary rush to get their snouts in the trough sickens our fellow Australians, especially when they stick their snouts in a trough that is nearly empty. I have quoted Abraham Lincoln before, and it is appropriate to do so once again: ‘Too many piglets, not enough teats.’

I am sure that I will be accused of envy again, but I am talking about applying the rule of law to what has been unregulated greed. This bill is about accountability. If these people in corporate Australia want to pay themselves high salaries and bonuses and, at the same time, allow the company to be run into the ground, there must be redress for the shareholders and creditors, including employees. No longer should they be able to pay themselves big dollars and then run away to do it all over again somewhere else. The government’s response is belated. No matter how often we raised the issue, the government dismissed it, and at the death knell they have brought in this legislation.

Let us be clear about one thing: this bill does not address all the deficiencies that exist in the area of corporate governance. For example, it does not extend to senior executives. Our fellow Australians, like ourselves, struggle to understand how someone can be paid a huge salary, get a bonus and leave when the company does not perform. Senator Murray referred earlier to the example of the Commonwealth Bank. It has been only weeks since we saw the undenifying procession of AMP directors from their particular boardroom. They had just seen a massive loss—they had seen the share price slump—and they all got a nice little payment to ease their pain on the way out.

But what has been done to ease the pain of the mum and dad shareholders who have seen their portfolios collapse as a result of their corporate governance? In one word: nothing. They say, ‘Don’t worry; you’ll get a new board.’ No doubt they too can get a nice little earner whether the company performs or not. This is an absolute farce—high farce, in fact, in the world of high finance. You can perform badly, you can stuff the company up and you can still keep going and get paid. Does that rule apply to ordinary, everyday Australians? Not on your life. Too many mistakes or poor performance and out you go. As a director or senior executive, you get paid for bad or good performance. What a fraud. I have noticed from recent news reports that the former CEO of AMP has accepted his severance pay and has banked it, but he has reserved the right to seek redress in the courts. He takes over $3 million and has the hide to reserve the right to take legal action. No doubt AMP will settle to save costs so, yet again, the shareholder is going to get it in the neck.

During the Senate Economics Legislation Committee inquiry into this legislation, a
number of submissions were received. The Australian Institute of Company Directors raised a number of concerns about the legislation. Of gravest concern was the failure of the government to consult with concerned parties. Their submission states:

AICD has unsuccessfully endeavoured to have our views heard on this subject for over twelve months. Indeed, it has been disappointing that our more recent requests to the Government for a copy of the Bill were rebuffed.

This raises some serious issues about the genuineness of the government’s approach. The AICD believe that the government, by taking this approach, has failed to use the provisions of existing laws to take action against directors. The AICD argue that ASIC should be provided with sufficient resources to take appropriate action. They also make the point that the focus of this legislation is only on directors and that it fails to address the problems of senior executives.

Another submission came from the Association of Superannuation Funds of Australia. ASFA stated that they thought that the four-year time limit leading up to a company’s liquidation was inappropriate, given that the law regarding corporate record retention requirement was for a longer period. If you do not like those two organisations, CPA Australia believe that the scope of this bill does not go far enough. They said in their submission that the bill:

... should address the granting of benefits (including bonuses) to directors (and others such as chief executives); the recovery of unreasonable payments; and protect the interests of shareholders as well as creditors.

Any reasonable person would agree that, when the CPA are highlighting these concerns, there is a problem. Yet again, this government does as little as possible, just to make the issue go away. The CPA make a number of suggestions to improve the legislation, but we are unsurprised that the government does not take up any of these suggestions.

The Australian Stock Exchange made a number of points in relation to the legislation as well. One of their suggestions is that payments made while the company is solvent should not be covered under the provisions of the act. The other striking suggestion is that the four-year period of time to review transactions is excessive. The ASX seem to have adopted the view that what went on in the past is not relevant to the present. They seem to suggest that a transaction made four years ago that benefits a director or an associate should not be included. To my mind, this flies in the face of the available evidence that shows that companies do not collapse overnight. Of course actions taken in the lead-up to a collapse are as relevant as those taken immediately prior to the company folding.

The ACTU submission covers the issue of executive remuneration and makes the point that, in 2002, average annual remuneration for the top 100 CEOs increased by a massive 38 per cent to $2 million. This now represents 44 times average weekly earnings, an increase from 34 times average weekly earnings in the previous year. That staggering amount is over $10,000 per week. This ridiculous and obscene amount of money is at a time when the government can only support an increase of less than $20 a week for average Australians. Let me see whether I have this right: a $20 a week increase for the majority, but a $10,000 a week increase for the minority—the top 100. The government can sit over there and support a system that allows increases of over $10,000 per week for the CEOs and about $20 a week for everybody else.

This is a government that cannot even come up with a reasonable increase for the staff working directly for them—and for all the rest of us, I might add. I understand that the current offer to MOPS is a whopping great four per cent increase. But in return for that, they have to work longer hours. Contrast that four per cent for the people who work directly for the government with the 38 per cent that the government lets senior executives get. The ACTU believe, like most other submissions, that this bill should extend to senior executives as well as directors. They believe that it creates uncertainty by not defining an unreasonable transaction. Finally, they also believe that it does not go to excessive remuneration when the company is solvent.
The IPAA, the Insolvency Practitioners Association of Australia—the people who are charged with winding up the companies that these well-paid directors and executives allow to go to hell in a handbasket, so to speak—also suggest a number of improvements. These include the insertion of a new section which they state in their submission:...

... will give a clear and unambiguous message to officers and management of companies and provide liquidators with the necessary legal framework within which to pursue unreasonable direct or related transactions.

The IPAA also raise the concern that one of the problems with this is the extensive litigation required to recover the payments. They say this is of particular concern, especially regarding companies known as phoenix companies. It is interesting to note, on the day that a report on a $60 million attack on the construction unions has been tabled, that the report remains largely silent on this sleazy method of asset stripping, going into liquidation and reappearing under yet another name. The IPAA points are well made in this regard.

This legislation does not go far enough, it is not clear enough and it fails the test of reasonable law. It is designed so that the government can pretend to the Australian people, and especially to the Australian shareholders, that they are taking steps to protect their money. But this legislation just tinkers with the edges and does not go far enough. Based on the submissions that were received by the Economics Legislation Committee, one would have thought it reasonable to make some changes to this legislation. Nothing that this government have done is about a total solution to the problem. Like so many other pieces of legislation we are faced with, like so much else where the government are concerned, they are doing all they can to get the issue off the front pages of the newspapers so that they can slip back into their lethargic, arrogant, hands-off style of government.

Senator WONG (South Australia) (8.46 p.m.)—I rise to speak on the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002. This is fundamentally an issue of corporate accountability. Many Australians, in fact most Australians, are rightly concerned about the issue of corporate accountability and corporate governance, particularly as many Australians find it hard to make ends meet. They are still confronted with the spectre of unreasonable executive remuneration, particularly in the context of companies whose share values are falling or, even worse, where they are insolvent. HIH and One.Tel are amongst many other examples of where our corporate sector has unfortunately not behaved or performed as well as we consider it ought to.

There are some obvious prudential issues associated with some of these corporate collapses, but there is the broader issue beyond corporate insolvency that deals with accountability in relation to remuneration and with how directors’ remuneration and bonuses ought to be treated. I think most Australians would agree that if a company goes into liquidation it is not fair, in that context, for directors to walk away with significant payouts whilst employees of the companies await their longstanding entitlements, often endlessly, and end up either not being paid at all or being paid a very small proportion of the amounts they are owed. It really does offend basic principles of fairness to see that occur in the context of corporate collapse, where you see the top end of the company sailing along just fine and employees who have devoted themselves to the company not being paid out basic entitlements.

It is appropriate that this legislation is introduced; it is unfortunate, however, that it is introduced in this form. There are a number of key issues that the Labor Party has voiced in relation to this legislation. To put those in a nutshell, it simply does not go far enough. It does not go far enough on the issue of executive remuneration and it does not go far enough in relation to transparency, disclosure and ensuring that shareholders are actually getting value for money when their companies enter into contracts with executive directors or when directors take inappropriate bonuses.

It seems strange in this policy context that we have a continued opposition by the Howard government to properly dealing with the issue of executive remuneration and corpo-
rate governance. Yet we also have the same Howard government, as other senators before me have identified, opposing what one would consider to be reasonably minimal wage increases for working Australians. As Senator Conroy pointed out, the Prime Minister, through the government, has opposed any wage increase above $10 a week for ordinary working Australians for the past seven years. However, he is not prepared in the legislation his minister has introduced into this parliament to deal properly with the issue of executive remuneration and to put in place legislation that can effectively allow administrators to recoup moneys that should not have been paid to directors when a company becomes insolvent.

Let us remember that, in the context of corporate insolvency, what we are talking about is a limited pool of money and people making claims on it. I think many Australians are tired of seeing their life savings—in the sense of entitlements they have built up over the years—not paid out because the company is insolvent, but then see the directors and executives of those companies walking away with unreasonably high packages. We can go through many examples of that. One I had particular involvement was with the Ansett workers, many of whom are still waiting for what are basic entitlements but who have seen unreasonable redundancy packages paid to those who hired and fired them.

I am very pleased to be able to speak on this legislation tonight. I am disappointed that the government is refusing to really deal with the issues of transparency and accountability in the area of corporate governance. They are key measures towards better democratising companies. It seems to me that democratisation of companies is a primary way in which you can ensure proper corporate accountability and, to that end, ensure better shareholder value for the investment the shareholders make in these listed companies.

The first issue I want to address is that of executive remuneration. It is a pity that this bill is limited to circumstances of corporate insolvency. That is an important measure to ensure that you increase the source of funds that can be properly applied to appropriate purposes, and it is appropriate that bonuses paid to directors are in the pool of funds that can be turned to in the context of insolvency. However, we say that there is a loophole in the legislation, that it does not go far enough. It limits the things that a liquidator can reclaim from an unreasonable director related transaction made within four years of a company appointing a liquidator.

We are concerned that the definition of what in fact constitutes an unreasonable director related transaction could create a loophole, and appears to create a loophole in respect of certain benefits. It does not appear to capture all transactions between directors and companies, and a very good example of that is share options, whereby the options issued to a director would be clearly captured by the definition but any profit made on the exercise of those options would not be captured. So one could foresee a scenario where a company which goes into liquidation could claw back the original value of the options but, if those options had been exercised at a time when the share value was significantly higher, that additional profit would not be something that the liquidator could turn to. For this reason it is appropriate that Labor’s amendments to the definition of unreasonable director related transactions be supported. That would capture this particular benefit and would give more certainty to the definition.

The second area I want to speak about is the importance of ensuring transparency of the links between boardroom pay and company performance. We have had quite a few examples in Australia where you would have to say that that link has not been properly established. An example that was referred to in the other place was that of AMP. Whilst I do not like to name any particular persons, the former CEO of AMP took over $3.3 million in the same year as the AMP share price was slashed by more than a quarter. I am sure the mums and dads and other Australians who were investing in AMP at the time would have questioned whether that was appropriate, given that their investment had quartered.
Australia really is lagging behind many other countries in relation to this area. The United Kingdom has regulations which are designed specifically to improve the transparency of links between boardroom pay and company performance. One would not have thought that that was a particularly revolutionary concept. To try to ensure that what companies pay their executives is reasonably related to the performance of the companies is surely exactly what people are being paid for. Whilst Labor are not saying we are going to be overly prescriptive and regulate everything, we are saying there should be appropriate measures in place to improve transparency so that shareholders actually understand what their company is paying their executives for.

I understand that the Labor Party is also moving amendments to include executives in this bill, not simply directors. That is highly appropriate. We have had numerous examples of excessive executive remuneration, and those executives may not be directors. It would be inappropriate for them to be excluded from the ambit of this legislation. It would be totally ridiculous to have a situation where you had directors’ bonuses in an insolvent company being able to be retrieved by the liquidator for the purposes of meeting other debts but you could not retrieve non-director executives’ bonuses in the same context.

On the issue of transparency, I note Senator Conroy has already indicated that Labor propose an amendment to the Corporations Act that would require listed companies to put to their shareholders an annual, non-binding resolution on the remuneration report. This is an example of trying to establish policy settings to ensure transparency within, and disclosure of, remuneration. We are not saying we will cap it. We are not saying we will be overly prescriptive in our regulation, as is often the cry from the other side. What we are saying to companies is this: if you are going to pay these people these salaries or these packages you should be required to disclose that. You should be required to tell your shareholders that you are doing it and why you are doing it and, as appropriate, justify the contracts that you have entered into. We are not suggesting that there is no freedom of contract; there obviously is. What we are suggesting with regard to publicly listed companies is that there is obviously a significant public interest associated with the management of those companies. There are many Australian families who invest in shares and they are entitled to have companies actually turn their minds to the issue of whether or not the remuneration that is being sought by executives is commensurate with the value that those persons are putting into the companies. It is really not a particularly radical proposition.

Again on the issue of transparency, I note that Labor is proposing an amendment to the act which would require the publication of a report not only on directors but also on the five highest paid executives. The amendment would also require the disclosure of the board’s policy in relation to executive remuneration. We are seeking that the report should include performance conditions to which any entitlement is subject, certain performance graphs showing historical information on the company’s performance against relevant criteria and the equity value protection schemes entered into in relation to remuneration. These are amendments designed to increase the transparency of company policy on executive remuneration. This is simply saying to corporate Australia: if you wish to enter into arrangements with people it is appropriate that you disclose those arrangements, and the policy behind them, to your shareholders. Most workers, most employees in Australia are subject to various duties in terms of their work performance and they are subject to performance criteria. Should it not be the same for executives? What is wrong with shareholders actually being entitled to understand that basis on which these decisions are made?

I want to talk briefly about the issue of superannuation funds. I have heard quite often over the last few years the statements by the Prime Minister and other ministers in the government about Australia being the world’s greatest shareholding democracy. The reality is that a significant number of shares in this shareholding democracy are held by superannuation funds. It would
therefore seem that the government does not have a lot of basis on which to oppose amendments which seek to improve democracy for shareholders and seek to ensure that superannuation funds participate in what is an onerous responsibility, and that is their investment in very many Australian companies which are publicly listed.

Seventy per cent of managed funds in Australia are invested through superannuation products, and hundreds of billions of dollars are invested by those funds. We say that it is appropriate to require trustees to do certain basic things in relation to the massive investment for which they are responsible: to exercise their votes, to disclose their voting record and to explain why it was in the best interests of their clients to have voted this way. One would think that those are precisely the sorts of things that trustees should be doing, particularly given that they are entrusted with such a significant amount of the money of Australians.

Labor’s amendments and its whole approach to this area have focused on transparency and disclosure as being the best methods of ensuring that executive remuneration and directors’ remuneration is appropriate. It is an issue of accountability. What can possibly be wrong with increased accountability? I await the government’s response to these amendments. I understand that they are not supported, but one would have thought that accountability was a pretty reasonable concept. We say self-regulation has not yielded the outcomes that benefit either the investor or the employee and that it is important that the law sets out certain policy settings and prescriptions which seek to facilitate increased disclosure, transparency and accountability. Shareholders are entitled to this and we, as a parliament, ought to ensure that shareholders do indeed get appropriate value for their investments.

Senator CROSSIN (Northern Territory) (9.01 p.m.)—I seek leave to have incorporated in the Hansard some speaking notes from Senator Sherry on the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002. I understand these have already been approved.

Leave granted.

The notes read as follows—

I rise to speak on the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002, and in particular, on the amendments which will moved by Senator Conroy as they relate to super funds.

Senator Conroy will move an amendment, that makes it mandatory for trustees of superannuation funds regulated under the Superannuation Industry (Supervision) Act 1993 to:

- exercise their votes;
- disclose their voting record; and
- explain why it was in the best interests of their clients that they voted in this manner.

The amendments would not apply to small funds like self-managed funds and some of the smaller corporate funds.

Appropriate carve outs will also be made where these changes would be inappropriate, for example, where another type of small super fund may not have the resources to comply without a significant increase in fees and charges they would have to impose on their members. Regulations will provide these exceptions.

The goal is not to compromise the fact super funds exist to provide a savings vehicle for their members to maximise retirement income. The Labor Party will consult with industry representatives to ensure this goal is not compromised.

It is important to note that these amendments increase the level of activism required of super funds trustees and I regard that as being a good thing when it comes to protecting and growing the investments of their members.

Many super funds are already engaged in this level of activism, but sadly many simply allow such decisions to go through to the keeper. That must change and Labor’s amendments will ensure such changes are guaranteed.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.02 p.m.)—At the outset I would like to say something that is often said but often not said earnestly, and that is thank you to the honourable senators for their contributions to the debate on the Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002. About the only contributors to debates on Corporations Law issues over recent years—going back about six, nearly seven years—have been Senator Murray, Senator Conroy and me, with the odd angry shot fired by some senators from time to
time. I do welcome Senator Wong and Senator Webber to the debate on this important area of law and, as the government describes it, the economy. In my time in the Senate—and I have been involved in most of the debates on the Corporations Law since 1990—the interest in this area of the law has been contained to a very small number of senators, so I do earnestly welcome senators to the debate. There may come a time when the baton has to be handed over to a new generation of people who focus on the Corporations Law. It is a bit of an exclusive club, unfortunately.

The building of this great shareholder democracy has been caused by a number of factors. It is fair to give credit to this government for its economic reforms and it is also fair to give credit to the Hawke and Keating governments for a number of their reforms. The superannuation guarantee legislation was certainly a part of that. By ensuring significant funds go into, effectively, mutual funds, or superannuation funds as the majority of them are called here in Australia, it has ensured that we have developed a strong managed fund sector which in turn has ensured the growth of the financial sector overall. So I give credit to the Hawke and Keating governments for some of their reforms, and I give credit to the Prime Minister and the Treasurer for their dogged determination to continue the reforms that have built the sector.

I thought Senator Webber was slightly unfair. It may be because she is new here—and I do not say that in any paternalistic or patronising sense—that she may not be aware of the strong reform agenda this government has pursued since 1996 in the Corporations Law area. No-one in this place—not Senator Conroy, Senator Sherry or Senator Murray—would do other than say that this government’s commitment to a focus on Corporations Law reform has been anything other than thorough, dedicated, diligent and ongoing. Most people in industry acknowledge this when I talk about the potential for CLERP 10, 11 and 12, which I say without announcing what those policies may or may not be, because they do not exist.

No-one who has been through the process of the consultation on and implementation of CLERP 1; CLERP 2; CLERP 3; CLERP 4; CLERP 5; CLERP 6, which became the Financial Services Reform Act; CLERP 7, which is before the parliament tomorrow in relation to the reform of ASIC’s interactions with the business community; CLERP 8, which has been announced and is out for public consultation now in relation to cross-border insolvency reform; and CLERP 9, which is before the government at the moment and is the most significant legislative reform in upgrading corporate disclosure in Australian history, could say other than that there has not been a massive focus and a massive delivery of substantial and, in many respects, world leading and, in some respects, revolutionary reform of the Corporations Law to develop a pro-business environment based on the premise that shareholders need to be well informed and to be empowered. Anyone who comes to the debate and says that this government has some sort of lazy approach to it either is trying to score a cheap and uninformed shot or is simply naive.

One of the lessons that I have learned, and that I think we should all learn about reform in this area, is that you are doomed to failure if you accept a proposition, grab it, put it into a law, bring it into this place, pass it out and cross your fingers and hope it is effective—and I will come to why that approach has failed in relation to section 300A of the Corporations Act, which was inserted by the parliament in 1999. The approach that has been developed through the Corporate Law Economic Reform Program has, not just in the law reform that it has delivered but also in the process that it has developed, stood Australia in very good stead. This has been at a time when world capital markets and world securities, the financial markets and the financial systems, have been under the greatest threats to their stability and to the faith in the markets and the citizens that they serve across the globe arguably since 1929-1930. That is how much stress the system has been under with the Asian financial meltdown and a range of other collapses and, of course more recently, the corporate collapses of the late nineties and the last couple of years.
The corporate remuneration disgraces that have occurred have added to that potential instability and the reduction in faith of many shareholders in the market and in the efficacy and trustworthiness of many of the captains of industry and people who run Australia's corporations and other investment companies. It is not of course restricted to Australia. I think we have had examples in many other jurisdictions.

The approach that the government has put in place in terms of the process that surrounds CLERP, as the acronym has come to be known—the Corporate Law Economic Reform Program—with the support in most instances of the opposition, the Australian Democrats and other interested parties has developed for Australia a sound mechanism for creating good policy, and it will be a legacy which will continue, I hope, for the benefit of future governments of either political persuasion. Over the past seven years that mechanism has involved the government issuing a broad policy platform suggesting the area where reform will focus, developing then a detailed policy proposal paper—and we have now issued nine of those over the past six years—allowing broad community consultation conducted by me and by Treasury officers, and involving the regulator very closely, and taking that consultation document through cabinet processes and turning it into legislation. We then allowed that legislation to have further consultation so that the practitioners, the people who use the law, the people who are subject to the law and, most importantly, the people who tend to prosecute breaches of the law and take cases in relation to that law can, using their experience, look closely at, firstly, how those laws can be applied and, most importantly from the government's perspective, how compliance can be achieved by the regulator and how surveillance can take place. So we have developed that process.

I also created the Business Regulation Advisory Group chaired by Catherine Walter, which provides yet another process of consultation by experts who can also go out to their constituencies and seek broader comment in terms of an expert group. That group now has in it people of the calibre—and I do not want pick out individuals but I will pick out well-known ones—of as John McFarlane from the ANZ Bank and a range of other eminently qualified people including representatives of small and medium enterprise, and I pick out Mike Potter from the Small Business Coalition for his contribution on that board.

So it is a thorough process. It has ensured that Australia has not reacted in a populist, knee-jerk way to the challenges of collapses particularly in the United States, but certainly here as well. It has allowed Australia to address these issues in two ways. Firstly, it has allowed us to address them from a position of strength. No-one in this place, unless they were wanting to score cheap political points, would say that the Australian financial system and corporate regulatory system is anything other than robust. It is internationally regarded, and that does owe some considerable thanks to the reforms that took place from 1996 onwards under our government. It is also a credit to people like Mr Ray Schoer at the Stock Exchange, back in the late eighties, who invented continuous disclosure. He invented the concept of disclosing material facts that shareholders know to the market in real time. No other jurisdiction has yet to catch up on that. The Americans are still asking us how we do it and trying to copy it. In America disclosures take place often three months after the event. Australia is in good condition but it can be improved. CLERP 9 is the most substantial reform of corporate disclosure, and improvements to corporate disclosure in the history of this nation and, I think it is fair to say, internationally. In relation to this bill, it also builds on a history of reform under this government to insolvency measures over the life of the government. We do not come to this as a Johnny-come-lately. We have a consistent history of reform in this area. This adds to those reforms.

I will deal with the specific details of the amendments to the core measures in the bill in the committee stage. But, just briefly, Senator Conroy has mentioned that he will be moving amendments, for example, to ensure that directors who reap benefits from the sale of their options will be captured. The
The bill provides for that already. It ensures that the court may make a range of orders in relation to the property that a person must repay to a company. These would include an order to pay to the company an amount that represents the benefits that the person received as a result of the transaction.

In seeking to define uncommercial transactions, for example, the opposition amendments introduce some new elements which will add uncertainty to the bill’s operation or simply limit its operation. In fact, they will constrain what this bill seeks to do. They are counterproductive. They will achieve a lower outcome than that which we are trying to achieve. They will constrict the reach of the bill because, under the opposition’s amendments, a court would need to consider how close to the winding-up the payment was made, thereby shortening the four years proposed by the government.

In relation to making the legislation retrospective to the date of the Prime Minister’s announcement, our advice is that it would be in contradiction of the constitutional requirement on the Commonwealth to acquire property on just terms and, because of the retrospective application, would risk its entire validity. That is not a risk we would be prepared to take. We want it to act prospectively, to have the full force of the law and to be valid. We do not want to be challenged when we first use this law sometime down the track and have it fail on constitutionality. Senator Conroy’s other amendments are in relation to subsidiaries and I will deal with them in some detail.

I turn to two other issues which I call ‘tacked’ amendments—amendments that have been tacked on to the bill. They relate specifically to, in the first instance, a gathering of proposals to deal with an upgrading of section 300A of the Corporations Law. Section 300A was inserted into the law by the Senate on a motion moved in similar terms and, because of the retrospective application, would risk its entire validity. That is not a risk we would be prepared to take. We want it to act prospectively, to have the full force of the law and to be valid. We do not want to be challenged when we first use this law sometime down the track and have it fail on constitutionality. Senator Conroy’s other amendments are in relation to subsidiaries and I will deal with them in some detail.

This evening I have re-read the Hansard transcript of that debate, and in it I warned the Senate of the danger of legislating in the way we did then—of not testing it and not getting the definitions right. I think we would all agree now that that provision has not worked. The government recognised that when last year we put out proposals to reform it. They are still out for public comment under the Corporations Legislation Amendment Bill 2002. We sent them out to Labor attorneys-general. The only response I have had has been from my ministerial council colleague Jim McGinty, the Attorney-General of Western Australia, who has made some constructive comments about them.

The government has been committed, as I have said, to a process of improving corporate disclosure through CLERP 9. I have developed a series of proposals which we are consulting on and which will go to cabinet in the very near future. They will be the subject of an announcement, obviously after the cabinet meeting, and will be the subject of CLERP 9 legislation which will be tabled in the parliament or given public exposure very shortly after it is drafted. Of course, that will be after the cabinet decision. If you read my speech in Hansard of Thursday, 25 June 1998, you will see that this is an issue that the government have not shied away from. It is an issue that should be dealt with thoroughly. Most jurisdictions in the world have grappled with it.

The Labor amendment has been drafted without any consultation with the users of the law or shareholders in Australia. In fact, consultation on the ALP amendment on remuneration took place in a major capital of the world. It was not the city of Brisbane, it was not the city of Sydney and it was not the cities of Adelaide or Perth. Consultation on the Labor provisions took place in the city of London, because the provisions they seek to put into the law tonight are, in Senator Conroy’s style, a direct copy of the UK regulations. They are not even subtly disguised; they are almost word for word. I would be happy to table the UK regulations which have been—dare I say it—copied. I would not say plagiarised, because that is a bit harsh. That mirrors the policy development approach that Senator Conroy took in relation to the ALP’s banking policy before the last election, when their policy was basically taken from the Australian Bankers Association.
tion. That is not a diligent way to legislate and it is not a diligent way to make policy. I will ask for leave to table that document later. I will table it.

Senator Conroy’s amendments would require disclosure up to 12 months after the event and would allow shareholders to look at it but to have no real power over it. The government’s commitment, made publicly already, is for real-time, up-front disclosure when the contracts are entered into. That will give shareholders power. That will be relevant disclosure which will put marketplace pressure on companies to ensure their remuneration policies and corporate disclosures are up to modern standards.

Senator Wong said that she had heard the coalition were going to oppose Senator Conroy’s amendments in relation to superannuation trusts. We have had no position on those amendments because, although we had been trying on an hourly basis to see them since they were announced in Hobart yesterday, we received them at 8.40 p.m. So for us the amendments are not even an hour old. The concept of getting managed funds to vote their shares is a very good one. The performance in Australia has not been good, but it is improving. The Labor Party has little credibility in this area when it wants to force super funds to vote their shares. If a super fund votes its shares and a member of that fund does not like the way it has voted, what does the member do about it? Most super funds do not allow members to vote for the trustees, so they cannot vote them out. Because of Labor’s intransigence on super choice, if they do not like the way the trustees are behaving, they cannot even leave the fund. So when you talk about the democratisation of superannuation, you talk with a forked tongue. (Time expired)

Senator Crossin—Is there something to be tabled?

The ACTING DEPUTY PRESIDENT (Senator McLucas)—It has been tabled, Senator Crossin.

Senator Crossin—We have not seen whatever it was.

The ACTING DEPUTY PRESIDENT—Ministers and parliamentary secretaries have rights to table, I am advised, in the performance of their government duty.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (9.23 p.m.)—I note as per the running sheet that my amendment (1) on sheet 2890 is the first before us, but if I can detain the Senate a short while I would like to respond to some of the remarks that Senator Ian Campbell made before I formally move my amendment. I thought that Senator Campbell’s exposition of the CLERP process was excellent and will stand well on the record. I have sometimes described CLERP as sounding like a troll, but if it is a troll it has not been an ugly giant. It has been a very effective process of the development of modern corporate law, thought and philosophy, and of consultation. It would not have passed the notice of Senator Campbell and his government that the Senate has supported those CLERP bills very strongly, with a few exceptions where the Senate has disagreed. The Senate has supported them strongly because of the development of those bills and the way in which they have addressed the issues at hand. I am quite sure that CLERP 9, which is the next one to come up on the corporate law program, will be of an equally high standard. But it is important to recognise that at times the Senate is almost overhelpful. Tomorrow, for instance, CLERP 7 will go through as a non-controversial bill. There are sectors of the business community which do not like it one bit, but it will go through because of the cooperative approach of the Labor Party and the Democrats.

The issue of consultation has to be recognised as extending to the parliament of Australia. The house of the executive in the other place is worthless when it comes to reviewing legislation. The Prime Minister and his cabinet determine what laws shall be put to that house, the executive dominates and that is the end of it. It is the Senate which really is the parliament to Australia, because the Senate acts as the review house—it reviews legislation. It is to the Senate that the gov-
ernment has to prove its case; because it does not have the force of numbers it has to make sure its case is good. Mostly the government does prove its case. Ninety-eight per cent of bills are passed and a large number are passed unamended.

It is the process of amendment, though, that we must pay attention to. I recall the debate when the remuneration disclosure provisions were first put in. That was not a bad process, because the committee review process and the report occurred three months before the bill was put to the parliament. And yet it did not stop Senator Campbell at that time claiming that it was a minute to midnight and they were last-minute amendments and so on and so forth, when anybody with a brain in their head would know that, if you are going to the Senate, you do not look at the majority report first; you look at the minority reports first, because the minority has the numbers. Anyone would have known exactly where the Democrats and the Labor Party stood, what was going to happen and how it was going to be put together.

The best efforts that the government make are not only when it consults widely in the community and with the appropriate interest groups—which they should—but also when it consults with the parliament. An example of this is the process of financial disclosure, which we have just gone through. It was an absolutely outstanding process. The government consulted, it came up with a draft, it sent it to the specialist committee, the specialist committee reviewed it in detail and it came back with a view. The result was that the process of introducing an extremely gutsy bill—and I have complimented the government before on that bill—was given the proper attention by the parliament as well as by the community. In this case, what do we have? The report on this bill was tabled yesterday and the hearing was held just a few days ago—as soon as it could be after the bill was presented. We have not had the time as a Senate to have the matter prepared and the proper consultation done at the same time. Yet, it is our job representing our constituents to express to you our views, which may differ from the government’s. It is our job representing the people of Australia to propose amendments. We get professional assistance from the draftsman and we devise them with as much input as we can.

It is the job of the government, which then has the resources of bureaucrats, to improve amendments which may subsequently be found to be insufficient for the job. One of those was a remuneration amendment, because the great mistake that the parliament made was believing that there was a smidgin of morality out there—that the executives and directors concerned would actually do the right thing and operate to the spirit of the amendment, but they did not. They ducked, dived and twisted, perverted their balance sheets and concealed the amount of money they were going to take. It is not our fault; it is not even the government’s fault. It is a lack of corporate morality. We are presenting to you black-letter law not because we want black-letter law and not because we want to enlarge the law more; it is because those corporate persons have proven themselves incapable of doing the right thing without the force of law.

That is a great shame. That is the very reason, Senator Ian Campbell, you are going to have to put up CLERP 9. It will go far beyond what your philosophical base would want, but it is because without it you cannot get the right outcome. If there is an issue that has to be addressed in the corporate world, it is the issue of returning to an ethos of integrity in their dealings. I do not remember our fathers’ fathers being as concerned about the integrity and morality of those who ran businesses as we are today. Perhaps I am wrong—perhaps it was bad. But that is the problem we face.

Having responded that way and given you lots of compliments about your process on the way, I also think there has to be recognition of the difficulties and the needs that we on the crossbenches and the opposition benches face. Having said that, I move amendment (1) on sheet 2890:

(1) Schedule 1, page 3 (after line 9), after item 1, insert:

1A Section 9 (definition of emolument)

Repeal the definition, substitute:
emoluments means the amount or value of any money, consideration or benefit given or accruing, directly or indirectly, vested or unvested, to a director of a body corporate in connection with the management of affairs of the body or of any holding company or subsidiary of the body, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the body.

This amendment takes the existing definition of ‘emoluments’ and, if I recall correctly—I have not reread the Hansard, unlike Senate Ian Campbell—the original amendments had ‘remuneration’ in it and it was then adjusted to be ‘emoluments’. We have added words to the existing definition, to include the words ‘vested or unvested’ and to include the words ‘accruing, directly or indirectly’. I am not going to speak at length because those words are apparent on the face of it.

‘Vested’ means a benefit that you achieve or acquire now. ‘Unvested’ means a benefit that is likely to appear in the future. An accruing bonus or termination bonus is one which accrues over time and usually gains in value. That is exactly Mr Cuffe’s situation. He did not know at the time of devising the contract what the end result would be, but it was an accruing benefit and, every year, that accruing benefit was a material liability that should have appeared in the balance sheet—and did not—as a contingent liability. It was not as if it was not going to happen. When he left it was going to happen, and so it should have been happens. As far as I understand the matter—and I could be wrong because I have not studied the matter in detail—the auditor never knew that that was lying there waiting. That is as far as I understand it; he might have. That is all. The amendment is designed to catch in a disclosure mechanism people who are going to acquire a benefit later than the date on which they designed the original contract.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.34 p.m.)—I will make some broad points, then I will explain the coalition’s attitude to all the amendments, because it might speed things up, and then I will talk about amendment (1), in that order. Senator Murray has given a very eloquent description of the role of the consultation process in CLERP, the role of the joint committee and the role of the parliament. What we do is submit our legislation to very high quality scrutiny throughout all those processes—and I do not think anyone would deny that.

What I am asking for I do not think I am going to get, because Senator Murray has told me offline, to use the IT jargon, that he will be supporting all the Labor Party amendments. I think Senator Conroy’s amendment has very fine intentions, because the intention of getting superannuation funds to focus on the performance of companies and actually vote—the democratisation of super funds—is a good intention, although he may not share that with me as thoroughly as he might forcing them to vote. I would like to welcome Senator Murray’s approach to corporate law reform and apply to the proposed law that Senator Conroy brings before us tonight the same scrutiny that my proposals are subject to. I am saying that the scrutiny of the parliamentary joint committee or the economics committee and the users of the law in the broader community is worth while. Senator Murray has agreed with me. All I am saying is: apply the same diligent process to Senator Conroy’s amendment in relation to forcing super funds to vote and apply it to a range of other amendments.

In fact, since 8.40 p.m. I have had a quick look at Senator Conroy’s amendment, and there are some measures in the amendment that I am immediately attracted to. I think that it is very worth while to find a mechanism for at least ensuring that mutual funds are required in a practical way to declare whether they vote or do not vote and how they vote. I think that is information that members of those funds, who I do not think have good enough rights in the Australian community, should have. I think we do need to democratise funds, as a lot of members of super funds have no rights to vote within that fund. Many of them do not get to say who the trustees are, and they do not have any choice if the trustees are stuffing up. They cannot send a signal to the trustees if the
trustees are stuffing up, and we need to have those signals.

In theory, I am very attracted to some of the ideas in Senator Conroy’s amendments, but I would not be so brazen. To let you into the loop a little, some of the proposals that I am looking at in CLERP 9 for executive remuneration are ones that I do not think have yet had enough consultation. I am ensuring that some consultation takes place before I bring them to this place. They are catching up with the rest of the CLERP 9 process. They are building on the Corporations Legislation Amendment Bill 2002 that sought to make 300A actually work. It is addressing this issue in Senator Murray’s amendment (1) about the definition of ‘emoluments’. Unfortunately, the game on emoluments has moved on—I will get to that at the end of my little soliloquy.

What I am saying is that you are dead right: these things should have scrutiny. The parliament has its laws and potential laws subjected to scrutiny, which has produced, by and large, good outcomes through CLERP’s 1 to 7. CLERP 7 will hopefully be voted into law tomorrow and, again, I congratulate the committee on its speedy examination of those issues, which were written as a policy for the October 1998 election. It has taken them a little while to get through the process, but it is a worthwhile process. I am saying we should subject the super trust amendments to that scrutiny. In Senator Conroy’s speech on the second reading, he talked about similar regimes in relation to trust voting or mutual fund voting in the UK and the US. His proposals differ from those. I do not think either the UK or the US have actually gotten it quite right yet, and I am not sure whether Senator Conroy’s idea will get it right, but I would surely like to have a look at it and I would surely like to get it right. I think it is an important part of what we have to do. So I say: subject it to the process. Take it to committee. Let us have a look at it. Let us see if it is broad enough.

I happen to think, in relation to remuneration disclosures, that Senator Conroy’s well-intentioned amendments do not go far enough in many respects. I do not think they achieve the outcome that we would all like. We would like up-front real-time disclosure. I am working hard to find a way to implement that in Australia and to do so this year—to bring forward a piece of legislation in the next few weeks and have it voted into law before the end of the calendar year. That is what I am trying to do. I may well upset some of my natural constituency, but I do not think that we should naturally assume that all people in business are opposed to quality disclosure; many people support the attitude I have taken. I have had very little negative feedback on my almost daily call for up-front real-time disclosure. The usual suspects, as we call them, will be nervous about it. They will have problems with it, but I have not had a significant counterreaction to it, although I am anticipating a counterreaction. That is the commitment that I have made on behalf of the government. My proposals will be subject to detailed scrutiny by the whole of Australia, and by anyone who takes an interest, including Senator Wong, who has just joined the interested parties in the chamber. Of course, they will be subject to detailed consideration by the committee that my honourable colleagues serve on in this place. That is what I think we should do.

It is not as if we are asking you to delay it into the never-never; we are saying that there is legislation coming through the process right now. It will go through the cabinet shortly and be subjected to the normal contingencies of finding a day for cabinet, getting it through there and getting the legislation drafted. But it is there. To home in on the emoluments amendment Senator Murray has moved, the debate in this chamber on 25 June 1998 focused on the problems of moving an amendment, which I said I would not oppose, but I thought that if we were going to do it we needed to try and get the definitions right. At that stage Senator Conroy’s amendment referred to remuneration. I will remind you all. It is going to come flooding back! At that time there was not—as I was informed then and have been informed since—a definition of ‘remuneration’ in the law. It did not mean we could not try and whack one in. What we are doing with the reform of 300A under the Corporations Legislation Amendment Bill 2002, which is out for consultation right now, was to fix up
300A and try and make it work. I think Senator Conroy and Senator Murray know a number of the reasons why 300A did not work.

I think if you are coming into this matter hoping that the goodwill of people in business will prevail, you are going to be sad at the end of the process, because it is not going to work. You have to strike a sound balance between legislative requirements, ASX listing rules, regulations, accounting standards and audit standards. I am developing my knowledge in this area and I think I still have a long way to go, but what I have found is that there is no use bringing about a law or regulation that cannot achieve a successful outcome. The reason you do not get a successful outcome, usually, is that you have to ensure the regulator can have a way of monitoring compliance and, most importantly, a way of ensuring that if compliance does not occur there is a penalty that is relatively achievable. Of course, on 11 March last year we brought civil penalties into law, and that has enabled the burden of proof barrier to be lowered for a number of offences. For example, in CLERP 9 we are proposing in continuous disclosure to give ASIC a quite radical power to effectively issue an infringement notice—a parking fine—for failure to comply with continuous disclosure.

One of the problems with continuous disclosure is that, if there is a breach, there are very few remedies. The stock exchange can delist a company or suspend its listing, but whom does that hurt? It is not the directors who have withheld the information from the marketplace; it is actually the poor shareholders who will not be able to sell their shares because those shares are not traded on the stock market anymore. In that event, prior to 11 March last year the next remedy was to take criminal action, which can take years. So, you can have a breach occurring in 1998 and get it to court in 2003. It is a bit like Senator Murray finding his dog digging a hole in the garden and growling at the dog three days later. The dog does not really get the message, and it is the same with breaches of the Corporations Law—you have to catch them digging the hole and make sure they feel the consequence of that breach immediately. It is as simple as that. When you are drafting this legislation you need to make sure that you can do that. When we do that, I want to make sure that that is the case.

Since 1998, unfortunately we now have a very fine definition of ‘remuneration’, which is also now defined through the body of law known as accounting standards. We are proposing—which will upset Senator Murray, because someone has gone to all the work of bringing in a definition of ‘emoluments’—to get rid of ‘emoluments’ because it is an old term. ‘Remuneration’ is the common usage and is very well defined. The corporations amendment to section 300A, which is just concluding its consultation phase, gets rid of ‘emoluments’ because remuneration is a far better definition. So we will be opposing this amendment because we have got a better proposal, effectively almost before the parliament, which will probably be overtaken by CLERP 9. The amendment to section 300A will probably be overtaken by the remuneration disclosure requirements that I will be putting forward under CLERP 9, but I think they would maintain the law reform work we have already done in the Corporations Legislation Amendment Bill 2002.

I do not intend to respond to this, unless I really need to respond to something definitive. There are two sets of amendments, in a way. There are the amendments to the core of the policy intent of this bill—that is, the reclaiming of directors’ bonuses. We have looked at those and we do not think they improve the bill. I can go into fine detail on that if you want. I am happy to do so, but I do not think it is necessary to detain the Senate. I have referred to some of those objections in my second reading speech. There are a couple that I did not specifically go to, but I am happy, if asked, to say why we are opposing them. I have said why we will not support the tacked on amendments, as I call them, that do not deal with the core of the substance of this bill. I do not think they have had the scrutiny they need. I think that we have some better proposals coming forward and that those proposals should be subject to the scrutiny that Senator Murray has so eloquently described.
We will not be supporting the amendments that arrived here at 8.40 p.m., just over an hour ago, and we will not be supporting the remuneration changes, because it would be, I think, silly of the government to change the law now when we know that we are contemplating more far-reaching reforms which will be public literally within a period of weeks. I think it would be a breach of what has otherwise been a diligent process. For those reasons we will not be voting for any of these amendments. I do not believe I will need to make any further explanation but, if honourable senators would like me to explain opposition to the details of the amendments to the core policy motivation of the bill, I would be happy to expand.

Senator CONROY (Victoria) (9.48 p.m.)—I thank Senator Murray for his amendments. Like Senator Murray, I do remember the debate back in 1998—I think it was 28 June, if you want to put a date on it. All three of us—there is probably one new character—were sitting in exactly the same places, having a discussion about the definitions of the words ‘emoluments’ and ‘remuneration’. I have not had to re-read it because I can still remember some of the debate. You convinced us on the night to accept the suggestion of the word ‘emoluments’. We bowed to your suggestion. I remember that, at the time, you were consulting with your advisers in the box and they were giving you the best possible advice that they could give.

Senator Ian Campbell—They’ve all changed.

Senator CONROY—They are luckily not the same characters—they are not all sort of rounder, slower and balder, like us three. I am interested in your discussion about ‘remuneration’. In the last five years ‘remuneration’ seems to have taken on the definition you were alluding to, so I will be interested in that down the track. Probably the reason that I will be supporting Senator Murray’s amendment is that, at the time, you were assured that ‘emoluments’ covered everything. If you look at the Hansard, I asked if you could give us a guarantee. At the time, in good faith—
If I may, I want to take up a couple of points that you made. It is funny, but I am standing here on 26 March, almost two years to the day since Kim Beazley spoke on 28 March at a forum—the same forum that I was at yesterday—to announce Labor's intention in the area of super fund trustees. What we said two years ago was that we believed that there should be more voting. At the time a whole range of changes had just been made to the Corporations Law and we wanted to give the government time to see if those changes led to a significant improvement in the voting patterns of institutions and super funds. We said, 'Two years down the track, if we are not happy and we don't believe there has been significant improvement in the voting record, we will move these amendments.' So for two years, Senator Campbell, I have been talking to people about the super fund trustee issue. We went to the last election, just over a year and a half ago, with this as our stated policy. This is not a surprise to anybody who has listened to me or to anyone who has read the ALP website or our corporate governance policy. So I have had two years of consultations and discussions about this issue. People have not always agreed with me. In fact, when I first suggested this, trustees were not very comfortable. They were nervous; they were not prepared for it. Two years down the track, they are a lot more receptive, they are ready for it and they are prepared for it. Some super funds—CSS and PSS, as I mentioned earlier—have in actual fact adopted a policy of 100 per cent voting on every single issue, so a lot has changed in those two years and a lot of people know that it has been on the table.

On section 300A you keep making this assertion that it is not working and that Senators Murray and Conroy know that it is not working. I would genuinely be interested in your expanding on that a little bit. I know we are not trying to take up the time of the chamber, but I would genuinely like to have a discussion with you about that, because I do remember that Labor moved the amendments with the support of the Democrats. The TEMPORARY CHAIRMAN (Senator Watson)—Order! You are making a very fine speech but it is a conversation with Senator Campbell rather than through the chair.

Senator CONROY—I am musing loudly, I would have thought, Mr Temporary Chairman, but I appreciate your drawing that to my attention. I will try to muse less. It was in fact, Senator Murray, the government that suggested that the section be split up and inserted in individual places throughout the section rather than being, as was actually intended, in one block. I think there would have been a lot more clarity if they had actually stayed together, but we were so pleased at the time that we were willing to accept your kind offer to try to insert them in the places where the government thought they would be the most useful.

I do not agree with the government's assertion that it has not worked as well as you suggest. I accept that there have been some problems. I accept some of the government's criticism is valid. In particular, I know that it has become possible to get around the disclosure of the five executives and the five highest-paid individuals in a company. I know that because of the case of Chris Cuffe, who has already been mentioned tonight. Senator Murray, you might be interested to know that, as I understand it, one of the reasons that his remuneration was not regularly disclosed was that he was not actually a director. He had been employed as a consultant, because consultants are not considered to be directors. Therefore he found a way to get around the rules. We on this side of the chamber and, I am sure, the government at the time did not believe that people would simply be so selfish that they would go out of their way—Senator Murray talks about ethics, and they are important—to do that. Quite simply, individuals have decided not to be employed as directors so that they can avoid having to disclose their salary. This is clearly in breach of the intent of, and clearly going around, the legislation as it was then. From what I am hearing, it sounds like Mr Cuffe is going to be a serial offender. I understand there is a new scam in play for Mr Cuffe at Challenger: he is not going to be
paid by Challenger; he is going to be paid by the private company of Kerry Packer, just so that he does not have to disclose his salary again.

So, while I accept that this section of the Corporations Law has not worked as perfectly as I know the government and certainly I and Senator Murray would want and that it does need refinement, I think we can refine this here. Some of these amendments will refine this, but we do have to be ever vigilant because, when these executives go to these lengths to avoid the intent of parliament, it is critical, if we are to retain the integrity of and faith in the marketplace, that people are informed. Through you, Mr Temporary Chairman, I think Senator Campbell has used the phrase borrowed from Maurice Newman, the Chairman of the Australian Stock Exchange, that 'sunlight is the best disinfectant'. When executives are prepared to go to such lengths to get around the law, to get around the specific intent of parliament—we welcome, Senator Faulkner, I did not know you had an interest in this particular area but it is good to see you in the chamber—then parliament must act, so a number of amendments that we are talking about today and will be talking about in the future go to some of these sections.

The spirit of the law has been abused and it will continue to be abused. As an example, people talk about recent decisions to do away with retirement benefits because they are not based on performance—they are basically a golden handshake to go away. We have seen some movement on that which is good. The only problem is that this section of the law, as proposed by Senator Ian Campbell, will not capture what they call 'golden hellos', the big sign-on fee—'We won't pay them at the end, we're going to pay them at the start.' Already the government's legislation is not good enough because it will not cover the big sign-on fee, the golden hello, and that is of concern to me.

I want to urge the Senate to support our combined amendments today because, notwithstanding the good intentions of the government and of Senator Ian Campbell representing the government, it is disappointing, Senator Murray, to see the amendments that we fought so hard for in 1998, which have by and large stood the test of time and have changed the face of the debate on corporate governance in this country—the amendments that have led to the information that shareholders needed—contained in a bill tabled by this government that tries to just quietly repeal many of the progressive changes that we made. When Senator Ian Campbell and the government say 'Trust me' and when, at the same time, they say, 'We're going to do all these things that you are talking about in the chamber tonight,' they are trying to turn the clock back five years to knock over the amendments that we fought so hard to put in place on 28 June 1998.

I am not as trusting, despite all the assurances from Senator Ian Campbell on behalf of the government, that we will get an improvement in section 300A and that we will get quite as tough a regime as already exists. But I would welcome a chance to be involved in the consultation process, and I would welcome a briefing on where the government is going so that we do not just receive it when the bill is tabled.

Senator Murray interjecting—

Senator CONROY—As you say, Senator Murray, we are having a lot of difficulty. I know you are having as much difficulty as I am, and I have a greater degree of resources than you have to cope with the short time frames that are being placed on our committee structures. These short time frames are also being placed on individuals and organisations that want to submit to our Senate committee process. I believe that, in the last few months, we have been doing our Senate committee process a disservice by the haste with which the government is trying to rush through legislation. We have a seven-week break starting next week—that is unheard of at this time. It is unnecessary, and it is forcing a reduction in the credibility of the Senate and the Senate committee process. I believe it is an unfortunate side effect of the government’s rush to get some of the bills through. Again, I would like to indicate that Labor is pleased to support the Democrat amendments and looks forward to further debate.
Senator MURRAY (Western Australia) (10.03 p.m.)—Senator Ian Campbell, we have problems with corporations bills. The process for parliamentary consideration works very well for those bills which automatically go to the specialist committee, the Joint Statutory Committee on Corporations and Financial Services. But CLERP 7 did not go down that route for some arcane procedural reason that I never did understand, and neither did this bill. I would like to request that the government, through the Treasury, looks at a process whereby these kinds of bills are automatically referred to the specialist committee, and that we have sufficient time to consider them. We have a very experienced chairman in Senator Chapman—he chairs very well. We have a very expert new deputy chair, Senator Wong, and we have some very experienced members. It would greatly improve the parliamentary side of the consultation process if that happened, and it would make your life easier, Senator Ian Campbell, when you wear your other hat as Manager of Government Business in the Senate.

My second point is that, given my compliments in respect of the effective community consultation process that has been outlined, you might wonder why, apart from issues of trust, we would not wait until CLERP 9 comes about. The simple problem we face is that we have no certainty CLERP 9 will come about, and that it will come about in time for the 30 June financial year, by which time we want these new disclosure provisions to be in place. That is of concern and that is why we are asking the government to look at these amendments.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.05 p.m.)—I think it is possible to have votes on these amendments before 10.30 tonight, unless there are specific issues that need to be raised. When I was in the previous portfolio, all of the CLERP bills did go to the joint committee—with the exception of CLERP 7, which we thought would be uncontroversial. I wanted to send CLERP 7 there but that did not happen because of a procedural issue. You cannot send a bill to a joint committee when it has already passed through the House of Representatives—that is what I was informed anyway. I will ensure that CLERP 8, CLERP 9 and other CLERP bills do in fact go to the joint committee. I found it made sense to send the first six CLERPs there.

In relation to consultation, Senator Conroy and Senator Murray have had the same right of access to consultation and the same right to put forward their views on CLERP 9 as anyone else in the community. I have not held special private meetings on that. I have put the document out for the whole world to see. I have taken, by way of an informal submission, Senator Conroy’s published policy on corporate governance to be a form of submission to the government on his views on many of the issues covered in CLERP 9. We have thoroughly read that policy and where we find measures which could improve ours, we will certainly take them. Senator Conroy and Senator Murray, and any other senator who has a view about the substance of CLERP 9—like anyone else in the community—is of course welcome to give the government their views.

The problem I have with this is that, if it is amended in this way, the government is not going to be able to accept the amendments for the reasons that I have put down. We disagree about those reasons. Therefore, what will ensue is that this measure to reclaim directors’ bonuses will not be law by 1 July either, and that is the thing I am grappling with. I am not asking you to trust me in relation to CLERP 9; I am saying that section 300A does require improvement. I think Senator Conroy has agreed with that. We did actually put section 300A in the law in one chunk, and it is just sitting there, in one chunk, in the law, exactly as you wanted. The amendment we have put out for consultation does not gut 300A; it actually improves it. It makes the definitions far more clear, it makes it harder for people to get around it, and CLERP 9 will extend it further.

Senator CONROY (Victoria) (10.08 p.m.)—There are a couple of points on the consultation process that I want to take up. Could Senator Ian Campbell give an indication whether the CLERP 9 draft bill will be
available some months before it is bowled up to parliament? The government is indicating that it will do that, and I appreciate that.

Senator Ian Campbell—They usually go for three months as a draft.

Senator CONROY—So I hope to see that that process will be followed because, obviously, these provisions and these amendments did not get as much consulta-
tion as I think they deserve—and Senator Murray has made that point.

Following Senator Ian Campbell’s contribution, there is one other issue that I want to raise with the government—the concept that the government seems to perpetuate and believe in that there are no elections for trust-
ees in super funds. I can only say that, in my experience, I have met an awful lot of elected trustees in the super funds in the areas that I move in. Maybe I am lucky, but certainly the majority of industry funds that I have ever been associated with have an election process. It is called a union election. The officials who are elected are then on the committee. So, if an official who is a trustee is doing a bad job and if their members are incensed by the poor returns, as an example, there is a capacity to vote the trustee off the board because you vote the official out of their job. I know that is a concept that the government does not seem to be able to grasp because, unfortunately, while I have been in the chamber I have heard the government mount this argument time and time again over the last five or six years. It needs to be said again that, in fact, there are elec-
tions involved for the trustees of many of the super funds that I have been associated with.

I spent the last 24 hours in Hobart at a trustees conference and there were hundreds of elected trustees wandering around everywhere. Senator Ian Campbell’s face was up at the conference. He spoke to the conference via a video-taped performance. I know that Senator Ian Campbell and the government are aware that the conference took place and I know that many down there were disappointed that Senator Ian Campbell could not make it to the conference. I do not want Senator Ian Campbell to think that he was not acknowledged—he was up there on the big screen a couple of times. I hope that, perhaps next year, the government, through Senator Ian Campbell, will be able to attend the conference and meet a couple of hundred elected trustees. Maybe then the government will be able to understand that there are elec-
toral processes involved.

I do not want to disappoint the government, but I do intend to speak a little more, certainly on some of Labor’s amendments. I suspect we are not going to finish and have a vote before 10.30 p.m., so I do not want to get Senator Ian Campbell’s hopes up. I sus-
pect we are going to be here when we kick off tomorrow morning as well. I am happy to defer to Senator Murray if he has any further comments before we put Senator Murray’s amendment to the vote.

Question agreed to.

Senator MURRAY (Western Australia) (10.12 p.m.)—I move Democrat amendment (2) on sheet 2890:

(2) Schedule 1, page 3 (after line 13), after item 2, insert:

2A Subparagraph 200F(1)(a)(iii)
Repeal the subparagraph, substitute:

(iii) given to the person under an agreement made prior to 30 June 2003 and between the company and the person before the person became the holder of the office as the consideration, or part of the consideration, for the person agreeing to hold the office; or

This amendment adds the words ‘made prior to 30 June 2003’ after the word ‘agreement’. The intention of this, of course, is to capture prior agreements because the miscreants, if you like, in this area have been evading dis-

Senator CONROY (Victoria) (10.13 p.m.)—I welcome this excellent amendment. Unfortunately, like Senator Murray—and, I am sure, the government through Senator Ian Campbell—I have noted that a number of very smart lawyers have got to work. We have seen equity packages or options pack-
ages made part of a sign-on agreement but the game has been that, if you give these packages to the individual before their start date, you can subvert the purposes of the Corporations Law in seeking shareholder approval. So the game has become one of piling up the options packages and the equity before the individual’s start date when they are not an employee, and you do not have to ask the shareholders for approval. Again, it is just a scam. It shows bad faith and it should be dealt with. This is a very simple and clinical way to deal with it and, hopefully, to put an end to it. I endorse Senator Murray’s proposal and I hope the government also accepts Senator Murray’s proposal.

Question agreed to.

Senator MURRAY (Western Australia) (10.15 p.m.)—by leave—I move Democrats amendment (3) on sheet 2890:

(3) Schedule 1, page 5 (after line 29), at the end of the Schedule, add:

238 At the end of Division 6 of Part 5.7B

Insert:

588YA Liability of a company for the debts or liabilities of a related company

(1) When a company is being wound up in insolvency, the liquidator, a creditor of the company, a nominee of a creditor of the company or the ASIC may apply to the Court for an order that a company that is or has been a related body corporate pay to the liquidator the whole or part of the amount of a debt of the insolvent company. The Court may make such an order if it is satisfied that it is just to do so.

(2) In deciding whether it is just to make an order under subsection (1), the matters to which the Court shall have regard include:

(a) whether the company provided services for or on behalf of the related body corporate; and

(b) whether the company occupied premises which are owned by the related body corporate; and

(c) the extent to which the related body corporate took part in the management of the company; and

(d) the conduct of the related body corporate towards the creditors of the company generally and to the creditor to which the debt or liability relates; and

(e) the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related body corporate or an officer or officers of the related body corporate; and

(f) any other relevant matters as the Court considers just and appropriate.

(3) An order under this section may be subject to conditions.

(4) An order shall not be made under this section if the only ground for making the order is that creditors of the company have relied on the fact that another company is or has been a related body corporate of the company.

This amendment has been put to the chamber at least four times to my knowledge in a form close to this. It is a matter that has had prior consultation, as far back as 1998. The government do not agree with Labor and the Democrats on this. We think it is intimately connected to the issue at hand because people are lodging their contracts in the companies where it suits them best to do so. We think that is another reason for this to be brought forward. I think the arguments for it and against it have been so well expressed before that I need do no more than move it.

Question agreed to.

Senator CONROY (Victoria) (10.16 p.m.)—by leave—I move opposition amendments (3) and (4) on sheet 2893:

(3) Schedule 1, page 3 (after line 13), after item 2, insert:

2B After section 250R

Insert:

250RA Approval of director’s report of listed company

(1) The business of an AGM of a listed company must include a resolution approving the annual director’s report prepared under section 300A, even if not referred to in the notice of meeting.

(2) No entitlement of a person to remuneration or emolument is made conditional on the resolution being passed by reason only of the provision made by this section.
(3) The chair of the AGM must allow a reasonable opportunity for the members as a whole at the meeting to discuss the resolution under subsection (1), and the resolution must be put to a vote at the AGM.

(4) This section only applies to a company that is listed.

(5) This section applies despite anything in the company’s constitution.

(4) Schedule 1, page 3 (after line 13), after item 2, insert:

2C Section 300A

Repeal the section, substitute:

300A Annual director’s report—specific information to be provided by listed companies

(1) The director’s report for a financial year for a company must also include:

(a) if a committee of the board has considered matters relating to the emoluments of the directors and executive officers:

(i) the name of each director who was a member of the committee at any time when the committee was considering any such matter; and

(ii) the name of any person who provided to the committee advice or services that materially assisted the committee in its consideration of any such matter; and

(iii) in the case of any person named under subparagraph (ii) who is not a director of the company, the nature of any other services that the person has provided to the company during the financial year and whether the person was appointed by the committee; and

(b) discussion of board policy for determining the nature and amount of emoluments of board members and executive officers of the company, including:

(i) discussion of the relationship between such policy and the company’s performance; and

(ii) for each director and each of the 5 named officers (other than directors) of the company receiving the highest emolument, a detailed summary of any performance conditions to which any entitlement of that person to securities is subject; and

(iii) an explanation as to why such performance conditions were chosen; and

(iv) a summary of the methods to be used in assessing whether any such performance conditions are met and an explanation as to why those methods were chosen; and

(v) if any such performance condition involves any comparison with factors external to the company:

(A) a summary of the factors to be used in making each such comparison; and

(B) if any of the factors relates to the performance of another company, of two or more other companies, or of an index on which the securities of a company or companies are listed, the identity of that company, of each of those companies, or of the index; and

(vi) a description of, and an explanation for, any significant amendment to be made to the terms and conditions of any entitlement to securities of a director or of one of the 5 named officers (other than directors) of the company receiving the highest emolument; and

(vii) if any entitlement to securities of a director or of one of the 5 named officers (other than directors) of the company receiving the highest emolument is not subject to performance conditions, an explanation as to why that is the case; and

(viii) in respect of the terms and conditions relating to emoluments of each director and each of the 5 named officers (other than directors) of the company receiving the highest emolument, an explanation of the relative importance of those elements which are, and those elements which are not, related to performance; and
(ix) an explanation of the company’s policy on the duration of contracts with directors and the 5 named officers (other than directors) of the company receiving the highest emolument, and notice periods, and termination payments, under such contracts; and

c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers (other than directors) of the company receiving the highest emolument; and

d) for each of the directors and the 5 named officers (other than directors) of the company receiving the highest emolument, details of the value of options granted, exercised and lapsed unexercised during the year and their aggregation in the total emolument; and

e) for each of the directors and the 5 named officers (other than directors) of the company receiving the highest emolument, details of any equity value protection scheme entered into by them or on their behalf. For the purposes of this paragraph equity value protection scheme means any financial arrangement which results in the director or officer retaining legal ownership of equity in the company the value of which to the director or officer remains fixed regardless of changing market values; and

(f) details of the nature and amount of each element of the emolument of a person, however described, who carries out like responsibilities of a director or each of the 5 named officers (other than directors) of the company who but for this section would not be included as a director or one of the 5 named officers receiving the highest emolument; and

Note: Paragraph (f) includes consultants.

(g) a line graph which plots for each of the most recent 5 financial years the total shareholder return on:

(i) the holding of shares of that class of the company’s equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of listed company; and

(ii) a hypothetical holding of shares made up of shares of the same kind and number as those by reference to which a broad equity market index is calculated; and

and state the name of the index selected for the purposes of the graph and set out the reasons for selecting that index; and

(h) any other matters prescribed in the regulations.

(2) This section only applies to a company that is listed.

(3) This section applies despite anything in the company’s constitution.

(4) This section applies to directors and each of the 5 named officers (other than directors) of the company receiving the highest emolument irrespective of which company in a consolidated group of companies the directors and named officers hold office.

(5) For the purposes of this section and section 58F(1)(b), a director includes a director of a subsidiary company and includes a director of a partly-owned subsidiary company.

I would like to urge the Senate to take the opportunity to support these amendments—and I would hope that the government really grasps the mettle on this one. I can see Senator Boswell down there and I know he is a supporter of the small businesses and the battlers. I invite you, Senator Boswell, to get on board with the small shareholders tonight because I know you care about the battlers—and many small shareholders are battlers. They would really appreciate your support tonight. In particular, these amendments empower shareholders; they give shareholders a say on executive remuneration.

This is an important debate. I have had this debate publicly with Senator Ian Campbell a couple of times. Senator Campbell’s proposal about real time disclosure is welcome. Can I say that? It is a very welcome amendment. The only problem is that I have had a look through the 202 pages of CLERP 9 and I could not find it. The government’s big, much vaunted CLERP 9 document, re-
leased with huge fanfare last year in an almost lock-up style announcement and that had pages and pages of coverage in major newspapers around the country, was not there. We all know what happened earlier this year: this government has been dragged screaming and kicking to the debate on executive remuneration.

There are 202 pages and 44 recommendations—he had to have 44 to make sure he had more than I did in my paper, which I had released a month or so beforehand, so that he could claim that his was a bigger document—and not a word on executive remuneration, and certainly no real time disclosure. He had to wait to get permission from the ASX and the ASX’s newly formed governing council before he would come up with that one. So it is very important that we understand that, while it is a very worthwhile initiative, it is not an initiative this government came up with willingly and it does not go far enough. What Labor are proposing tonight does go a lot further, because what we are proposing is to give shareholders a say on executive remuneration. We are proposing to allow shareholders to have a vote about the framework of the negotiations that take place between the board, the executives and the employees.

If shareholders do not believe that Brian Gilbertson or Peter Smedley should have received lifetime pensions on retirement, then shareholders can vote no under our amendment. The board is not to put into any contract with any CEO or other executive or director a pension, because pensions clearly are not paid on performance. It is very simple. Shareholders get the chance to set the framework under Labor’s proposals; they get a real say before the decision is made and the contract is signed—not just a chance to have a peep at the contract after it has been signed. That is the difference between what Labor is putting forward and what the government has been dragged to kicking and screaming. Do not forget that this government had to be dragged. There were 202 pages and not a word about it. It was only earlier this year, three months after the original document, that we saw the government want to put up its hand on the executive remuneration and disclosure issue.

Labor has a concrete proposal that is about giving power to shareholders, and we should be supporting it. Both Mr Abbott and Mr Costello have said to shareholders, ‘We want you to become more active.’ A few weeks ago, in response to a question about the $33 million payment to the former chief executive of Colonial First State, Mr Abbott said, ‘Well, we do not believe that the government should be regularly interfering in things which are quite regulated by others.’ He stated:

Shareholders have every capacity to control these things and they should control them, and I think for too long shareholders have been too passive in the face of high-handed executive action.

And it seems like one of those actions. What hypocrisy! This is the same government that has put out a corporations bill that reduces shareholder power, that is designed to overturn hard-won amendments from 1998 and to close down shareholder activism—and Mr Abbott has the gall to slap shareholders in the face and say it is their fault. On the very same day, in question time, Mr Costello said:

... it is the shareholders of the Commonwealth Bank who have the ability, through their influence on directors, to ensure that they receive value for moneys that they have invested in that company.

It is just breathtaking to see the Pontius Pilate efforts of this government when it comes to executive remuneration. Mr Abbott and Mr Costello are aware that, under the Howard government, shareholders do not have the capacity to object to obscene corporate salaries. That is the fact of the matter. They can do nothing other than sell their shares in the end if they are unhappy; they have no capacity to deal with it before the fact. This government still does not want to get serious; it still just wants to be able to let you have a bit of a peep after the fact. Mr Temporary Chairman, I am conscious of the time.

Progress reported.
CORPORATIONS LEGISLATION AMENDMENT BILL 2002
CORPORATIONS (FEES) AMENDMENT BILL 2002
CORPORATIONS (REVIEW FEES) BILL 2002

Report of the Senate Economics Legislation Committee

Senator EGGLESTON (Western Australia) (10.25 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Corporations (Fees) Amendment Bill 2002 and two related bills, together with documents presented to the committee.

Ordered that the report be printed.

CORPORATIONS LEGISLATION AMENDMENT BILL 2003
CORPORATIONS (FEES) AMENDMENT BILL 2002
CORPORATIONS (REVIEW FEES) BILL 2002

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.26 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.26 p.m.)—I table a revised explanatory memorandum relating to the Corporations Legislation Amendment Bill 2003 and move:

That these bills be now read a second time.

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

Leave granted.

The speech read as follows—

Today I introduce a package comprising the Corporations Legislation Amendment Bill 2003, the Corporations (Review Fees) Bill 2002 and the Corporations (Fees) Amendment Bill 2002. It incorporates amendments that were moved in the House of Representatives to the Corporations Legislation Amendment Bill 2002.

The changes proposed to be implemented by these Bills flow from the Government’s Corporate Law Economic Reform Program. The Bills will implement the seventh stage of the Corporate Law Economic Reform Program, known as ‘Streamlined Lodgments and Compliance’ or CLERP 7.

The CLERP 7 reforms are intended to simplify document lodgment and compliance procedures for companies under the Corporations Act 2001. The Bills will provide a user pays system of servicing by the Australian Securities and Investments Commission (ASIC) and facilitate a more efficient and competitive business environment. In particular, the Bills will improve the efficiency of corporate regulation and reduce regulatory burdens on business.

The ASIC changes will be of particular benefit to small business. Around one million proprietary companies will no longer need to provide ASIC with an annual return, significantly reducing paperwork. A streamlined approach will be adopted to enable companies to update ASIC’s database.

Small business will also benefit from reduced business costs and charges, and from being able to access more reliable, accurate and timely information.

The quality and integrity of ASIC’s register of company information will be protected by the use of an Extract of Particulars. The Extract of Particulars, setting out a company’s details as recorded on the Register, will be issued to all companies together with an Annual Fee invoice. This will be done electronically, except where a company lodges in paper form.

Companies would still need to notify ASIC of certain basic changes in company details as they occur. However, if there are no changes, no paperwork will need to be lodged. In practice, this will reduce compliance burdens for a large number of small businesses that typically do not notify changes during the course of the year.

The measures will not only reduce the paper compliance burden for business, but also assist ASIC by reducing the volume of returns requiring processing, while maintaining the quality and integrity of its company database.

The CLERP 7 reforms include proposed modifications to the Corporations Act fee system. The Corporations (Review Fees) Bill 2002 will permit a fee known as a ‘review fee’ to be imposed.
Under the Bills, companies will no longer lodge an annual return with ASIC. An annual review fee will replace the present annual return fee. The review fee will be payable two months after the company’s review date—which would be either the anniversary of a company’s registration or an alternative date nominated by the company and approved by ASIC.

The Corporations (Fees) Amendment Bill 2002 will modify the range of fees that may be prescribed under the Corporations Act to facilitate moving from a document based fee structure for companies to an annual fee structure. The annual fee for proprietary companies would remain capped at $200 until 30 June 2004, as announced by the Government in the 2002 Budget.

The CLERP 7 proposals have received broad support from the business community. They take account of consultation with the business community and other stakeholders following the release of the CLERP 7 discussion paper in February 2000. In that regard, I would like to thank the members of the Government’s Business Regulation Advisory Group for their participation in the consultation process.

The Corporations Legislation Amendment Bill also contains some miscellaneous amendments to the Corporations Act and the Australian Securities and Investments Commission Act 2001 (the ASIC Act). The Bill will repeal section 201C of the Corporations Act to remove the prohibition on the election or re-election of directors of a public company (or a subsidiary of a public company), who have reached 72 years of age. The Bill will amend the Corporations Act to remove charges over uncertificated securities from the application of the charges provisions in Chapter 2K of the Corporations Act.

The Bill will also make minor, miscellaneous amendments to the ASIC Act to increase the financial cap in paragraph 137(1)(a) of that Act from $250,000 to $1 million before Ministerial approval is required for ASIC to enter into contracts, and to enable a member or a senior employee of ASIC to attend meetings of the Corporations and Markets Advisory Committee (CAMAC) in place of the Chairperson of ASIC when he or she is unable to attend.

I have consulted the relevant State and Northern Territory Ministers about these amendments in accordance with the Corporations Agreement and have obtained the approval of the Ministerial Council for Corporations for those amendments in the Bills for which the Council’s approval is required under that Agreement.

I commend the Bills to the Senate.

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

NATIONAL BLOOD AUTHORITY BILL 2002

INDUSTRY, TOURISM AND RESOURCES LEGISLATION AMENDMENT BILL 2003

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.27 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.27 p.m.)—I table a revised explanatory memorandum relating to the Industry, Tourism and Resources Legislation Amendment Bill 2003 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

NATIONAL BLOOD AUTHORITY BILL 2002

This bill will establish a National Blood Authority. The National Blood Authority will improve and enhance the management of Australia’s blood supply at a national level. With the passage of this bill, Australia will, for the first time, have a national overarching agency responsible for managing the supply of blood and blood products across the country, and for coordinating safety, quality and information systems on behalf of all governments.

This bill is an integral part of the new national blood sector arrangements agreed to by Australian...
health ministers in November 2002 and, together with the new National Blood Agreement, represents the new national approach preferred and supported by all states and territories. The endorsement of the bill has been the culmination of consideration and cooperation by all governments to bring about necessary reforms to Australia’s blood sector.

Proposed reforms of the blood sector follow on from two major reviews: the Commonwealth Review of Australian blood and blood product system—the McKay Wells review—undertaken in 1995, and the Review of the Australian blood banking and plasma product sector—the Stephen review—in 1999. Although the Australian Red Cross Blood Service was formed and a forum established following the 1995 review which aimed to strengthen national policy coordination, administrative arrangements across jurisdictions remained somewhat fragmented, prompting the second review in 1999.

The Stephen review, released in March 2001, provided a number of recommendations aimed at addressing further challenges associated with poor cost-effectiveness of new technologies and the rising demand for blood products. It also recommended new administrative arrangements for the blood sector.

All Australian governments have been working together to implement the recommendations arising from the Stephen review and to put in place arrangements that will build on improving the national blood system and enhance Australia’s existing national policy objectives.

This bill seeks to implement the main recommendation of that review in establishing the National Blood Authority to provide national management and oversight of Australia’s blood supply. The National Blood Authority will liaise and gather information across Australia on issues relating to blood products and services. It will plan and budget for the supply of blood and ensure that appropriate supply is maintained in all states and territories. It will also monitor the funding issues associated with the management and supply of blood products and services across Australia.

These new arrangements will bring about a number of benefits, including coordinated demand and supply planning, and improved evidence based processes for the introduction of new products and services into the sector. The new arrangements will then provide governments with an enhanced ability to evaluate new products and services to ensure continued access by the community to the products they need. These include the provision of an adequate, safe, secure and affordable supply of blood products and services in Australia, and the promotion of safe, high-quality management and use of blood products.

The new arrangements will ensure the preservation of the key principles that have served the national interest well, namely voluntary, non-remunerated donation of blood by donors in the Australian community, and national self-sufficiency in blood and blood products. The new arrangements will also see the continuation of existing regulation for collecting, processing, distributing, exporting and importing blood and blood products, and the provision of products free of charge to patients and other end users, for example the haemophilia community.

The National Blood Authority will operate within policy approved by the ministerial council, and in full consideration with all governments through a jurisdictional blood committee.

The functions of the board will include the selection of a general manager, liaising with governments, suppliers and others about matters relating to National Blood Authority functions, and advising the general manager on issues relating to the performance of functions.

The provisions contained in this bill will strengthen accountability in the blood sector and ensure that Australia’s blood supply continues to be adequate, safe, secure and affordable. Governments will be provided with better information to determine appropriate purchases in response to clinical need, and mechanisms will also be provided to ensure evidence based assessment of new sector initiatives for products, services and technologies through transparent evaluation of health gain.

The establishment of the National Blood Authority is central to the achievement of these aims, and will ensure the protection of consumers and maintenance of public confidence in Australia’s blood supply.
The Act refers to two types of bounty payments builders to access bounty payments in respect of Australian Innovation Scheme. The Act enables registered shipbuilding. This is known as the Shipbuilding Innovation Funds Program in 1992. Relevant to the forerunner of the Department of Industry, Tourism and Resources. The Act contains some references to the Chief Executive Officer of Customs, and the Bill changes these to the Secretary of the Department to reflect the transfer of responsibilities. This Bill amends the Trade Practices Amendment (Country of Origin Representations) Act 1998. The 1998 amendments created defences to actions for false or misleading country of origin representations. The defences were not extended to section 53(a) of the Act which prohibits false or misleading representations as to a good’s particular history. Actions for false or misleading country of origin representation can also be made under section 53(a). The Bill ensures that the existing defences to a false or misleading country of origin action are extended to protect companies that may be subject to a false or misleading country of origin action under section 53(a).

The Bill amends the Pooled Development Funds Act 1992 (the PDF Act), to correct a drafting error which rendered section 4A inoperative. Section 4A of the PDF Act, which defines the meaning of a “widely-held complying superannuation fund” for the purposes of the Act, referred to “excluded superannuation funds” as defined in the Superannuation Industry (Supervision) Act 1993 (the SI(S) Act). However the definition of excluded superannuation funds in the SI(S) Act was repealed in 1999. This Bill amends the PDF Act to correct the error by amending the definition of a “widely-held complying superannuation fund” to provide that such a fund must have a minimum of 5 members.

Several of the amendments are technical in nature and involve no change to the substance of the law. A technical correction to the Bounty (Computers) Act 1984 removes a reference to the organisation once referred to as the “Standards Association of Australia”, and replaces it with the correct name, “Standards Australia International Limited”.

An amendment to the Petroleum (Submerged Lands) Legislation Amendment Act 2001 corrects a misdescription of an amendment to the Petroleum (Submerged Lands) Act 1967. In this case, text that was to be replaced in subsection 85(1) of the principal Act was misquoted, omitting the word “to” before the word “make”. This amendment corrects that misquote.

The Bill amends the States Grants (Petroleum Products) Act 1965 to reflect changes in administrative arrangements. This Act underpins the Petroleum Products Freight Subsidy Scheme, which subsidises the cost of freighting eligible fuel to remote locations in Australia. In April 1999, responsibility for administering the Scheme was transferred from the Australian Customs Service to the forerunner of the Department of Industry, Tourism and Resources. The Act contains some references to the Chief Executive Officer of Customs, and the Bill changes these to the Secretary of the Department to reflect the transfer of responsibility.

This Bill repeals two Acts which are no longer required. The need for the Management and Investment Companies Act 1983 (the MIC Act) ceased with the conclusion of the MIC Program in 1991, which was replaced by the Pooled Development Funds Program in 1992. Relevant
claw-back provisions of the MIC Act (to retrieve outstanding monies from relevant businesses) ceased in 1995-96.

The Aluminium Industry Act 1960 is also no longer required. The aluminium smelter at Bell Bay in Tasmania was established in the 1950s as a joint venture between the Commonwealth and Tasmanian Governments. The Aluminium Industry Act 1960 subsequently provided the legislative approval for the Commonwealth’s interest in the smelter to be sold to a subsidiary of Comalco Limited.

These Acts served their purpose well, but are now redundant, and their repeal is in keeping with the Government’s commitment to remove from the statute books unnecessary business legislation.

Debate (on motion by Senator Mackay) adjourned.

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

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

First Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.29 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.29 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill delivers on the Government’s commitment for real change that will see more people with disabilities who can work in a more active system that supports and encourages them to achieve their best. This builds on our Australians Working Together initiative ‘Better Assessment and Early Intervention for people with disabilities’ in the 2002 Budget. This initiative will see much needed improvements in assessing the ability and needs of people with disabilities.

The bill will put in place a new system of income support rules for people applying for DSP from 1 July 2003. At the same time it will protect people receiving DSP prior to 1 July 2003 from the operation of the new rules. This means there will be no change for people who are currently receiving DSP, who will continue to need to meet existing criteria. No change to the 30 hour rule; no change to the services Centrelink can consider in thinking about whether someone could move into work within the next two years; and no change to the special provision that means local labour market prospects can be taken into account when assessing the eligibility of people aged 55 and over.

Those people who are quarantined will still have incentives to have a go at working full-time if they think they are able. We will continue with current provisions that allow people to have their payments suspended in these circumstances. The arrangements in this bill will mean that someone who does try out work of 30 hours or more a week, but finds they cannot maintain this, will be able to move back onto DSP under the current rules within a two year period.

And finally, there will be no change to current provisions for people who claim or receive DSP who are permanently blind.

Schedule 1 of this bill makes changes to the legislative framework governing qualification for disability support pension for people who apply for DSP on or after 1 July 2003.

This will ensure that the qualification criteria are changed so that disability support pension is only payable to people with very restricted work capacity (less than 15 hours at award wages a week). The amendments also extend the range of interventions and activities that Centrelink will be able to consider in determining whether a person has a continuing inability to work. Those aged 55 and over will no longer have their local labour market conditions taken into account in determining their eligibility for the disability support pension.

DSP will remain a safety net for people who cannot support themselves. People claiming DSP after 1 July 2003 who are not able to work for full award wages will not be affected by the changes. This means people working in Business Services...
(ie sheltered workshops) or at less than the full award wage will still clearly continue to qualify for DSP. People who could not work independently, such as those with high personal care needs, will also still clearly continue to qualify for DSP.

At the same time, the Government will maintain its commitment to provide up to 73,000 new places in services such as employment assistance, rehabilitation to help people with disabilities to realise their assessed work potential. It builds on increased funding for services for people with disabilities announced last Budget in the Australians Working Together package.

Grandfathering existing recipients means that no existing DSP recipients will be shifted on to other payments like Newstart, nonetheless we will still offer up to 73,000 extra places for disability support services. They will be progressively made available as required for example by existing DSP recipients wanting to improve their job opportunities and to people who, whilst they would not get DSP under the new rules, may nonetheless still need assistance.

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

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

Transport Safety Investigation Bill 2002
Transport Safety Investigation (Consequential Amendments) Bill 2002

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 10.30 p.m., I propose the question:

That the Senate do now adjourn.

Building and Construction Industry: Royal Commission

Senator ABETZ (Tasmania—Special Minister of State) (10.30 p.m.)—Today Mr Tony Abbott, the Minister for Employment and Workplace Relations, tabled the final report of the Royal Commission into the Building and Construction Industry. This report is most welcomed by the small contractors and individual workers who were the victims of the unlawful activity undertaken by big unions and big business. The small contractor sector in our home state of Tasmania made numerous representations to me seeking this royal commission. In July 2001 I publicly called for such a royal commission and wrote to all my cabinet colleagues urging such a course. I am delighted that a royal commission was appointed and the story of union abuse has now been able to be told.

In particular, the royal commission devoted a section of its report to Tasmania—45 pages in all. Those 45 pages detailed chapter and verse the unlawful and inappropriate actions in the construction industry. There is an African proverb which says, ‘When elephants mate, the grass gets trampled.’ And this royal commission has highlighted that when big unions and big business get together the rights of workers and small contractors are trampled. At this point I pay tribute to the Master Plumbers Association, represented by Adrian Cowie, the Building Industry Specialist Contractors Organisation, represented by Michael Shepperd, and the Housing Industry Association, which at the time was represented by Peter Geeves, for their valiant pursuit of truth and justice in the building industry in Tasmania. Their representations were first rate, credible and persuasive.

Within a short seven days the royal commissioner heard about and found 13 separate incidents of unlawful conduct in Tasmania. On top of that, there were 15 types of inappropriate conduct identified, some of which the royal commissioner believes ought to be outlawed. I agree. But the conduct largely has at its foundations union threats, union intimidation and, at best, weak big business leaders or willing participants. The royal commission quite rightly calls for a change in this culture. It also makes the interesting finding that the state of workplace relations in Tasmania relates mainly to decisions made by union officials outside Tasmania. At page 421 the commissioner points out that the circumstances occurred not because of any pressure from or unrest or discontent of employees but in consequence of union officials in Victoria demanding the Tasmanian workers be forced into union based and approved enterprise bargaining agreements. The Master Builders Association brokered these ne-
The pattern EBAs in the industry in Tasmania are not in truth:
(a) relevant to the enterprise in question;
(b) a bargain freely struck between employer and employee; or
(c) the result of unpressured agreement on the part of many employers and employees.
That is a quote from page 422 of the report. As a result of this practice, we have witnessed the destruction of freedom of association and freedom of bargaining in the Tasmanian construction industry.

I draw particular attention to pages 436 and paragraphs 118 through to 122, which detail the strong and courageous stand taken by Mr Rudie Sypkes of Chickenfeed Bargain Stores against the conspiracy of the CEPU and Hansen Yuncken against a quality small contractor Parmic Pty Ltd. The thuggery and intimidation was thwarted on that occasion because of the moral courage and strength of Mr Sypkes. What a pity the builders did not show similar integrity and fortitude.

Another example of the unions’ thuggery is highlighted at page 437. There the case of Mr Childs, a sole trader, is described in relation to the Woolstore Apartments project. He signed the EBA because of the builders’ and unions’ threats. As a result, he had to increase his charge out rate by $10 per hour to $55 per hour. Remember, he was a sole trader. The report on page 438, paragraph 125, states:
The experience of Childs in relation to the Woolstore Apartments project illustrates the extent to which unthinkingly Vos—
the builder—
and the union enforced the requirement of a union-endorsed EBA on the Woolstore Apartments project. In essence it required Childs to make an agreement between himself as an employee and himself as an employer.

How ridiculous. How shameful. It would be funny if it were not so very serious.

Another important finding of the royal commission is to be found on page 447. The report states:
By a letter dated 21 February 2002 addressed to this Commission, the Tasmanian Government contended that unlawful or otherwise inappropriate industrial or workplace practices or conduct ‘are not features of the building and construction industry in this State’.
The commissioner’s finding in the next paragraph was:
That contention is unsustainable.
He goes on to say:
This Commission heard evidence of widespread unlawful or otherwise inappropriate conduct in the Tasmanian building and construction industry. The evidence suggested that the situation in the State is worsening. The Commission has found widespread unlawful and inappropriate conduct in Tasmania concerning freedom of association, freedom of bargaining, OH&S, and right of entry upon premises.

One may wonder how a premier could be so out of touch with the realities in his state. Mr President, you and I know, coming from Tasmania, that the Labor Premier of Tasmania is a former secretary of the Builders Labourers Federation, the notorious BLF. With that background, to seek to assert that he was not aware of those activities in the building industry simply defies belief. That he had the audacity to say to a royal commission, through his department, that these types of practices are not features of the building and construction industry in this state really shatters his credibility.

The royal commissioner was very polite when he said that assertion or contention was unsustainable. He went on to refer to ‘the evidence of widespread unlawful or otherwise inappropriate conduct in the Tasmanian building and construction industry’ and suggested that the situation in Tasmania is worsening. I cannot believe that the Premier was not aware of that. I believe that the Premier, the former secretary of the BLF, was seeking to deliberately mislead the royal commission and to send the royal commission off the scent in relation to these matters.
I commend the royal commissioner on his hard work and on his findings, and I suggest that the Premier of Tasmania needs to recognise his responsibilities as premier. He needs to remember that being candid with a royal commission is a lot more important than being a sycophantic apologist for the building unions that have wrought so much disruption to the building industry in our home state of Tasmania.

**Women's International League for Peace and Freedom**

**Senator GREIG (Western Australia)** (10.39 p.m.)—Last Friday afternoon I had the pleasure of joining the ACT branch of the Women’s International League for Peace and Freedom, along with Senator Lundy, to help open a photographic exhibition by Japanese photojournalist Takashi Morizumi. The exhibition titled *Children of the Gulf War* included photographs ranging from images of children smiling in the face of appalling conditions to the tragic images of the physical outcomes of war. The exhibition is sponsored by the league and will travel to other capital and regional cities and centres around the country over the coming months.

While I was at the exhibition, I was approached by Ms Lynn Lane, who presented me with a large dossier containing a statement of peace, sponsored by the Women’s International League for Peace and Freedom and supported by over 6,000 people from all around Australia. This is not a petition per se but rather an expression of emotion and compassion and a call for peace in the Middle East. I am pleased to present the statement to the Senate tonight. It reads:

> Australian women are concerned about the growing threat of our country’s involvement in the so-called war on terror and an imminent pre-emptive strike on Iraq. We ask all Australians concerned about the direction our government is taking on these issues to add their voice to ours in opposition to war.

> Australian women are increasingly unhappy about our government’s stance but our voices are not being heard by either of the major parties. We speak for many women, children and men in our call for a cool appraisal of the situation in Iraq and other countries of the Middle East and an investigation and implementation of measures to build peace rather than to fuel war.

We consider ourselves fortunate to live in Australia, a country with democratic institutions, which has no reason to fear terrorist attacks while we take an independent stance and work for peaceful resolution of conflicts, avoiding war-like language and actions except as a last resort. We fear that involvement in a war on Iraq and threats of pre-emptive strikes on any country will increase the likelihood of terrorist attacks on our land and people.

We support the use of the international institutions of the United Nations and human rights and other conventions developed by the international community to find resolutions to global problems.

We draw our government’s attention to the United Nations Security Council Resolution 1325 on Women, Peace and Security which was passed unanimously by the UN Security Council on 31st October, 2000, after years of concerted effort from women’s organisations all around the world. It calls upon the Security Council, governments, militaries, humanitarian agencies and civil society to:

> Involve women in decision-making and peace processes,
> Ensure that peacekeeping forces are trained to consider gender perspectives in their operations,
> Protect women, children and other vulnerable peoples in all security operations.

We want Australia and other governments to give this resolution the support that they insist Saddam Hussein give to other Security Council resolutions.

We believe that Australia, along with other states in the world system, can play an important role in solving the pressing problems faced by our country, our region and the global community. These problems—social and income inequity, drought, hunger, disease, corruption of people in power, human rights violations, environmental degradation—are exacerbated by a global political economic system which provides the seeding ground for dissatisfaction and conflict both within and between states.

While in no way condoning terrorist acts on these or other grounds, we want the Australian Government and the Australian Labor Party to understand that we are in total opposition to any involvement in a war on Iraq.

In this we speak out of concern for our communities and our children and for children and vulnerable people in Iraq and other countries of the Middle East where conflict and violence claims lives.
With that, it is my pleasure to seek leave to table the said document.

Leave granted.

**Senate adjourned at 10.44 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:


**Indexed Lists of Files**

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998:

- Indexed lists of departmental and agency files for the period 1 July to 31 December 2002—Statements of compliance—Agriculture, Fisheries and Forestry portfolio agencies—
- Australian Dairy Corporation.
- Australian Fisheries Management Authority.
- Australian Wine and Brandy Corporation.
- Cotton Research and Development Corporation.
- Dairy Research and Development Corporation.
- Department of Agriculture, Fisheries and Forestry (including Dairy Adjustment Authority).
- Fisheries Research and Development Corporation.
- Forest and Wood Products Research and Development Corporation.
- Grains Research and Development Corporation.
- Grape and Wine Research and Development Corporation.
- Land and Water Australia.
- National Registration Authority for Agricultural and Veterinary Chemicals.
- Rural Industries Research and Development Corporation.
- Sugar Research and Development Corporation.
- Tobacco Research and Development Corporation.
- Wheat Export Authority.
- National Capital Authority.

**Departmental and Agency Contracts**

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

- Departmental and agency contracts—Letters of advice—2003 autumn sitting—Department of Agriculture, Fisheries and Forestry and Dairy Adjustment Authority.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

National Office for the Information Economy
(Question No. 1015)

Senator Lundy asked the Minister for Communications, Information Technology and the Arts, upon notice, on 11 December 2002:

(1) Can the following information be provided in the form of a spreadsheet, in both hard copy and electronically, for each contract entered into by the National Office for the Information Economy which has not been fully performed or was entered into during the 2001-02 financial year, and that is wholly, or in part, information and communications technology-related with a consideration of $20,000 or more: (a) a unique identifier for the contract, for example contract number; (b) the contractor name and Australian Business Number or Australian Company Number; (c) the domicile of the parent company; (d) the subject matter of the contract, including whether the contract is substantially for hardware, software, services or a mixture, with estimated percentages; (e) the starting date of the contract; (f) the term of the contract, expressed as an ending date; (g) the amount of the consideration in Australian dollars; (h) the amount applicable to the current budget year in Australian dollars; and (i) whether or not there is an industry development requirement and, if so, details of the industry development requirement (in scope and out of scope).

(2) With reference to any contracts that meet the above criteria, can a full list of sub-contractors valued at over $5,000 be provided, including: (a) a unique identifier for the contract, for example contract number; (b) the contractor name and Australian Business Number or Australian Company Number; (c) the domicile of the parent company; (d) the subject matter of the contract, including whether the contract is substantially for hardware, software, services or a mixture, with estimated percentages; (e) the starting date of the contract; (f) the term of the contract, expressed as an ending date; (g) the amount of the consideration in Australian dollars; (h) the amount applicable to the current budget year in Australian dollars; and (i) whether or not there is an industry development requirement and, if so, details of the industry development requirement (in scope and out of scope).

Senator Alston—The answer to the honourable senator’s question is as follows:
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<th>Contract ABN or ACN Number</th>
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<th>PO Number</th>
<th>Order Date</th>
<th>Description</th>
<th>Commencing Date</th>
<th>Completing Date</th>
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<th>Amount Inclusive GST</th>
<th>Current Budget Figure $ Ex-GST</th>
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* Note: There is an Australian Industry development benefit from the awarding of a contract to a company conducting activities in Australia.
Environment and Heritage: Recherche Bay  
(Question Nos 1126, 1127, 1128 and 1129)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 21 January 2003:

(1) What natural, cultural and heritage significance does the Government place on the landing place and area of exploration at Recherche Bay in southern Tasmania of the French explorer Bruni d’Entre- 

casteaux’s expedition of 1791-93 in search of La Perouse.

(2) What communication has the Australian Government had with the French Government or the Tasmanian Aboriginal community regarding the protection and commemoration of this place.

(3) Has the Government ever requested an assessment of the area for its indigenous and European heritage values, including an archaeological dig in the area to determine the site of the garden planted by the gardener Felix Delahaie; if not, will the Government seek such an assessment.

(4) Was the area considered for reservation under the Regional Forest Agreement because of its National Estate and/or heritage values; if not, why not.

(5) Is the Government aware that an area of private land in the north-east corner of Recherche Bay, referred to by the French as the Port du Nord, has been the subject of a clear-fell logging plan and approved for logging by the Tasmanian Government.

(6) Is the Government aware that the land in question is surrounded by reserved areas and that the Tasmanian Government has granted permission for a logging road to be built across the conservation reserve.

(7) Is the Government aware that the Tasmanian Minister responsible for the Forest Practices Board and therefore granting approval for the Forest Practices Plan is also the Minister for the Parks and Wildlife Service responsible for granting road access across a conservation reserve: does the Commonwealth regard this as a conflict of interest.

(8) What action has the Government taken to protect the area in question.

(9) What action does the Government intend to take.

(10) Has the Australian Government informed the French Government of the proposed logging of this heritage site; if not, does it intend to do so.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The Australian Heritage Commission maintains the Register of the National Estate (RNE) and is the Commonwealth’s official adviser on heritage significance. The Commission holds records in the Register database on five places in the vicinity of Recherche Bay:

- D’Entrecasteaux Watering Place Historic Site, on the western shore of Recherche Bay was entered in the RNE on 21 March 1978,

- Southport Lagoon Wildlife Sanctuary, on the northern side of Recherche Bay, was entered in the RNE on 21 March 1978,

- Southport Lagoon Conservation Area (being the above Wildlife Sanctuary renamed) and an extension area on its northwest side, was identified as having heritage values through the Comprehensive Regional Assessment (CRA) process under the Tasmanian Regional Forest Agreement (RFA),

- Recherche Bay Nature Recreation Area and Adjacent Areas, on the western and southern shores of the Bay, identified under the CRA, and

- The North East Peninsula of Recherche Bay, nominated for assessment for the RNE on 12 February 2003.

The Commission has advised that, at Recherche Bay, the 1791-1793 expedition by D’Entre- 
casteaux is referred to only in its database records for the D’Entrecasteaux Watering Place Historic Site and The North-East Peninsula of Recherche Bay. I understand that the Tasmanian Heritage Council (THC) has received a number of nominations to the Tasmanian Heritage Register for places in the area and has agreed to provide interim listing for
some of the sites that might have been endangered by logging. I understand that full assessment of the sites by the THC will take several months.

(2) None.

(3) No. I have asked the Australian Heritage Commission to seek access to the outcomes of the Tasmanian Heritage Council assessments to assist with assessment of the nomination received on 12 February 2003. This information will also assist me in evaluating claims of possible world heritage values.

(4) See answer to (1) above.


(6) Yes.

(7) Such matters are issues for the Tasmanian Government not the Commonwealth.

(8) See answer to (3) above.

(9) See answer to (3) above.

(10) No.

**Telstra: 1800 Prefix**

*(Question No. 1155)*

Senator Harris asked the Minister for Communications, Information Technology and the Arts, upon notice, on 7 February 2003:

(1) (a) Was the commencement date for Telstra’s changeover from 008 to the 1800 prefix 1 September 1993; and (b) at that time was Optus in fact leasing and/or using floor space in the corner of Telstra’s exchanges for Optus’ own 1800 exchange equipment.

(2) (a) Was the Minister previously aware of the many 1800 prefix systemic faults that affected a substantial number of both Telstra and Optus subscribers’ businesses nationally; and (b) can the Minister advise what the settlement arrangements or terms of settlement were between Optus and Telstra over the 1800 prefix faults in Telstra’s exchanges and computer software that apparently not only caused Telstra’s 1800 network not to be fit for purpose, but also caused Optus’ 1800 network not to be fit for purpose.

(3) Have Telstra or Optus yet notified the subscribers affected by these 008 to 1800 and ten digit number problems of the fact that both Optus’ and Telstra’s 1800 networks were not fit for use, and that, unless their subscriber customers dialled 008 instead of 1800 during the double trunking period of the 2-year changeover period or until fixed, their 1800 customers would not have been able to reach the subscriber’s 1800 number being dialled, despite the fact the subscriber was unaware of the systemic faults and reasons for loss in incoming business.

Senator Alston—The answer to the honourable senator’s question is as follows:

(1) (a) No. The National Numbering Plan, released in April 1993 by AUSTEL, the then telecommunications regulator, required all carriage service providers to progressively implement a change in the prefix for Freecall numbers from ‘008’ to ‘1800’ by September 1995. Telstra has advised that it wrote to its ‘008’ customers on 22 September 1993 advising that it was providing a two year changeover period to convert from ‘008’ to ‘1800’ numbers with the new ‘1800’ prefix to commence in late 1993.

(b) No. Optus has advised that it commenced offering its own ‘1800’ service on 2 November 1994. Optus has advised that it did not offer any ‘008’ services. Optus advised that it did not have equipment for providing ‘1800’ services in Telstra exchanges.

(2) (a) No, on the basis of Departmental records, the issue has not previously been raised. Telstra advised it is not aware of any systemic faults to the ‘1800’ service affecting a substantial number of customers nationally. Optus has advised that the Optus network did not experience changeover problems from the ‘008’ to ‘1800’ prefix, as Optus did not offer ‘008’ services.

(b) No. Any such settlement arrangements would be a commercial matter between Telstra and Optus. Both Telstra and Optus have advised that they are not aware of such arrangements.
(3) Telstra has advised that it wrote to its ‘008’ and ‘1800’ customers in March 1994, noting that some users had chosen to configure their telephone equipment, such as PABX, so as to prevent calls being made to numbers beginning with ‘1’, or ten digit numbers, including ‘1800’ Freecall numbers. Telstra advised customers that the users’ telephone equipment suppliers or maintainers could advise on any reconfiguration of equipment necessary to permit calls to these ‘1800’ services. AUSTEL also included information about the need to reprogram some business systems in its public information campaign on the National Numbering Plan.
Telstra reiterated that it is not aware of systemic faults in relation to the ‘1800’ service that affected a substantial number of customers nationally.
As outlined in part 1(b), Optus advised that it did not offer ‘008’ services to its customers.

Trade: Live Animal Exports
(Question No. 1180)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 24 February 2003:
(1) Can details be provided of the mechanism for the collection of mortality data in relation to live animal exports.
(2) How is the data collected.
(3) How is the data verified.
(4) What protocols exist for the transmission of the data to the Department of Agriculture, Fisheries and Forestry.
(5) Why did the department reject recommendation nine of the investigation into excessive livestock mortality aboard the MV Kalymnian Express (voyage 07/99), namely that: ‘The method of calculating the mortality rate for a voyage should take into account all livestock which perished as a result of undertaking the voyage including animals which are destroyed after discharge or die as a result of injuries suffered in the course of the voyage.’

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:
(1) Masters of livestock ships loading animals at Australian ports are required to provide a report to the Australian Maritime Safety Authority (AMSA) at the conclusion of each voyage, which includes figures on livestock losses and when they occurred during the voyage. The master also is required to immediately report to AMSA during the voyage when the mortality rate of an animal species equals or is greater than the prescribed level in provision 40 of Marine Orders Part 43, Cargo and Cargo Handling – Livestock made under the Navigation Act 1912.
(2) AMSA provides mortality data from the master’s report to the Australian Quarantine Inspection Service (AQIS), which monitors livestock welfare.
(3) The mortality data is verifiable against reports to AQIS from the accredited stockman and the accredited veterinarian accompanying the animals on the voyage.
(4) AMSA and the Department of Agriculture, Fisheries and Forestry are progressing a memorandum of understanding which will include protocols for the transmission of data.
(5) AMSA’s Livestock Advisory Committee, comprising relevant Commonwealth agencies, industry representatives involved in the export of livestock, and the Royal Society for Prevention of Cruelty to Animals (RSPCA), considered the method of calculating mortality rates for a voyage following the Kalymnian Express report. It agreed to the amendment of Marine Orders Part 43 to prescribe that livestock mortality should be determined by the number of deaths occurring while animals are on the ship during a voyage, including during loading and unloading.

Australian National Audit Office: Department Accounts
(Question No. 1205)

Senator O’Brien asked the Minister representing the Prime Minister, upon notice, on 25 February 2003:
With reference to evidence given to the Rural and Regional Affairs and Transport Legislation Committee estimates hearing on 20 November 2002 that accounts of the Department of Agriculture, Fisheries
and Forestry were qualified by the Australian National Audit Office (ANAO) in the 1999-2000 financial year because a payment made in that year breached the Australian Constitution:

(1) Did the ANAO qualify the Department of Agriculture, Fisheries and Forestry accounts; if so: (a) on what date did the ANAO become aware of the breach; (b) what are the details of the breach; (c) on what date did the ANAO qualify the department’s accounts; and (d) what were the consequences of that action.

(2) Have any other Commonwealth departments had accounts qualified by the ANAO in the past 3 financial years; if so, can details be provided.

**Senator Hill**—The Prime Minister has provided the following answer to the honourable senator’s question:

I have been advised by the Australian National Audit Office

(1) Yes.

(a) ANAO became aware of the breach on 23rd August 2000.

(b) The breach was as a result of issues surrounding the introduction of new financial systems during the year and arose from the disbursement of industry levies, which at that time were in excess of the amounts collected. The excess levy payments totalling $3.699 million were made in breach of section 83 of the Constitution, which states that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

(c) The ANAO formally issued a qualified audit opinion on 18 September 2000.

(d) Qualification of AFFA’s accounts resulted in a notification to that effect on page 47 of the Auditor-General Audit Report to Parliament No. 23 of 2000-2001 “Audits of the Financial Statements of Commonwealth Entities for the period ended 30 June 2000.”

Also as a consequence of the qualification AFFA took immediate steps to strengthen the controls and reconciliations, which gave rise to the underlying cause of the breach.

(2) Other Commonwealth Departments of State which have had their accounts qualified by the Australian National Audit Office (ANAO) in the past three financial years are:

- for the financial year ended 30 June 2002
  - Department of Defence;

- for the financial year ended 30 June 2001
  - None;

- for the financial year ended 30 June 2000
  - Department of Communications, Information Technology and the Arts;
  - Department of Family and Community Services.

Details of the qualifications are as follows:

**Department of Defence, for the financial year ended 30 June 2002**

*Inventory and Repairable Items*

The audit report for Defence’s financial statements for the 2001–2002 financial year was qualified on the basis of two limitations of scope. The first limitation relates to the inventory balance in the Statement of Financial Position and its potential impact on the Statement of Financial Performance. The ANAO finding was based on the ongoing lack of data integrity over prices, shortcomings in the detective controls employed in fiscal 2002, and gaps in the collective evidentiary support for the final balance at 30 June 2002.

The second limitation relates to the potential impact of corrections that might need to be made to that part of the Specialist Military Equipment balance known as Repairable Items and their subsequent impact on the Statement of Financial Performance. In this case, the ANAO decision was also based on the ongoing lack of data integrity over quantities and prices, shortcomings in key processes employed, and significant gaps in the collective evidentiary support for the final balance at 30 June 2002.
Department of Communications, Information Technology and the Arts, for the financial year ended 30 June 2000

Non-recognition of National Archives assets

The Department has not recognised the National Archives of Australia collection of heritage assets as at 30 June 2000. This represents a departure from Schedule 2 of the Finance Minister’s Orders and Australian Accounting Standard AAS 29 Financial Reporting by Government Departments, which require all assets that meet the recognition criteria to be brought to account in the financial statements. The effect of this departure on the financial statements cannot be reliably estimated as the Department has not recorded and valued all the items in the collection of heritage assets.

Department of Family and Community Services, for the financial year ended 30 June 2000

Breach of Section 83 of the Constitution

The Department made payments for the Child Care Benefit, prior to 30 June 2000, ahead of the enabling legislation coming into effect on 1 July 2000, thus breaching section 83 of the Constitution. The breach occurred when the Department made payments totaling $74.986 million for Child Care Benefit on 29 June 2000 when the standing appropriation in the A New Tax System (Family Assistance) (Administration) Act 1999 was not yet in force. The breach resulted from a lack of adequate internal controls to ensure that such payments were made in accordance with legal authority.

Qualifications in respect of the financial statements of Commonwealth entities other than Departments of State

Details of all Commonwealth entities which had their accounts qualified by the Australian National Audit Office (ANAO) in the past three years are available in three reports published by the ANAO.

These are:


The number and types of entities which had qualified accounts in the past three years are:

<table>
<thead>
<tr>
<th>Financial year ended 30 June</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth Consolidated Financial Statements</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Commonwealth Departments of State</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Agnecies prescribed under the Financial Management and Accountability Act 1997</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Commonwealth Authorities or their subsidiaries</td>
<td>3</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Commonwealth Companies or their subsidiaries, and other bodies</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>7</td>
<td>4</td>
</tr>
</tbody>
</table>

The audit opinions on a number of financial statements included comments described formally as an ‘Emphasis of Matter’. An Emphasis of Matter is not a qualification of the audit opinion. Details are available in the Audit Reports cited.

6 ANAO, Audit Report No. 25, 2002–2003, p. 34.
7 Including the Department of Agriculture Fisheries and Forestry.
Agriculture, Fisheries and Forestry: Programs
(Question No. 1217)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 February 2003:

(1) Can copies of program guidelines, performance indicators and budget details, including approved expenditure by year and by state (where applicable), be provided for the following programs: (a) Food Innovation Grants Program; (b) Food Centres of Excellence Initiative; (c) Technical Market Access Program; (d) International Food Standards Initiative; (e) Food Export Program; (f) Food Chains Program; and (g) Food Safety and Quality Initiative.

(2) When will an evaluation of the programs be undertaken.

(3) Which programs will be delivered by the department.

(4) Which programs will be delivered by National Food Industry Strategy Limited (NFIS Ltd).

(5) How are NFIS Ltd’s administrative costs funded and reported.

(6) Can a copy of the NFIS Ltd constitution and the contract between NFIS Ltd and the Commonwealth be provided; if not, why not.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Performance indicators and budget details are set out in the Portfolio Additional Estimates Statements 2001-02 for the Agriculture, Fisheries and Forestry portfolio, Education, Training and Youth Affairs portfolio and Industry, Science and Resources portfolio. Further details are set out in the contract provided in answer to Question 6 for (a) Food Innovation Grants Program, (b) Food Centres of Excellence Initiative, (e) Food Export Program (Market Development Program) and (f) Food Chain Program. There is no breakdown of budgets by State. As this is the first year of the program, there is no additional information on actual and approved expenditure by year and State.

Program guidelines for grant applicants are set out on the National Food Industry Strategy Ltd (NFIS) Ltd website at www.nfis.com.au for (a) Food Innovation Grants Program, (b) Food Centres of Excellence Initiative and (f) Food Chain Program. The other initiatives do not involve granting programs and therefore do not have program guidelines.

(2) Evaluations of the programs will be undertaken in 2004/05 and 2006/07.

(3) The Technical Market Access Program, the International Food Standards Initiative and the Food Safety and Quality Initiative will be undertaken by the Department of Agriculture, Fisheries and Forestry (AFFA).

(4) NFIS Ltd will deliver the Food Innovation Grants Program, the Centres of Excellence Initiative, Food Market Development Program, Food Chain Program and Food Management Development Program.

(5) NFIS Ltd’s administrative costs are funded through a proportion of the budgets for each program administered by NFIS Ltd, including the Secretariat allocation, as set out in the contract provided in answer to Question 6. Reporting requirements are also set out in the contract.

(6) Copies of the NFIS Ltd constitution and the contract between NFIS Ltd and the Commonwealth are available from the Senate Table Office.