INTERNET
The Journals for the Senate are available at:
Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at:

SITTING DAYS—2003

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>4, 5, 6</td>
</tr>
<tr>
<td>March</td>
<td>3, 4, 5, 6, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>May</td>
<td>13, 14, 15</td>
</tr>
<tr>
<td>June</td>
<td>16, 17, 18, 19, 23, 24, 25, 26</td>
</tr>
<tr>
<td>August</td>
<td>11, 12, 13, 14, 18, 19, 20, 21</td>
</tr>
<tr>
<td>September</td>
<td>8, 9, 10, 11, 15, 16, 17, 18</td>
</tr>
<tr>
<td>October</td>
<td>7, 8, 9, 13, 14, 15, 16, 27, 28, 29, 30</td>
</tr>
<tr>
<td>November</td>
<td>3, 4, 24, 25, 26, 27</td>
</tr>
<tr>
<td>December</td>
<td>1, 2, 3, 4</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Location</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANBERRA</td>
<td>1440 AM</td>
</tr>
<tr>
<td>SYDNEY</td>
<td>630 AM</td>
</tr>
<tr>
<td>NEWCASTLE</td>
<td>1458 AM</td>
</tr>
<tr>
<td>BRISBANE</td>
<td>936 AM</td>
</tr>
<tr>
<td>MELBOURNE</td>
<td>1026 AM</td>
</tr>
<tr>
<td>ADELAIDE</td>
<td>972 AM</td>
</tr>
<tr>
<td>PERTH</td>
<td>585 AM</td>
</tr>
<tr>
<td>HOBART</td>
<td>729 AM</td>
</tr>
<tr>
<td>DARWIN</td>
<td>102.5 FM</td>
</tr>
</tbody>
</table>
CONTENTS

WEDNESDAY, 18 JUNE

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]—
In Committee ................................................................................................................ 11793

Matters of Public Interest—
Queensland Government .............................................................................................. 11831
Environment: Great Barrier Reef Marine Park Authority ............................................ 11835
Veterans: TPI Veterans .................................................................................................. 11838
Bull, Mr Tas Ivan .......................................................................................................... 11842
Budget 2003-04 ............................................................................................................ 11845

Ministerial Arrangements .............................................................................................. 11849

Questions Without Notice—
Iraq ................................................................................................................................... 11849
Howard Government: Senate Powers ........................................................................... 11851

Distinguished Visitors........................................................................................................ 11852

Questions Without Notice—
Iraq ................................................................................................................................... 11852
Economy: Performance ................................................................................................ 11853
Iraq ................................................................................................................................... 11855
Housing: Affordability .................................................................................................. 11857
Iraq ................................................................................................................................... 11858
Iraq ................................................................................................................................... 11859
Foreign Affairs: Travel Advice ..................................................................................... 11860
Health: Disability Services ............................................................................................ 11861
Economy: Business Investment..................................................................................... 11862

Questions Without Notice: Additional Answers—
Manildra Group of Companies ..................................................................................... 11864

Questions Without Notice: Take Note of Answers—
Iraq ................................................................................................................................... 11864

Notices—
Presentation .................................................................................................................. 11870

Committees—
Selection of Bills Committee—Report ........................................................................... 11873

Notices—
Postponement ............................................................................................................... 11876

Committees—
Rural and Regional Affairs and Transport Legislation Committee—Extension of Time .................................................................................................................. 11876
Joint Standing Committee on Foreign Affairs, Defence and Trade—Meeting ............ 11876

Departmental and Agency Contracts ................................................................................. 11876

Textbook Subsidy Bill 2003—
First Reading ............................................................................................................. 11877
Second Reading ............................................................................................................ 11877

Committees—
Foreign Affairs, Defence and Trade References Committee—Reference ................. 11880
ASIO, ASIS and DSD Committee—Extension of time .................................................... 11880
Legal and Constitutional References Committee—Meeting ................................... 11881

Scrutiny of Bills Committee—Report .......................................................................... 11881

Documents—
Auditor-General’s Reports—Report No. 50 of 2002-03 ................................................ 11882
Acts Interpretation Amendment (Court Procedures) Bill 2003 ..................................... 11883
CONTENTS—continued

Export Market Development Grants Amendment Bill 2003 ................................................................. 11883
Australian Prudential Regulation Authority Amendment Bill 2003—
   First Reading ........................................................................................................................................ 11883
   Second Reading .................................................................................................................................... 11883
Wheat Marketing Amendment Bill 2002—
   Report of Rural and Regional Affairs and Transport Legislation Committee .................. 11886
Committees—
   Environment, Communications, Information Technology and the Arts
   References Committee—Reference ........................................................................................................ 11892
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]—
   In Committee ........................................................................................................................................ 11904
Documents—
   Health and Ageing: Gene Technology Regulator ........................................................................... 11920
Adjournment—
   Health: Mental Illness ......................................................................................................................... 11921
   Immigration: Asylum Seekers ............................................................................................................. 11923
   Tasmania: Pulp Milling ......................................................................................................................... 11926
   Military Detention: Australian Citizens ................................................................................................ 11928
Documents—
   Tabling .................................................................................................................................................. 11930
   Tabling .................................................................................................................................................. 11930
Questions on Notice—
   Taxation: Goods and Services—(Question No. 829) .......................................................................... 11931
   Defence: Fisheries Management—(Question No. 1237) .................................................................... 11931
   Education: School Bus Services—(Question No. 1413) ................................................................. 11931
   Defence: USAF Global Hawk Program—(Question No. 1432) ....................................................... 11932
   ComLand: Properties—(Question No. 1434) ..................................................................................... 11932
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m., and read prayers.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002 [No. 2]

In Committee

Consideration resumed from 17 June.

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—by leave—I move government amendment (63) on sheet RA231 and oppose clause 4 in the following terms:

(2) Clause 4, page 2 (lines 12 to 14), to be opposed.

(63) Schedule 1, item 24, page 37 (after line 4), at the end of Division 3, add:

34Y Cessation of effect of Division

This Division ceases to have effect 3 years after it commences.

I table a supplementary explanatory memorandum and a revised explanatory memorandum relating to the government amendments to this bill. The memorandums were circulated in the chamber on 17 June 2003.

These are technical amendments which relate to a sunset clause. Clause 4 as it currently stands has the effect of repealing the entire bill rather than that part of the bill which relates to detention and questioning. Therefore, the government proposes with these amendments to make this proposed new division of the act subject to a three-year sunset clause. Amendment (63) does that with a new division, as I understand it. This is a technical problem which arose from drafting. It is not being put forward for any reason other than that. It is not a substantive aspect; it is a technical matter to reflect what was intended in the last debate. The sunset clause does not relate to the entire bill.

Senator NETTLE (New South Wales) (9.34 a.m.)—It is pertinent that this happens to be the first amendment that we are dealing with today, because over the last couple of days we have been told through the media—and we have heard it consistently from the ALP—that today the government is making concessions in response to the demands of the ALP—that today the government is making concessions in response to the demands of the ALP in relation to civil liberties. Today, with this first amendment, which the minister describes as a technical amendment about a sunset clause, we are seeing exactly the opposite. We are seeing here, in the discussion of this amendment, the ALP caving in to the demands of the government—and indeed making the bill even worse than the current legislation.

In the bill we have a sunset clause that relates to the whole act. This proposal is to make the sunset clause relate only to division 3 of the legislation. We have heard from the minister that division 3 deals with the detention and questioning regime. There are other parts of the bill before us today that, under this proposal from the government to limit the sunset clause to division 3 of the legislation, will continue and will not be covered by the sunset clause in the format that the government now proposes. Let us look at what parts of the ASIO bill are not covered by this proposal to change the sunset clause just to deal with division 3. I will walk us through those parts. Proposed sections 27A and 27D, and proposed sections 28 and 29, which relate to the Telecommunications (Interception) Act, contain reporting mechanisms. It is appropriate that the Australian Greens support those ASIO reporting mechanisms about who is being detained under this legislation, and they rightly should continue beyond the sunset clause for the questioning and detention regime in division 3.
I draw the chamber’s attention to proposed section 23 of the bill. There are other definitions at the beginning of the bill that will also continue—again, the Australian Greens have no problem with that—but I will just outline for the chamber what proposed section 23 does. Proposed section 23 gives greater powers to ASIO officers than they have ever had. I am talking outside the questioning and detention regime being proposed in division 3 of the bill. Proposed section 23 is an issue we canvassed extensively in the committee stage. It deals with giving ASIO agents the power to carry out personal searches on people who are at the premises that is the subject of the warrant: not just at a premises that is the subject of the warrant but at or near a premises that is the subject of the warrant. So that everyone is clear, we are not looking at the questioning and detention regime put forward in the bill. Separate to that, we are looking at additional powers never before given to ASIO officers to allow them, when entering premises for the purpose of carrying out a warrant, to have the ability to carry out personal searches. It is limited to personal searches—strip searching, of course, is dealt with in division 3 of the bill—and it allows those ASIO officers to carry out personal searches.

I would now like to take the chamber to the Legal and Constitutional References Committee public hearings of 26 November in Sydney last year where we dealt with this issue at great length. There was a witness before the committee; his name was Mohammed Kadous. He was representing himself as an individual, with a number of other Islamic organisations, at the committee. I would just like to read his concerns with regard to this legislation. In his opening statement, he said:

Apart from anything else this legislation has some very serious potential loopholes. For example, consider clause 23—

The legislation states that ASIO officers have the right to do an ordinary search or frisk-search, if the minister so determines, of any person at or near a premises, subject to a warrant, if they have reasonable cause to believe that person may have some evidence. Let me give a scenario to show you how the legislation could be abused. Let us say a warrant is granted to search the Lakemba mosque and ASIO choose to exercise that warrant at the time of Friday prayer, when there are some 4,000 people in the room. It is arguable, but ASIO could claim that they have reasonable cause to believe that some of these 4,000 people have critical information, and they may be frisk-searched or have an ordinary search. Furthermore, the legislation has this vague term ‘near’. In the context of a mosque, what constitutes ‘near’? Does it include the whole suburb of Lakemba? Does this then give ASIO the right to search anyone at all, near the mosque? In that context, does that mean the whole suburb?

I have been to the Lakemba mosque several times for Friday prayers when there have been particular occasions, such as the Festival of Eid and the Festival of Ramadan. Lakemba mosque is a premises perhaps the size of this chamber. Clearly, 4,000 people do not fit into the Lakemba mosque—the premises or the building itself. The location of the Lakemba mosque also has an outside area where you could fit perhaps another 200 people, or maybe a few more, into that space. But for Friday prayers, and especially when it is an occasion such as Eid or Ramadan, the people who come to Lakemba mosque fill the mosque; the outdoor area pertaining to the Lakemba mosque premises; the street, which is closed off; and the other premises, perhaps sometimes two doors down from the Lakemba mosque on either side. So we are talking about 4,000 people fitting into that space.

This legislation proposes that, if perhaps there has been a phone call made using a mobile phone from Lakemba mosque on Fri-
day when prayers are taking place, it gives ASIO agents the power to search anyone at or near the Lakemba premises. That means for personal searches to be carried out on the 4,000 people far outside the venue of Lakemba mosque—all those people—looking for, in my example, a mobile phone. I would like to take us to further evidence given to the committee in terms of the concerns about this personal search proposal in proposed section 23 of the bill. On 26 November, Mr Kadous said:

As we have mentioned, if the Muslim community is to bear the brunt of this legislation, one particular issue relates to searches. Already, the Criminal Code rules for frisk-searches and ordinary searches mention that they should, if at all possible, be done by someone of the same gender. That provision does not exist in the legislation—this is the ASIO legislation he is talking about—

However, it does exist in the Criminal Code. For consistency, it would make sense—and it would be beneficial to the Muslim community—if we had the requirement that all frisk-searches and ordinary searches, if at all possible, be done by a person of the same gender.

I would say that is a fairly reasonable request that we are hearing from a member of the Islamic community. Where personal searches are being done in the context of this legislation, he is making a request that they be done by somebody of the same gender. We are not talking about strip searching here; we are talking about personal searches. So I clarify that by saying:

It was not so much in the strip-searching; it was their understanding, as well, that gender was covered in strip-searching. It was with regard to whether ordinary searching and frisk-searching would be carried out by people of the same gender or not.

I quote Mr Richardson’s response to this question:

If that were an issue, it could be clarified, because in situations like that there are usually both male and female officers present.

So we have the Director-General of the Australian Security Intelligence Organisation saying this could be clarified, that we could put in place a requirement that those personal searches be carried out by somebody of the same gender. I have had a look through the legislation that we received and I have had a look through the government amendments that I received about 1 o’clock yesterday—we certainly got the ALP amendments much later—and I have not found any proposal that follows on from what Dennis Richardson said to the committee on 26 November last year, that it could be clarified that personal searches would be carried out by somebody of the same gender.

I note we are seeing some discussion in the chamber at the moment between the two parties that have put together the deal on this
package, and I welcome that. So perhaps in the discussions they could look at the possibility of that commitment from Dennis Richardson to the committee being included in the legislation that is before us today. I will leave it at that at this stage but will point out again to the Senate that this is the first amendment we have today in the committee stage of this bill in the context of a series of amendments put forward by government, the opposition, the Greens and the Democrats. What we are seeing thus far—and we certainly hope to see this situation rectified in the coming hours—is not, as proposed in the media over the last few days, a caving in by the government to the demands of the ALP over civil and political rights but, in fact, the opposite. We will get to further examples today throughout the committee stage where we will see this same pattern: rather than it being the government backing down on proposals put forward by the opposition, we will see exactly the opposite. This sunset clause is the first example of an instance where, far from it being a watering down of the legislation put forward by the government—(Time expired)

Senator BROWN (Tasmania) (9.49 a.m.)—Senator Nettle has made a presentation and I know the minister will be responding to that in a moment. While he has time to think about that, because it is a very good point that the senator is making, I want to ask the minister this: why did it take till yesterday for the government to circulate the amendments to the crossbench, or at least to the Greens? We know that the Labor Party had the government amendments, including this one, last week. There were repeated efforts by my office, and I am sure by others, to get the government amendments so that they could be studied and referred to community organisations and for legal advice over the last several days, but the government did not give those amendments to the Greens. I do not know whether the Democrats got them.

Senator Greig—No.

Senator BROWN—I want to know why. This is a democratic chamber and its special job is review. That review comes from being able to put all legislative moves, not least the important ones like this, out to the community for discussion. The efforts to get these amendments were repeated through Monday without result. The effect, on the surface of it, is that the government was trying to trammel the ability of the Senate to deal with this legislative analysis that we are now undertaking in this committee stage. I want an explanation from the minister. It is not acceptable that amendments to important legislation like this, which has enormous public interest, are not circulated, as I believe, wider than the major parties but certainly to the parties taking part in this debate. I want to hear from the minister why that happened.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.52 a.m.)—I would be interested to know whether the Greens themselves have amendments because we have not seen those, as I understand it. We cannot consider any position of the Greens until we have seen those. We have been in negotiation with the opposition. They had the major contribution to make to the bill and, as such, being in that position, we discussed with the opposition what their concerns were. We have not had any proposals from the Greens, so we will have to consider whatever proposals they put up now. Certainly, we circulated our amendments yesterday. The content of those amendments has been publicised well before today. Anyone who has been reading the papers would have seen what the government was contemplating, and these amendments should not take anyone by surprise. On the other side of the equation, we have had noth-
ing from the Greens as to what they propose—nothing at all; no amendment. I ask whether the Greens propose to move any amendments and when we can expect to see them.

Senator BROWN (Tasmania) (9.53 a.m.)—The Greens’ amendments were circulated yesterday and if the Minister for Justice and Customs has had nothing then there is some failure in his department. But I am not going to be diverted by that. This is a government bill. The government is running this country under the imprimatur of this parliament. This parliament is all important. What comes out at the end of the day is the responsibility of the parliament. On the face of it, the government and this minister have been very seriously selective in the circulation of their amendments. They have entered into a deal with the Labor Party, as Senator Nettle pointed out. Labor has unanimously decided to go along with the government on the bill as now circulated.

But if you do not get the government amendments—and this is from a rest-of-the-Senate point of view—you cannot draw up your amendments with the precision that you need to have. For example, as Senator Nettle has pointed out, we did not know until these amendments finally surfaced yesterday that the sunset clause was going to be so obviously reduced. It no longer applies to the bill; it applies to part of the bill. We know that the government had that amendment available days ago but it did not share it with the chamber. This is a very serious matter. It is not the first time it has happened. The government is politically manoeuvring against the interests of the chamber—that is, the Senate, elected by the people to review its legislation. It is wide open to put an analysis on that—that is, the government does not want this legislation to be a subject of public debate. The government does not feel confident that it can hold up in public debate on the detail in this legislation; therefore, it did not want it out over the weekend. It did not want the experts in law, terror, surveillance and the Criminal Code to be able to have their input. So it dropped the amendments on the Senate at the last possible moment. That is reprehensible behaviour by the government. It is deliberate; it is reprehensible.

The pathetic response from the minister, ‘The Greens’ amendments weren’t in here, so we were tit-tatting with the Greens,’ holds no water. We Greens have circulated these amendments as soon as we could. But you cannot, from the point of view of the cross-bench, adequately design your amendments until you know what the government is doing. The government dropped these amendments on this chamber at the last possible minute in order to cut out public debate. This is a government that has put before us legislation which we and many experts outside this chamber believe cuts right across centuries-old civil liberties, basic to our concept of freedom and democracy in this country, and moves a step down that terrible path towards a police state, from which this parliament must defend the people—a grab for power like that from the government. The government is very clearly manoeuvring to truncate debate and the information base on which this debate takes place. That is reprehensible behaviour by the government. It is untenable. It is just not acceptable.

We will now come to the debate on the specific amendments but we are not going to fail in or shirk our duty to take those amendments and to question the minister on them. It would help on this particular amendment, following Senator Nettle’s submission to the committee, if the minister explained exactly, again, in clearer terms, why it is that he has changed the government’s sunset clause from covering the whole bill to just part of the bill. Indeed, the opposition might explain themselves. Senator Faulkner
might explain to the chamber why the opposition have unanimously agreed that ASIO powers will forever and a day be increased under this bill—for example, in the matter of being able to arraign and search people in certain premises. It is very important that we understand now that the sunset clause no longer applies to the bill. It leaves very important enhanced powers to ASIO outside the amendment that the government has now decided to move. I would like to know this: did the opposition suggest this amendment or has it come from the government? At what stage in this congress between the government and the opposition did this particular amendment arise?

**Senator Ellison (Western Australia—Minister for Justice and Customs) (9.59 a.m.)**—This is an amendment which the government brought about because of a flaw in the drafting and, of course, clause 4 purports to have the sunset clause apply to the whole of the bill. The Greens have put up a suggestion in relation to the inclusion in this amendment of other matters. We will consider that. It was certainly never the intention to have the sunset clause cover the entire bill—that was made very clear last time. Unfortunately, the drafting did not depict that intention and that is why this amendment, which is of a technical nature, has been moved—to fix a drafting flaw. It did not come about as a result of negotiation with the opposition; it was a government amendment. As I understand it, the Greens are saying that we should extend this further. That is something which we will consider. In view of that, we will have to revisit these two amendments. We will leave them aside. I ask that we move on to the next set of government amendments—(3), (4), (23), (24) and (26). Rather than waste time now, we could come back to it. I move:

That the consideration of government amendments (2) and (63) be postponed.

**Senator Nettle (New South Wales) (10.01 a.m.)**—I would like to make a short comment about the postponement of those two government amendments to add another concern that I did not have the opportunity to raise before. I appreciate the minister’s comment to the chamber that there is a capacity to move on to deal with some of the other amendments and to look at the issues I have raised. I will read another section of the committee *Hansard* that deals with this particular issue, which the government’s adviser is going to look at. I want to ensure that we encapsulate all of the concerns of the Australian Greens. If I could add these comments, then I would be happy to move on to the following amendments to allow time for that consideration to occur.

The issue goes to the lack of a definition of ‘near’ in the legislation. I will read from the committee *Hansard*. On that day, there were a series of questions and answers between me and Mr Marshall, the legal adviser from ASIO who has been with us in the advisers box in the chamber for part of this debate. I asked Mr Marshall this question:

Another piece of evidence that we heard this morning from one of the Islamic groups was about the definition of ‘near’ in terms of searches being carried out at a premise or near a premise. Do you have any interpretation as to how wide that ‘near’ would be defined in the legislation?

I am now quoting Mr Marshall:

‘Near’ would definitely not include anyone in a given suburb. I can make that point. I think that was one of the suggestions made. The reference in the bill to that search power is a proposed amendment to section 25 of the existing ASIO Act provisions which enable search of premises. That provision does not have express authorisation to search persons who are on the premises, and ASIO have always taken a fairly conservative view as to our authority under the current provision. When the new legislation was being drafted, the government determined that it would be appropriate to provide a power for ASIO to conduct
searches of persons on or near the premises if there was reasonable cause to believe that those persons would be carrying material relevant to the security matter for which the warrant was issued. In practice it would require an ASIO officer or a person authorised under the warrant to have a reasonable basis to believe that somebody on the premises had documents or other items in their possession which were relevant to the purposes for which the warrant was issued. It would definitely not enable someone to turn up at a given building—a public place or a church—and just say, ‘There are 4,000 people here; we can search all of them.’ I would see that as being totally outside the scope of the warrant.

Mr Marshall’s answer continued:

In terms of ‘near’, it is difficult to say whether it would be 50 metres or two metres away from the premises. All I can say is that the inclusion of the word ‘near’ was designed to accommodate the fact that a warrant on premises might refer them to, say, a flat number or a unit in a block of flats. A person might be on the stairwell going into or out of the unit and ASIO might have cause to suspect that that person would have items relevant to the security matter. My understanding is that that is the particular issue that the inclusion of the word ‘near’ was designed to accommodate.

Following that response from Mr Marshall, my question to him was:

So that might be something that could be tightened up. Would you agree to defining how ‘near’ might be interpreted?

Mr Marshall’s response was:

Yes. What I would like to do, if I may, is to take the remainder of that issue on notice and look to see whether or not the search powers that are conferred upon other agencies use the same formula and whether they have been subject to any judicial interpretation in the past.

I am in the process of following up as to whether that question was taken on notice and whether we received any determination as to the definition of ‘near’ in other criminal code legislation or appropriate legislation. If we are moving on now to other amendments, I would like to ask the minister to look at that particular issue that Mr Marshall raised in the committee process and provide us with any answers to questions on notice that may have subsequently been made available about the way in which ‘near’ is defined in criminal code legislation and how this issue may be dealt with in regard to this particular piece of legislation.

I appreciate the opportunity to raise the issue and I am happy to proceed to other amendments and I look forward to the government coming back and responding to the Greens on this issue. Again, I reiterate what Senator Brown said previously. Upon receiving the government amendments yesterday, I sat in the chamber yesterday afternoon and read through them and found that we were dealing with a watered-down sunset clause that did not include this particular extension of powers to ASIO. We are here today as a consequence of those amendments being received yesterday.

The bill as it stands has a sunset clause in relation to the whole act. These amendments aim to make that sunset clause relate just to division 3 of the act. With respect to the proposal being put forward by the government, there are a number of options regarding ways in which we can move forward and deal with the issues that have come to the attention of the Greens, and to my attention since I received the amendments yesterday afternoon. Because a sunset clause exists in the legislation as it stands, we have the option to oppose these two government amendments which limit the sunset clause. The purpose of a sunset clause is to have a three-year review whereby you look at the reporting mechanisms. As I said at the beginning, the Greens support the reporting mechanisms being able to continue beyond the sunset clause proposed in this bill. And there remains the capacity for that to occur: if the amendments currently put by the government are opposed, we can ensure that in three years time the
reporting mechanisms that we all want to continue beyond the sunset clause of the bill are able to continue.

I put to the chamber that there are options on the table now. I am sure the government has other options, which I am interested to hear about, and I am happy to wait to hear those at an appropriate time when we come back to the issue. I say for the benefit of the chamber and those present that we have the option to oppose the watered-down sunset clause that is proposed in this government amendment, and that would allow us to stick with the sunset clause previously put by the government in the discussions that occurred in the chamber on 12 and 13 December, which was the last time this ASIO bill was debated. Then, in three years time, we would have the capacity to ensure that the reporting mechanisms, which we all want to see continue, will continue beyond the sunset clause.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.08 a.m.)—by leave—I move:

(3) Schedule 1, item 24, page 6 (lines 29 and 30), omit the definition of approved lawyer.

(4) Schedule 1, item 24, page 7 (after line 6), after the definition of issuing authority, insert:

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

(23) Schedule 1, item 24, page 13 (lines 9 and 10), omit “an approved lawyer”, substitute “a lawyer of the person’s choice”.

(24) Schedule 1, item 24, page 13 (after line 17), at the end of subsection (4), add:

Note 3: A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person’s choice, so the warrant must identify such a lawyer.

(26) Schedule 1, item 24, page 15 (line 28), omit “is an approved lawyer or”.

We also oppose proposed section 34AA in schedule 1 in the following terms:

(6) Schedule 1, item 24, page 7 (lines 15 to 28), section 34AA to be opposed.

These amendments deal with the question of lawyer of choice. One of the three aspects I mentioned in the second reading contribution, which dealt with the amendments that the government would propose, was the question of lawyer of choice. The government made a considerable concession to the opposition in this matter and has agreed to permit a person who is subject to a questioning warrant to be able to choose their own lawyer. Furthermore, the government will allow a person being questioned to have access to their lawyer at any stage of the proceedings. While it is understandable that a person being questioned would want access to a lawyer of their choice, we have to balance this against the needs of security and that, of course, has to be subject to certain safeguards to protect the safety and the security of the Australian community. There are circumstances in which there is a belief that a lawyer may undermine the integrity of the questioning regime by releasing sensitive information to those associated with terrorist organisations. This could substantially increase the likelihood of a terrorist attack occurring and, therefore, defeat the whole purpose of this bill.

The proposed new section 34AA will allow ASIO to apply to the prescribed authority to prevent a person’s access to their choice of legal practitioner. The prescribed authority can then direct that the person will not have access to their lawyer of choice. One has to remember that a prescribed authority can include a former or an existing judge from a state supreme court—county or district courts, I think, are also included
there—and also the President and Deputy President of the Administrative Appeals Tribunal. So we are dealing with people of some standing. The prescribed authority that we are referring to here is not another ASIO officer or a police officer; it is a person of some judicial standing and that, we argue, provides a further safeguard.

In order to prevent access to a lawyer of choice, the prescribed authority must be satisfied that permitting such access could result in a person involved in a terrorism offence being alerted to the investigation or in the destruction, damage or alteration of a record or thing that the person may be required to produce under the warrant. The subject of the warrant can choose another lawyer, but ASIO will have the right to object to any other lawyer chosen by the subject in accordance with the process set out in the proposed new provisions. Under the government’s proposal, questioning can commence in the absence of a lawyer. However, a person will have a right to a lawyer of choice at all times, subject to the direction of the prescribed authority on a case being made by ASIO for the exclusion of a particular nominated lawyer. This means that a person may not be held incommunicado but, as with the opposition’s amendments moved during debate in the Senate last year, the questioning of a person may commence in the absence of the lawyer.

The government also proposes to increase the penalty for breach of the current secrecy provision, from two years to five years imprisonment. The secrecy provision contained in proposed section 34U(7) places a ban on the legal adviser communicating any unauthorised information while the subject is detained under warrant. That speaks for itself. Obviously the aspect to guard against is the question of the legal adviser releasing or divulging vital information which could be gleaned during the questioning. It was thought that the two-year penalty was not sufficient, and that it should be increased to five years. When that is coupled with these changes, the government believes that there will be a balance between not only providing the individual with their choice of lawyer but also having the sanction and the safeguard there to ensure that the integrity and the security of the process will be maintained. On that basis, I commend these amendments as a package to the committee.

**Senator BROWN (Tasmania) (10.14 a.m.)—**I have a couple of questions for the minister. Is it true that the lawyer will not be able to take part in the interrogation process but would have to sit aside from that and not intervene in the interrogation process? Is it also true that the lawyer would not have access to the reasons for which the person has been detained—that is, the reasons that ASIO has that the person might have information that would help in their inquiries? I will ask those first. I have some more questions but I will restrict them to those two first.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.15 a.m.)—**The role of the legal adviser is to provide advice to the person who is being questioned. It is not envisaged that the role of the lawyer is one where the lawyer participates in the interrogation, obviously not one where the lawyer would ask questions of the person being questioned. It is a role of advice to the person who is being questioned. So legal advice could be offered but certainly there could not be participation in the interrogation. Although this is not a suspect regime that we have under the criminal jurisdiction it is one for gathering intelligence. Certainly lawyers participate by giving advice to the person but they do not involve themselves in the interrogation or in the giving of answers, for that matter. I am just getting the provision in the bill which deals with that. But at first blush, in relation
to Senator Brown’s question, that is the purpose of the role of the legal adviser.

Senator BROWN (Tasmania) (10.16 a.m.)—I will go to second blush on this question. We have got the situation where a journalist or a lawyer or a community representative has been arrested and is undergoing a four-hour period of interrogation—remembering, first of all, the terrible situation in which this interrogation may be taking place without any lawyer at all. As the minister has just outlined to the committee, ASIO will have the power to veto a person’s requested legal representative and to get questioning under way in the meantime. That is very critical because first questioning is going to be aimed right at what ASIO wants to get from this individual and she or he is not going to have their lawyer there and is going to be subject to the full power of an interrogation system totally foreign to the usual legal process in our country.

We have got a new situation where people can be questioned—and will be questioned—and if you look at this from ASIO’s point of view the aim will be to get the questioning in before legal representatives appear on the scene. That is what the opposition is agreeing to here. As the minister has just said repeatedly, ASIO can appeal to have a person’s legal representative turned down. It would be good to know from the minister how far into the interrogation you can go—into these three blocks of eight hours—without a legal representative being there. It appears on the face of it that the whole 24 hours of interrogation over a week could take place without a legal representative. If that is not the case, I would like to know how much of the interrogation can take place without a legal representative being there. Hours and hours of it, we know, but how long?

When the person has got out of that situation, because finally the judge or other person whom ASIO has appealed to has said, no, they must have a legal representative at this juncture, the question, which I put earlier, is whether that legal representative is able to say to her or his client: ‘You have been asked this question. My advice to you is to answer it with this in mind.’ Is the legal representative going to be able to advise during the questioning, in response to questions coming from the interrogator, what the now client of the lawyer should answer, or at least what the client should take into account in answering, a question or not? The minister says that the lawyer will not be able to take part in the interrogation process. Is the lawyer able to ask the ASIO interrogator questions? Is the lawyer able to give advice after questions have been put by that interrogator to her or his client?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.20 a.m.)—Firstly, dealing with the involvement of lawyers, section 34U provides for that in the bill. I would refer Senator Brown to that. It is quite extensive and detailed in relation to the involvement of lawyers. Certainly, without going through it step by step, you can see that it deals with the way that contact must be made, that there must be a reasonable opportunity provided for the legal adviser to provide legal advice during the breaks in questioning. The legal adviser cannot intervene in the questioning of the subject or address the prescribed authority that is answering questions. The legal adviser cannot disrupt proceedings. Certainly the legal adviser is provided with a copy of the warrant for questioning. Subclause (7) deals with the obligations of the legal adviser and also with the avenues that the legal adviser can have in relation to making an application to a registrar of a federal court for the purposes of seeking a remedy relating to the warrant. Certain remedies can be pursued there by a legal adviser. Regulations can also be made.

CHAMBER
concerning the making of communication by legal advisers of persons in relation to the questioning or detention of those persons. So I think that covers comprehensively the aspect of the lawyers being involved.

Senator Brown also raised the question of what happens if ASIO makes repeated objections to the choice of lawyer. Whilst we have said that questioning can continue in the absence of a lawyer, proposed section 34TB, entitled ‘Questioning person in absence of lawyer of person’s choice’, would deal with that. Before I come to that, the prescribed authority has the decision as to whether ASIO is successful or not. In the first instance, it is not just a question of ASIO being able to block the choice—I want to correct that. The determination of that question does not rest with ASIO, it rests with the prescribed authority. As I have indicated, the prescribed authority is someone of some judicial standing. We would not expect that you would have a prescribed authority capriciously exercising that power. In relation to the question of what happens if ASIO is successful—let us say ASIO raises an objection and is successful in having the prescribed authority say, ‘No, that lawyer is not available’—then, as I understand it, the prescribed authority can make a choice himself or herself of a lawyer for the person being questioned if there is no other being offered. So there is that fall-back provision as well. I think that covers the questions that Senator Brown asked. I might have missed one. If I have, perhaps he can remind me.

Senator NETTLE (New South Wales) (10.24 a.m.)—I thank the minister for his answers. On the last issue the minister raised of the capacity for a new lawyer to be put in place if the first-choice lawyer of the person being interrogated is knocked out on request by ASIO, it is worth perhaps first noting that I understand the process whereby the prescribed authority makes the decision as to whether ASIO’s case for the lawyer of choice being knocked out is appropriate or not. I am certainly interested to know if there are any guidelines for the prescribed authority in making that decision. I recognise that they make that decision. They often do make those sorts of decisions.

I can imagine a situation whereby a prescribed authority, in whatever form of judge at the time, has a case put to it by ASIO that the first-choice lawyer of the person being interrogated is not appropriate for whatever reasons. Is there any capacity for an alternative case to be put to the prescribed authority? I imagine that, where ASIO comes up with a raft of arguments and a dossier on the lawyer with regard to their connectedness with a whole range of different activities, it may be quite difficult for the prescribed authority to make that judgment without having any alternative case put to them. In the context of this debate, it may well be quite difficult for the lawyer of first choice of the person being interrogated to put that alternative case. Perhaps the minister could explain how that would occur in terms of informing the prescribed authority and then making a determination as to whether ASIO’s case was appropriate or not.

The other question I have for the minister relates to the capacity to change lawyers. The minister said that if the prescribed authority makes the determination that the lawyer is not appropriate, the prescribed authority then determines who should be the lawyer for the person being interrogated. Rather than the person being interrogated getting a second choice of lawyer, we go to a choice by the prescribed authority. Perhaps the minister could correct me if I misunderstood, but I thought the minister was quite clearly saying that, if you do not get a first choice of lawyer, you move to the prescribed authority’s choice of lawyer rather than your second choice of lawyer. My other question goes to
how that would take place. Government amendment (24), note 3, says:

A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person’s choice, so the warrant must identify such a lawyer.

Could the minister explain—because I am not familiar with all of this—if that is a standard practice in terms of the warrant specifying the lawyer or if that is in relation to this particular instance, because in this legislation we allow for the ASIO vetting through the prescribed authority. If there is a change of lawyer, does that mean a new warrant has to be issued? What is the process under which that can occur? If, as stipulated in government amendment (24), we put the name of one single lawyer on the warrant, what then happens if we get no second choice of lawyer but the prescribed authority’s choice of lawyer? Do we have another warrant being issued with the name of another lawyer on that warrant?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.28 a.m.)—Dealing with the last question first, the warrant does not mention the lawyer concerned. What it does say is that the person is entitled to a lawyer of choice. At that stage it would not be able to say who the lawyer was, because the person may not have made the choice of that lawyer. That is why the name of the lawyer is not mentioned in the warrant. That takes away the concern that if the lawyer is changed there has to be some change to the warrant—that is not so; it does not follow.

In relation to the question of the consideration of lawyer of choice, if ASIO agrees, it puts forward the fact that it agrees—no problem. If it has an objection, the prescribed authority looks at that. There is no subhearing, if you like, in relation to that decision because to go through the choice of lawyer at a hearing where both sides are argued would, firstly, be time consuming and, secondly, would possibly canvass all the issues which are subject to the questioning warrant, and they would be security matters. It could be argued that a lawyer is not a security problem. In arguing that, you would have to go through all the matters of investigation at hand in order to demonstrate your argument. To have a whole hearing on the lawyer of choice where either side advances arguments would unduly delay matters and flush out matters of security. We believe that the current situation is sufficient. The prescribed authority being a person of some judicial standing is sufficient. ASIO makes its submission to that person; that person then considers it.

The proposed government amendment (45) deals with proposed clause 34TA, which relates to a limit on contact of lawyer of choice. I would draw that to the attention of Senator Nettle. In relation to what I said earlier, I repeat that where a person chooses a lawyer and that person is refused by the prescribed authority—not refused by ASIO; they can only be refused by the prescribed authority—and where that person has no other choice the prescribed authority can intervene and say, ‘Here is a lawyer who can help you.’ But if the person has another lawyer of choice—a second choice—certainly they can put that forward. There is no question that they only get one choice, if that is what Senator Nettle was thinking. You can have a first, second, third or whatever choice you like, and that is no problem. But you only have the prescribed authority making that decision if the person cannot get their lawyer of choice. It is much like appointing an amicus curiae in relation to proceedings in a court where the person does not have a lawyer or any choice of a lawyer and the court provides a lawyer to assist them. That is the reason for the fall-back to the pre-
scribed authority. But of course that would not arise where the person had their own lawyer of choice. That would be pursued in the first instance.

Senator BROWN (Tasmania) (10.32 a.m.)—We are establishing here from the minister that there will be a kangaroo court on the lawyer before and while the questioning of the person, who can be a person known to be innocent, takes place. What we have established from the minister is that the person’s lawyer can be vetoed by ASIO without having any ability to defend her or himself before the judge who makes that decision. Effectively that means that, on the submission of ASIO using information that may or may not be true, may or may not be based on fact and may or may not have validity at all, the lawyer can be knocked out of this process. That is very dangerous legislation. There is not an appeal process here; the lawyer cannot later go and say, ‘I want to know why I have been considered a security risk or unable to act in defence of my client.’ I ask the minister: what is to prevent ASIO simply vetoing—that is, objecting to the prescribed authority—every lawyer that comes forward? Senator Nettle asked the minister: what are the parameters for a successful ASIO submission to the judge against a lawyer? It appears that there are none at all; it is just the say-so of an operative in ASIO. This is very dangerous legislation.

This is legislation that cuts away all the checks and balances built into our legal system, and it does not just affect the innocent person who has been arraigned under this legislation; it affects their legal representatives, who are effectively stripped of rights that ought to be there. This is supported by the Labor Party, by the way. We are not going to get any change to that—that is established from what the minister has said. But I come back to an earlier point: can the minister categorically state that under this process there is no way in which a person could be interrogated for a block of eight hours without having legal representation? I want to know from the minister how long a person can be interrogated. They may be known to be an innocent person. They may be a doctor, a lawyer, a shipwright or a person at a restaurant who overhears a conversation—I understand that has made the front page of today’s Mercury concerning another matter; but these things do happen—who has been taken in off the street and who is under interrogation, and intense interrogation. We know what the interrogation is going to be like. It is going to be very intense on this person who does not have legal representation. How long can that go on? What is the cut-off? It is very important that we have an answer to that because, as I read this legislation, there is no cut-off.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.36 a.m.)—Senator Brown has asked a question in relation to the cut-off, and he is talking about the question of rolling objections, if you like, by ASIO. I just want to correct the record and Senator Brown on one aspect of that. He says in one breath that ASIO has the power of veto and in the next breath that it has the power to object. They are two different meanings. Veto means that your objection then has the force of knocking out that lawyer. ASIO does not have a power of veto—let us make that very clear. It has the power to object only, and to object to the prescribed authority. That is all it has. The normal meaning applied to veto is that you have the effect of objecting and having that objection then carried out to the extent that it is upheld. That is not the case with ASIO and I want to make that point very clear.

In relation to the time aspect, that is subject to the authority or determination of the prescribed authority. The prescribed authority may say: ‘Look, enough is enough. Go
back and try and find someone else.’ It is in the hands of the prescribed authority. I note that we have gone into debate on the contact with lawyer of choice. In hindsight, when I moved these amendments perhaps I should also have moved government amendments (15), (16), (25), (38), (40), (41), (45), (46) and (48) because we are moving into that area. We can deal with these amendments cognately rather than have to argue all this again. We can then debate the whole aspect of lawyer of choice and contact with lawyer of choice. This would tidy things up and it is perhaps something I should have done at the outset. I seek leave to move those amendments.

Leave granted.

Senator ELLISON—by leave—I move government amendments (15), (16), (25), (38), (40), (41), (45), (46) and (48) on sheet RA231:

(15) Schedule 1, item 24, page 11 (lines 5 to 11), omit subsection (3B), substitute:

(3B) In consenting to the making of a request to issue a warrant authorising the person to be taken into custody immediately, brought before a prescribed authority immediately for questioning and detained, the Minister must ensure that the warrant to be requested is to permit the person to contact a single lawyer of the person’s choice (subject to section 34TA) at any time that:

(a) is a time while the person is in detention in connection with the warrant; and

(b) is after:

(i) the person has been brought before a prescribed authority for questioning; and

(ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and

(iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contacting the lawyer.

(16) Schedule 1, item 24, page 11 (lines 12 to 29), omit subsection (3C).

(25) Schedule 1, item 24, page 13 (after line 17), after subsection (4), insert:

(4A) The warrant may specify times when the person is permitted to contact someone identified as a lawyer of the person’s choice by reference to the fact that the times are:

(a) while the person is in detention in connection with the warrant; and

(b) after:

(i) the person has been brought before a prescribed authority for questioning; and

(ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and

(iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contacting the lawyer.

(38) Schedule 1, item 24, page 26 (line 18), omit subparagraph (6)(a)(iii).

(40) Schedule 1, item 24, page 27 (lines 15 and 16), omit “an approved lawyer at any time when the person is in custody or”, substitute “a single lawyer of the person’s choice when the person is in”.

(41) Schedule 1, item 24, page 27 (line 29), omit “or (iii)”.

CHAMBER
(45) Schedule 1, item 24, page 31 (after line 28), after section 34T, insert:

34TA Limit on contact of lawyer of choice

(1) The person (the subject) specified in a warrant issued under section 34D that meets the requirement in paragraph 34D(2)(b) may be prevented from contacting a particular lawyer of the subject’s choice if the prescribed authority before whom the subject appears for questioning under the warrant so directs.

(2) The prescribed authority may so direct only if the authority is satisfied that, if the subject is permitted to contact the lawyer:

(a) a person involved in a terrorism offence may be alerted that the offence is being investigated; or

(b) a record or thing that the person may be requested in accordance with the warrant to produce may be destroyed, damaged or altered.

(3) This section has effect despite paragraph 34F(9)(a).

(4) To avoid doubt, subsection (1) does not prevent the subject from choosing another lawyer to contact, but the subject may be prevented from contacting that other lawyer under another application of that subsection.

34TB Questioning person in absence of lawyer of person’s choice

(1) To avoid doubt, a person before a prescribed authority for questioning under a warrant issued under section 34D may be questioned under the warrant in the absence of a lawyer of the person’s choice.

Note: As the warrant authorises questioning of the person only while the person is before a prescribed authority, the prescribed authority can control whether questioning occurs by controlling whether the person is present before the prescribed authority.

(2) This section does not permit questioning of the person by a person exercising authority under the warrant at a time when a person exercising authority under the warrant is required by another section of this Division not to question the person.

Example: This section does not permit the person to be questioned when a person exercising authority under the warrant is required by section 34H or section 34HAA to defer questioning because an interpreter is not present.

(46) Schedule 1, item 24, page 32 (line 1), omit “(whether the adviser is an approved lawyer or not)”.

(48) Schedule 1, item 24, page 32 (lines 25 and 26), omit “an approved lawyer other than the legal adviser”, substitute “someone else as a legal adviser”.

Senator BROWN (Tasmania) (10.39 a.m.)—The minister has confirmed that there is no limit. Under this legislation, a person can be questioned not just for an hour or two without their lawyer; they can be questioned for 24 hours in blocks of eight hours and in particular in unbroken blocks of four hours over a period of a week without legal representation. If that is not possible under the legislation, the minister should show us where that is prevented from happening. Worst of all, the minister refers to the prescribed authority. That is an appointed judge—it might be a retired judge or even somebody from the Administrative Appeals Tribunal—in these secret proceedings who would be able to arbitrate. That is not good enough. The minister is saying: ‘We will abrogate our obligation and give that person enormous powers when conducting hearings in secret. We will let them work out what they think should be done in terms of a person who has been arrested by ASIO and is now being interrogated by ASIO.’ That
opens this political system up to an appointment which ultimately has the government’s approval and that person will arbitrate over the rights of an individual and their legal representation. That is repugnant. That is totally unacceptable.

We have a situation here where, in secret and out of the view of any help, an innocent person can be taken off the street in Australia because ASIO wants to question them. That person can be held for a week and interrogated intensely during that time without their legal representative being present and potentially without any legal representation at all. If the legal representative is there but cannot intervene during the questioning, which is something you do not see in any court and which is something the police do not have power over in this country, that person can be questioned without any legal representation. That is up to the decision of some unnamed person, appointed into that position in secret, against an innocent Australian citizen. If you leave legislation open to that scenario, that scenario can occur and, given length of time, it will occur down the line.

Just this week, Mr Steve Mark, Chairman of the Council of the Australian Section of the International Commission of Jurists, said: Media, Doctors, Lawyers, Counsellors or even other Investigating Officers who are suspected of having information can be detained and questioned. The proposed amendments—which Labor has accepted—do not solve this problem.

With habeas corpus, which I understand came in in the 17th century—we have had three centuries of habeas corpus—the tendency has been to strengthen it, not to weaken it. Mr Mark said:

The Bill denies detainees the right to review of the substantive basis of their detention through Habeas Corpus. They cannot effectively test the basis of their detention under the new Bill. There is no test. They cannot even test the veto of their lawyer by ASIO through the compliance of an appointed so-called umpire. The umpire is not going to be independent. The umpire is not authorised to be independent. The umpire is not subject to the usual scrutiny or appeal. This is extraordinary legislation. How could the Labor Party be supporting it—unanimously? It cuts right across the development of common law in this country and indeed before the establishment of the Commonwealth of Australia over 100 years ago. This is outrageous legislation and the opposition is supporting it. We are now getting a rolling input from the judiciary, from the legal experts in this country, warning about the shortcomings of this legislation.

But the more we look at it, the worse it gets. Shadowy figures who are unknown to the public and not open to the scrutiny of the media are going to arbitrate this process, because that is not in the bill. The limitation of their powers is not in this bill. These unseen judges, no doubt selected over a period of time because they are compliant with the intent of the legislation to empower ASIO way beyond anything we have seen in the past, will hold the reins of what happens to the detainees. No wonder the media organisations in Australia—commercial as well as ABC—are objecting to the more repugnant aspects of this legislation. Sure, they are not saying that we do not have to tighten up on security and we do not have to improve our methods of defending ourselves against terrorism; but this is way beyond the pale. This is not acceptable.

We are caught in an extraordinary situation in the Senate today where the opposition is missing in action. They are inactive; they are not here. The Labor Party has effectively abandoned this debate and has handed it across to the government of the Hon. Mr Howard to have its way, untested. So it is left
to the Greens to be taking on the government on these measures. I feel very frustrated, I can tell you, because we are seeing here a historic abrogation of responsibility of opposition to defend the historic rights of Australians to be protected from the excesses of police while depending upon police, including ASIO—now effectively becoming a police organisation—to protect their interests. The minister has not been able to adequately answer the questions I have put to him. In fact, he has corroborated the points that Senator Nettle and I have been putting forward.

But let us go back a step in this. I asked the minister, because it is important to this whole process: what is the independent process by which this faceless judge sitting in secret will make determinations about the advice from ASIO that a lawyer should be knocked out? It is indefensible under this legislation: the lawyer has no say; the client has no say. ASIO totally puts the case and prosecutes whether this lawyer is a security risk or not, and this person adjudicates. What are the checks and balances on the appointment of that person? We know they have no direction from the government, whether it is Labor or Liberal. No direction has been given: there is none in this legislation. The minister said earlier in the piece that you are going to have somebody who is respected and who is beyond reproach. We all know that that is a theory that in reality is wide open and will be found wanting. I ask the minister: how does he assure the committee that this is going to be Solomon sitting in secret?

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that the amendments be agreed to; however, the government has also moved further amendments. I need to clarify with the Democrats and the opposition whether they are going ahead with their amendments to those amendments.

Senator Faulkner—I rise on a point of order. I want to be clear what questions are now before the chair.

The TEMPORARY CHAIRMAN (Senator Collins)—At the moment we have government amendments (3), (4), (23), (24) and (26), government amendment (6) to oppose section 34AA and then further government amendments (15), (16), (25), (38), (40), (41), (45), (46) and (48).

Senator Faulkner—Is it your intention to call Senator Greig and the opposition to move the amendments that also appear on the running sheet?

The TEMPORARY CHAIRMAN—Yes, that was what I sought.

Senator GREIG (Western Australia) (10.50 a.m.)—I move Democrat amendments (15), (16), (17) and (19), on sheet 2953, to those government amendments:

(15) Amendment to government amendment (15), subclause (3B), after “warrant” (first occurring), insert “requiring a person to appear before a prescribed authority for questioning, or”.

(16) Amendment to government amendment (15), after subsection (3B), insert:

(3BA) If a person is unable to identify or engage a single lawyer of the person’s choice in accordance with subsection (3B), the prescribed authority must assist the person by locating a lawyer competent and available to advise in the circumstances.

(17) Amendment to government amendment (25), after subsection (4A), insert:

(4B) If a person is unable to identify or engage a lawyer of choice in accordance with subsection (4A), the prescribed authority must assist the person by locating a lawyer competent and available to advise in the circumstances.
Amendment to government amendment (45), before subsection 34TB(1), insert:

(1A) To avoid doubt, this section must not operate unless a person before a prescribed authority for questioning under a warrant has:

(a) been informed of his or her right to a lawyer of choice or his or her right to assistance from the prescribed authority to engage a lawyer competent and available to advise in the circumstances; and

(b) exercised a free choice either to require the presence of a lawyer of choice or for questioning to proceed without a lawyer of choice being present.

(1AB) To avoid doubt, this section must not operate and questioning must not commence, where the person has exercised their right to a lawyer of choice, before the arrival of the person’s lawyer of choice unless the prescribed authority is satisfied on application by the Director-General that there is a threat of an imminent terrorist act.

Before going into some fuller debate on those, I have a couple of questions to the minister in terms of the current debate we are having on the question of legal access. It is has been made clear in the legislation and in discussion here this morning that a lawyer who is rejected as being a representative of a detainee by the authority has no appeal in respect of that. But are they advised of why it is that they have not been found acceptable? Are they simply told that they do not meet certain criteria in the legislation or are they told the specifics as to why they are not acceptable? Secondly, while I understand that the lawyer, when approved, is not able to participate in the interrogation in terms of questioning either the detainee or the ASIO officials, are they in a position to witness the questioning? Could they sit in on the questioning but not involve themselves in it, and would they be permitted to access either a video or an audio tape of the questioning itself?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.52 a.m.)—Starting with the presence of the lawyer, certainly it is provided that the lawyer will be present during questioning so that, if the lawyer of choice is approved, that lawyer sits in for the questioning. There is no provision in the proposed legislation for the lawyer to have access to any videotape. That, I think, answers two of Senator Greig’s questions. In relation to the reasons for the refusal of the lawyer of choice, the person being questioned is not provided with any reasons. If there is another question that I have missed, please remind me.

Senator GREIG (Western Australia) (10.52 a.m.)—You have answered the questions, Minister. You have replied, but I am not sure of the reasoning behind it. Why has the government drafted the legislation such that a lawyer, who has effectively been vetoed from representing a client or a potential client, is not told specifically of the reason for that, given that there is no appeal? I understand that there is no appeal process, so it would not frustrate proceedings or continue the process of the person being detained and/or questioned. But it seems to me only fair that, if a practising lawyer is told that they do not meet the specific criteria of the legislation in terms of being able to represent a client, there should be good reason for that and they should be entitled to know it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.53 a.m.)—I had understood Senator Greig’s question to be, ‘Would reasons for refusal be given to the person questioned?’ which I answered. In relation to, ‘Would reasons for refusal be given to the lawyer?’ the answer is
no, I doubt the lawyer of choice would even know that he or she was the lawyer of choice. The person being questioned would say, ‘I want a particular lawyer.’ That would then be put to the prescribed authority and ASIO would agree or object. If they agreed, the lawyer would then be notified; if ASIO objected, obviously the lawyer would not be notified. The prescribed authority would consider the submission and, if the prescribed authority then decided against the lawyer of choice, certainly the person being questioned would be advised but the lawyer of choice would not be because the lawyer of choice would not be aware that he or she had even been subject of choice.

In relation to the reasons, I can say that the prescribed authority would indicate to the person being questioned that, with respect to the criteria contained in the legislation, a refusal had been made for that lawyer of choice. The criteria are set out in the legislation; I referred to them in my reasons for the amendment—that is, is it likely that the lawyer of choice is going to divulge strategic information? That was just one aspect which was looked at. The criteria are set out in the legislation. It would simply be, ‘On the criteria set out by the legislation as to lawyer of choice, I have made a decision that the lawyer of choice be refused.’ That would be the extent of it.

Senator BROWN (Tasmania) (10.55 a.m.)—What we have here is the establishment by ASIO of a register of lawyers who are not of choice, the establishment of a secret list of Australian lawyers who are accredited by the courts of this country but who are not able to represent their clients under this legislation, in this extreme circumstance. There is no appeal and there will be no publication of that list. So an unknown number of Australian solicitors and barristers are going to be listed by ASIO, without their knowledge or anybody else’s knowledge, as being unable to represent their clients in this most extreme circumstance of being arrested, whether or not innocent, and being interrogated.

That is police state legislation. I have to appeal to the opposition again to put a stop to this. If not, let us hear from the opposition how you could possibly justify a process that is going to allow this to happen. It is outrageous. I ask members in here: how would you like it if ASIO were empowered to have a list of politicians who were proscribed from speaking up on behalf of their constituents on certain matters—on matters when it becomes absolutely critical that constituents be empowered to speak through their politicians to the parliament? That is the analogy.

How would journalists like it if there were a secret list kept or an ordinance which prevented them from covering certain issues, and they were proscribed from being involved? I guess they would find out about it; they would at least have the advantage of knowing they were not able to do their work. How would any profession like that? At arm’s length, we are supposed to have the judiciary as a check on legislation—as a check on the executive, if you like. But here we are having the parliament give the secret police the ability to keep a list of members of the legal profession who are proscribed, effectively—and they have no appeal. They do not even know that they are listed.

You can argue, and we all will argue to varying degrees, that we need stronger laws to defend the rights of Australians to a peaceful and safe environment. But this is outside that; this is beyond the pale. I ask the opposition and I ask Senator Faulkner: how do you justify having a system here which allows, in secret, names of members of the legal profession to be kept which proscribes them from being able to be involved in protecting their clients when it gets to this sort of situa-
tion? I point out again that it is part of a program which was quite deliberately drawn up—this legislation has been drawn up with great intent—to deny people access to strong legal representation at a moment when they will need it more than ever in their lives.

I go back to Mr Steve Mark, the Chairman of the Council of the Australian Section of the International Commission of Jurists. Within the last week, the following was reported:

‘The Bill’s compulsion to answer questions is unlikely to draw information from anyone involved in terrorist offences; why would a terrorist bother to answer truthfully. The Bill must be targeted at other members of the community,’ said Mr Mark. ‘The police and ASIO currently have practical powers to deal with security threats. No useful information is likely to come from the exercise of this power.’

Down the line, the bill will put innocent, law-abiding citizens on the rack without legal defence. But, as Mr Mark points out, it is simply another challenge. If a terrorist is pulled in by this legislation they will deal with it, using all the subterfuge and so on available to them. We already have the powers to deal with the plotters—very strong police and surveillance powers—but this legislation is threatening people who do not fit into that category. In fact, it is threatening everybody. ASIO determines whom they are going to pick up off the street, ASIO determines whether they will have the legal representation they want, ASIO is going to determine which Australian barristers and solicitors are proscribed from taking any part in this process, and a faceless judge is going to determine whether she or he is going to go along with ASIO on this.

It is terribly wrong. I again appeal to the opposition to stop it. I appeal to the opposition to recognise that this process is far beyond the ethic of the Australian Labor Party, that this bill is rotten to the core, that this bill needs standing up against, that this bill is a backdoor concession to all the things we want to defend ourselves from—that is, terrorists and the erosion of our way of life—that this bill does not have the potential to reap the rewards that the government is touting for it, and that this bill is a serious loss for the Australian community. Surely the Labor Party cannot go all the way with Prime Minister Howard in the abrogation of the rights of Australians that is being uncovered in this committee debate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.03 a.m.)—by leave—I move opposition amendments (7), (8) and (9) on sheet 2953:

(7) Government amendment (45), subsection 34TA(2), after “satisfied”, insert “, on the basis of circumstances relating to that lawyer,.”.

(8) Government amendment (45), paragraph 34TA(2)(a), after “may”, insert “, as a real possibility,”.

(9) Government amendment (45), paragraph 34TA(2)(b), after “may” (second occurring), insert “, as a real possibility,”.

These amendments provide that any objection by ASIO to the presence of a particular lawyer is focused on the lawyer in question. I say to the committee that these particular amendments are technical in their nature but they do strengthen the operation of the ASIO bill.

When I spoke on the ASIO bill in December 2002, I stated that the opposition supported significant changes to guarantee access to legal advice. Those changes were, you may recall, that a person being questioned should have the right to legal representation of their own choice. That has been achieved. Accepting that certain lawyers might prejudice an investigation, which is something that the opposition have accepted may be the case, we have said in that circumstance, provided that the
circumstance, provided that the prescribed authority is satisfied, on application by ASIO a person could be denied a lawyer of first choice. And that has been achieved.

I do think it is important to remember that so many of these decisions that have been spoken about in recent contributions to this committee stage debate are not decisions made by ASIO; they are decisions made by the prescribed authority. Of course they may be decisions made by the prescribed authority on application to the prescribed authority by ASIO, and that is why it is so important, as the opposition has argued for such a long time, that the prescribed authority must be a person of real standing. That is why we argued so strongly that it was appropriate that judges and retired judges fulfil that very important role.

I hear the criticism that is made by Senator Brown that the prescribed is a ‘faceless judge’. They are the words that Senator Brown has used. It might be valuable for the minister to outline to the committee, as a result of important opposition amendments which go to a range of review mechanisms for these new provisions in the ASIO act, what reporting mechanisms will be made in relation to the so-called faceless judge in ASIO’s annual report to parliament. That might be useful.

As we look at all these provisions, I think we have to keep in mind those very important review mechanisms that I have spoken about at some length previously: the sunset clause, the review by the Joint Parliamentary Committee on ASIO, ASIS and DSD and the important review of these provisions by that committee, and also, of course, the enhanced reporting requirements in relation to these particular provisions in ASIO’s annual report. It is a very significant change to this bill and they are very important review mechanisms. They will, in my view, make a great deal of difference in terms of both the parliament’s and the public’s understanding of the number of times these provisions have been used in any annualised period. I do not expect it to be a significant number of occasions at all—and I do not think many in this committee would expect that either—but those statistics are important and it is important that they be provided to the public and be presented in formal reports to the parliament.

These technical amendments that I am moving regarding legal advice are important enhancements. I commend the amendments to the chamber. When these matters are being considered, it might be the will of the committee that they be dealt with separately. I might progress that issue a little later in the committee stage when attitudes to those amendments become clear. In other words, I might request to put those questions separately to the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.10 a.m.)—In relation to opposition amendments (7), (8) and (9), on behalf of the government I can say that we support opposition amendment (7), which seeks to clarify that the prescribed authority may only give a direction preventing an interview subject from contacting a particular lawyer of their choice ‘on the basis of circumstances relating to that lawyer’. That was indeed our intention in drafting the provision and, while we think it is implicit in the bill, we have no objection to making the qualification explicit to remove any doubt. The government has no problem with that amendment by the opposition, and no doubt that should be dealt with separately from the others.

We do not support opposition amendments (8) and (9), which require the prescribed authority to make an assessment of whether there is ‘a real possibility’ that, in contacting
a particular lawyer, a person involved in a terrorism offence may be alerted that the offence is being investigated or that a relevant record or thing may be destroyed, damaged or altered. The government says that the insertion of this concept of ‘a real possibility’ does not add anything to the section, which already stipulates that the prescribed authority must be satisfied of relevant conditions. The government is already proposing an arrangement for the provision of a lawyer of choice with a range of safeguards, as I have mentioned, to protect the disclosure of sensitive information. Under these arrangements, while the prescribed authority may direct that the subject may not have access to their lawyer of choice, the subject of a warrant can then choose another lawyer. But, certainly, when you look at proposed section 34TA, the situation is outlined as to the criteria that is to be exercised by the prescribed authority. To include the words ‘real possibility’ we do not believe really adds to anything. In fact, the insertion of that term could add further complication.

In relation to the Democrat amendments, Senator Greig asked me some questions. I do not think we have yet had the arguments in support of those amendments from the Democrats. I will reserve the government’s arguments on those until Senator Greig has put up his arguments for those amendments. In relation to the report that Senator Faulkner mentioned, clause 27A outlines the situation in relation to ASIO’s report. It says that ‘the report must include a statement’ and it goes through the total number of requests made under sections 34C and 34D. That is in relation to the question of the warrants which can be issued, so you have the total number of requests that have been made for these warrants and the total number of warrants that in fact are issued—because some might not be granted—that meet the requirement in paragraph 34D(2), which says:

(2) The warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request, either:

(a) require a specified person to appear before a prescribed authority for questioning under the warrant immediately after the person is notified of the issue of the warrant, or at a time specified in the warrant;

So that is the number of warrants that meet that requirement, then there is the number of hours that each person appeared before a prescribed authority for questioning—that covers the questioning arrangements—the total number of warrants that fall into 34D(2)(b), which provides for warrants which provide for people to be taken into custody and be brought before a prescribed authority and detained; the following number of hours that people appeared before the prescribed authority; and, finally, the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year. Of course we do not want to identify anyone that was questioned or brought in, and that is outlined specifically in that section.

There is no provision for mention of the prescribed authority’s identifying them but I think that is really something which you would not want to widely disseminate, for security reasons. Suffice to say that your prescribed authority has been outlined and stated by me to be a person who is a former judge—a Supreme or County or District Court judge of a state jurisdiction or the president or the deputy president of the Administrative Appeals Tribunal. People in parliament and others who want to take a close interest in this can find out who those people are but to put that in a report and to pointedly advertise who is a prescribed authority we believe is not desirable for the purposes of security. We know that in our courts there are Family Court judges and Federal Court judges and that they have been appointed.
We do not necessarily advertise in annual reports who they are or where they live. People know who they are: these prescribed authorities are drawn from a pool of people who are well known. We do not think that adding it to a report is going to add any extra aspect of scrutiny or accountability, and you have to balance that against alerting people who might have undesirable motives for knowing that. We do not think it is appropriate.

Senator BROWN (Tasmania) (11.18 a.m.)—So we have the faceless judge. So we have the judge appointed by the minister—a politically appointed judge; nobody else can appoint this person—put in control of this secret process dealing with Australians who have done no wrong and are without legal representation of their choice for extended periods of time—maybe the whole 24 hours of interrogation over a week with no legal representation at all—and the only evidence that this faceless judge has as to whether legal representation of choice should be given to this person or not comes from ASIO. There is no appeal mechanism, there is no balance of argument and there is no balancing of evidence. My submission would be that any judge who put herself or himself in this position, under this law from the government and the ALP, would be in a very invidious position indeed where the whole concept of natural justice is out the window.

I remind you, Temporary Chair, and I remind the committee that we are dealing with Australian citizens who may or may not have information—it is up to ASIO to judge. ASIO become the police, the surveillance authority, the arresting agent, the interrogator and effectively the judge, because it is only their evidence that is allowed. They judge which information comes, and which information does not come, before this disempowered faceless person—no appeal, no other point of view. It is a police state mechanism—and the opposition supports it! I know there are some amendments from the Labor Party but they do not get rid of the core problem here. Anyway, the Labor Party said it is going to keel over if the government objects to the amendments. So it is a combined government-opposition amendment to bring in this system of faceless judges, and where will it go from here?

This is an extraordinary situation. We are not dealing with known terrorists or people plotting terrorism here; we are dealing with Australians who may have information, and frontline in the sights of ASIO are going to be journalists and/or politicians because they tend to pick up information from the community at a greater rate than the average. The concern is: what is the power of this faceless person appointed by the minister of the government of the day? They are disempowered in terms of having access to the normal input that is required to make a judgment. Coming back to Mr Mark of the International Commission of Jurists, he says:

The change in the Bill allowing a “lawyer of choice” is a false gift. The lawyers will still be limited in what they may do during questioning and the Prescribed Authority—that is, the faceless judge—will still have little power to control the questioning which is before them … A retired judge is unlikely to be available in many areas of Australia and at many different times during a given week.

I ask the minister if he would be good enough to outline the powers of the judge to intervene on the questioning of this, let us say, journalist who has been brought in. I also ask the minister to say what the required qualifications of the ASIO officer are in that questioning process. Do they have to have legal qualifications? Do they have to be skilled in the norms of justice in the Australian system? Do they have to have any background at all? Or is it that just any ASIO operative who gets into this position can go
into the interrogation process? Seeing as we have this person without their legal representation and without a judge acting in a court—as is required in Canada for example—under legislation covering this territory, what are the restrictions? Are there any restrictions, short of physical violence, of the ASIO interrogator on this hapless citizen hauled in off the street, wondering what on earth has happened to them and not being told why they have been arrested and are going to be kept for seven days?

Senator Nettle (New South Wales) (11.23 a.m.)—Senator Brown has raised a range of serious questions, and I look forward to hearing the minister’s response to that and any contribution that the opposition may have with regard to their ability to support a bill that undermines the fundamental tenets of our legal system, going right back to the Magna Carta, which was mentioned in the dissenting report by Senator Brown and former Senator Cooney in relation to this legislation when it was first sent to a particular committee. In their dissenting report they pointed out that the principles that this bill seeks to undermine go right back to the Magna Carta, something that has again been raised in the debate since then.

As others said yesterday, it would be interesting to hear the views of a range of people in the opposition. Former Senator Cooney would be one of those who, I imagine, like many in the community, has perhaps given support to the opposition in the past and who would be interested to know about this proposal of the opposition to support the government’s legislation, the most draconian piece of legislation that we have seen with regard to civil liberties not just in this country but indeed going further than similar legislation brought in in other Western democracies and going further than officers of the CIA or MI5 could ever hope for. This is legislation that, when it was first drafted, went further than the Malaysian Internal Security Act with regard to restricting access to lawyers. Why is it that this legislation was passed unanimously by the caucus of the Australian Labor Party, with members saying, ‘Me too! We are prepared to support this legislation right through’?

As I mentioned when we began this debate, this is not about the government caving in to proposals put forward by the Labor Party. No, I am sorry; it is actually the opposite of that. We saw that this morning. There are examples in this legislation that relate to the sunset clause whereby the opposition came out loudly and strongly and said, ‘We want a sunset clause in this legislation.’ Yesterday afternoon when we got that bill it was not there. We do not have a sunset clause for this bill. The government, through a deal with the opposition, are proposing a sunset clause only for division 3 of this bill—for a part of this bill. That is what we are discussing here today. We are discussing why the two major parties in this chamber think it is appropriate to come together and to undermine the fundamental civil and political rights of citizens under a legal system that goes back to the Magna Carta, that has existed in Western democracies around the world. They are very important questions that we need to hear answered by those present in the chamber—by the opposition.

We did not hear those answers in the second reading debate on this bill yesterday. Senator Faulkner spoke for 20 minutes about why the Labor Party thought they had got a good deal. We did not hear from any other member of the ALP caucus as to why they thought it was appropriate for this legislation to unanimously go through and for them to jump into ‘me tooism’ with the Howard government. We did not hear from any of the ALP senators who have been involved in the Legal and Constitutional References Committee process—and not just that committee
but the joint defence committee. We did not hear from any of those people who have been involved in that process as to why they thought it was appropriate to back down on the principles that they have spoken of on each of those committees on the three occasions that this legislation has been reviewed. Each of those committees has come out and said that it is not appropriate, and that it is an abrogation of fundamental human rights. We did not hear from any of those senators. We heard about the comments of the member for Banks from a government senator who rose to read the comments that the member for Banks had made in the other place. He told the Senate that the comments from the member for Banks related to the need to ensure that we did not undermine civil and political rights in this country. It is a great shame that those comments by the member for Banks have not been adhered to in the position of the Australian Labor Party today when they come into this chamber and agree to join forces with the government in passing the most draconian legislation that we have seen. It is a great shame that those views have not been expressed in this chamber, but those views have been expressed in the community.

We have heard no opposition to this legislation going through from those members of the Australian Labor Party caucus. But we have heard the opposition to this from the community, and we will continue to hear the opposition from the Greens in this chamber. Let me inform the chamber about the comments that we have heard in the community in opposing this legislation—this deal that has been done; this so-called watered-down piece of legislation. Cameron Murphy from the Council for Civil Liberties said today in the Australian newspaper that the legislation would give ASIO the power:

... to kidnap people, hold them for a week and question them in order to fill in gaps in our intelligence files.

He continued:

We’ve criticised apartheid South Africa, Stalinist Russia, Pinochet’s Chile and countless other regimes for doing just this ... It violates everything that makes us a dignified and democratic nation.

These are the words of Cameron Murphy from the Council for Civil Liberties. These are the words that need to be heard by the opposition in this chamber. The community have been expressing outrage about this legislation since it was first introduced and proposed by the government. The community have mounted a public campaign that we have seen over months calling on the Australian Labor Party not to cave in and not to give in when it comes to defending these fundamental civil and political rights. Again in today’s Australian, the Secretary-General of the Law Council of Australia said the bill remained—and I quote:

... the most serious erosion on the rights of individuals that the parliament has seen in many years.

In the same article, the federal secretary of the Media, Entertainment and Arts Alliance, Christopher Warren, said that it would be detrimental to the daily work and goals of journalists. He said:

We’re concerned that this legislation, like so much since September 11 under the guise of fighting terror, is winding back human rights and civil liberties of journalists.

As well, today in the Fairfax press we saw comments that Fairfax had written to the Attorney-General’s Department about the draconian nature of this legislation and their concerns about the impact of this legislation on the work of journalists. But we will get back to that issue as we move on through the range of amendments that are before us today.
I would like to take the minister back to an amendment that I spoke about earlier today—government amendment (24) to this legislation, which is in the context of the limited right to access a lawyer—that the government and the opposition are proposing. I take the minister back to his comments in relation to note 3 in government amendment (24) about whether the name of the lawyer goes onto the warrant. I was heartened to hear the minister say that he did not believe that it was the intention of the legislation to list the name of the lawyer on the warrant. I recognise the difficulties that would occur from that in terms of the requirement to issue a new warrant if the name of the lawyer on the warrant were to change. Note 3 says:

A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person’s choice ...

I will read on from there because it then says:

... so the warrant must identify such a lawyer.

The minister said he did not believe we needed to list the name of the lawyer on the warrant. Can the minister then explain the meaning of that last phrase—‘so the warrant must identify such a lawyer’? We have established that a person can contact a single lawyer of their choice—at this stage of the process anyway. In terms of note 3 in government amendment (24), what is the purpose of that phrase?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.34 a.m.)—I think you need to look at note 1, which appears below subsection (4), and says, ‘The warrant may identify persons by reference to a class.’ What is intended here is that the warrant must state that the person is entitled to a warrant of choice, because the prescribed authority explains the warrant to the person when they are brought in for questioning. It stands to reason that you want to advise the person who is being questioned, or is about to be questioned, that they have available to them the choice of a lawyer. So that is why you have it in the warrant. But when you look at note 1, it really qualifies subsection (4). The whole intention is to have it contained in the warrant that you are able to have a lawyer of choice. But as to the identity of the lawyer, that is not made out or known until the person who is being questioned can make that selection.

Senator NETTLE (New South Wales) (11.35 a.m.)—I understand from the minister’s previous answer that it is impossible to list who the lawyer would be at that stage. I think the phrase ‘so the warrant must identify such a lawyer’ is ambiguous as to whether that requires the warrant to actually list the name of the lawyer. The minister is saying that it does not, and I accept that. I wonder then why we need it. Why can’t we just end note 3 with the comment: ‘contact a single lawyer of the person’s choice’? Why do we need the last phrase of note 3? To me it is somewhat ambiguous as to whether there is an intention to list the name of the lawyer.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.37 a.m.)—I will take that question on notice and, rather than hold up proceedings now, we will have a look at that and get back to Senator Nettle.

Senator BROWN (Tasmania) (11.37 a.m.)—I asked Minister Ellison earlier about the powers of the faceless judge to intervene in the questioning process of a person who has been arrested and taken into custody under the authority of ASIO. I also asked the minister to give other information about the questioning process, the credentials of the ASIO operative who would be undertaking the interrogation and the limits of the interrogation—those three things.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.37 a.m.)—In relation to the prescribed authority, we have gone over that. But I will restate it so we do not misunderstand it. The prescribed authority must be present at all times. We know the judicial standing that the prescribed authority must have. When the person first appears before a prescribed authority for questioning, the prescribed authority must explain what the warrant authorises ASIO to do, the period for which the warrant is to be in force and the possibility of facing criminal sanctions if the person does not cooperate.

The prescribed authority must explain that the person has a right to complain to the Inspector-General of Intelligence and Security in relation to ASIO and also to the Commonwealth Ombudsman in relation to the Australian Federal Police—bearing in mind that the Inspector-General of Intelligence and Security is an independently appointed statutory authority who is also present during the questioning. The prescribed authority must also advise the person that they have the right to seek a remedy from the Federal Court in relation to the warrant or their treatment under the warrant. This information must be provided when the person first appears before the prescribed authority and at least once in every 24-hour period subsequently.

The bill further requires the prescribed authority to inform a person appearing before it of the role of every person present during the questioning, including the role of the prescribed authority. It is clear, however, that in some instances it would not be appropriate to name a person present at the questioning. The amendment makes it clear that the prescribed authority must not disclose the name of a person when providing information about their role unless that person has consented to be named—and that flows from the last comment I made.

A prescribed authority may give directions under the warrant regarding the detention of the person, including permitting the person to contact another person. The directions must be consistent with the warrant, and any changes to the warrant must be approved by the minister in writing. The prescribed authority may also direct that the questioning be suspended if it is advised by the Inspector-General of Intelligence and Security that the inspector-general has a concern about the legality or the propriety of ASIO’s actions. An interpreter will be provided for a person being questioned if necessary. The bill provides that an interpreter may be provided at the request of the prescribed authority or at the request of the person being questioned.

Throughout the questioning, there is the requirement that the person must be treated with humanity and with respect for human dignity. The person must not be subjected to cruel, inhumane or degrading treatment by anyone exercising authority under the warrant or implementing or enforcing a direction of the prescribed authority. Any contravention of that carries penalties—and that stands to reason. The Director-General of ASIO must ensure that video recordings are made of a person’s appearance before a prescribed authority for questioning and any matter or thing that the prescribed authority directs to be recorded. So, at the very least, there must be a video recording.

I have mentioned the independent aspect of the Inspector-General of Intelligence and Security. That person is independently appointed by statute and will be there, in addition to the prescribed authority, to ensure that the ASIO officer carries out questioning in an appropriate form and that the treatment of the person who is being questioned is appro-
appropriate. So there will be two people there, looking out for the integrity of the process.

Senator Brown asked about the ASIO officer concerned. The ASIO officer does not have to have any legal training or background. We argue that the situation is covered by the presence of the inspector-general, who is a much more senior person, has been independently appointed by statute and has oversight of ASIO’s functions and behaviour. The inspector-general will be in attendance, and it will be video recorded. The prescribed authority has all the powers I have mentioned and also has power to stop questioning. So there are extensive safeguards. The person will be advised as to what is in the warrant, one aspect of which we have just covered—there must be a lawyer of choice. So this is a comprehensive package in relation to the questioning regime.

Senator BROWN (Tasmania) (11.43 a.m.)—We have not established that there will be a lawyer of choice at all; we have established that a lawyer of choice can be denied. So that is very problematic, and the minister is quite wrong to make an assertion like that. He did, however, raise the possibility that the inspector-general could intervene if the inspector-general believed there were some legal reasons why the questioning should be stopped. Under those circumstances, I ask the minister: will the person being subjected to the interrogation be told the reasons for the intervention? Will their legal representative be told about it? What access will the person whose legal rights may have been infringed—even under this situation, where it seems basic legal rights will be suspended in the main—have to seek redress, or is that going to remain secret, too? I go back and ask the minister: what authority does the faceless judge have to intervene on the questioning process?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.44 a.m.)—What you have to remember is that there is provision for a lawyer to be present throughout. In my previous answer I outlined that the inspector-general will be there, the prescribed authority will be there, and we have provision for a lawyer to be present. Senator Brown is asking if the inspector-general intervenes—and I take it Senator Brown’s question is if the inspector-general intervenes in a way that stops questioning or limits ASIO’s actions—will the person who is being questioned be informed of those reasons.

I think it should be fairly obvious, if there is an intervention from the inspector-general, why that is being done. I fail to see the reason for Senator Brown’s question. If the inspector-general intervenes and says, ‘I think we should stop here,’ it would be fairly obvious why that is being done. He would be saying to the prescribed authority: ‘I think we should stop. I think things have gone too far and we should have a break.’ He is making it perfectly obvious there why he is intervening. The person being questioned and his lawyer there would understand exactly what the story is. I cannot see where the mischief is in the issue that Senator Brown has raised.

Senator BROWN (Tasmania) (11.46 a.m.)—The minister is not being a faithful to the legislation that he has brought into this committee. The person does not have a lawyer there under a range of circumstances including those where the interrogation has begun before the lawyer arrives. We have established that the person may quite well, under this legislation, never have a lawyer there. So it is very important, if there is an intervention because a person’s rights even under this legislation are being infringed, that the person be acquainted with those reasons. The minister says that it will be per-
fectly obvious. No, it will not. Where is the provision here that the inspector-general must before the witness tell the faceless judge that the person is having her or his rights infringed? It is not there.

Again, I say to the opposition: how can you go along with this legislation which so grievously takes away the rights of individuals to even know that they have been legally transgressed under this process? I come back to the minister again regarding the faceless judge and ask: what are the powers of this person? Under what provisions of this legislation can the faceless judge go beyond being a witness to the process and become an intervener? Does the faceless judge have the power to intervene if she or he thinks that legal propriety is being infringed? Indeed, does the faceless judge have the requirement that they intervene if the person’s human rights, their rights to dignity and so on, are being transgressed by the unqualified ASIO officer who is undertaking the interrogation, putting the person who has been arrested under cruel, degrading and inhumane interrogation? You do not have to be physically assaulting a person to be subjecting them to a cruel and degrading process. What are the powers in this legislation for this faceless judge to intervene in that process? Indeed, what are the requirements? The faceless judge is there, I submit, as a disempowered witness—and Mr Mark from the International Commission of Jurists worries about this. What are the powers and obligations of that judge to intervene in this process? Can the minister be explicit?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.49 a.m.)—I understand that the prescribed authority has the power to intervene. You have got these requirements there that the person has to be treated humanely, that there is no cruelty or degrading treatment. I have spoken extensively about the powers of the prescribed authority. But in addition to that you have got other people there like the inspector-general, and you have got the question of a lawyer being present. There are legal avenues available, which I mentioned, that a lawyer has under section 34U, which spells out the involvement of lawyers. I mentioned the involvement of the inspector-general and the role of the prescribed authority. The prescribed authority has the ability to intervene if things are being dealt with inappropriately and, as I understand it, to suspend questioning.

Senator BROWN (Tasmania) (11.50 a.m.)—Does the prescribed authority, this faceless judge, have an obligation to do so?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.51 a.m.)—There is a requirement that the person has to be treated with humanity and respect for human dignity and there should be no degradation, as I mentioned. All those people concerned would have an obligation under the act to see that carried out. It follows that the inspector-general, ASIO officers and the prescribed authority would have that obligation. I am not aware of anything which says the prescribed authority has to do that, but it is implied from the act that the person has to be treated in that manner, and contravention of that by an ASIO officer is an offence. But certainly the prescribed authority is charged with oversighting the questioning. Where that is a requirement that the person be treated in that manner, the person who is oversighting has a duty to follow that. I do not think it needs to be spelled out; I think it is there.

Senator BROWN (Tasmania) (11.52 a.m.)—Under 34SA, ‘Status of issuing authorities and prescribed authorities’, it says:

(1) An issuing authority or prescribed authority has, in the performance of his or her duties under this Division, the same pro-
tection and immunity as a Justice of the High Court.

So this is talking about the immunity and protection of the faceless judge, not the witness. It goes on to say:

(2) If a person who is a member of a court created by the Parliament has under this Division a function, power or duty that is neither judicial nor incidental to a judicial function or power, the person has the function, power or duty in a personal capacity and not as a court or a member of a court.

Does that not remove from the faceless judge the duty to ensure that a person is not subjected to an infringement of their basic rights in this situation which is set up to remove basic rights from that Australian citizen? I do not agree with the minister. I think the legislation, if it means that the faceless judge is there to ensure that even under these extraordinary situations what legal rights are left are protected and that a person cannot be subjected, for example, to cruel and unusual interrogation, should say so. But it does not. The implication is that that is a requirement of the interrogator—this unqualified ASIO operative—and that the inspector-general can step in if he or she thinks that their own officer might be crossing the line. What an extraordinary situation! Meanwhile the faceless judge stands by, if not impotent then not required to intervene at all. That is the situation. That is what this legislation leaves as the situation. And the minister uses the word ‘implication’. He says there is an implication in this legislation that the faceless judge might intervene. I have asked the minister to say at what stage the faceless judge can intervene to protect the person being interrogated. He has not outlined that at all except to say, ‘At the stage where you get to cruel and unusual treatment.’ That is way short of Australian justice. I keep coming back to it.

I am particularly interested in the situation where a person is not only innocent but they are known to be innocent and they do not have legal representation. Because, at least at the start of the interrogation period, one can expect that that is going to be not only the exception but the norm. The judge that is involved is, if not disempowered, certainly not required to look after that person’s interests. ‘There is an implication,’ says the minister. That is not how you write legislation. You write legislation to say what you mean. You spell it out. That is an obligation on the legislature and the executive which in this case has written this piece of legislation, and it is not spelt out here. I ask the minister whether he would be happy with an amendment—because I will write it in—that would require the judge to uphold the rights of the person being interrogated.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.56 a.m.)—It is covered in the bill, which states that people who are exercising authority under the warrant need to abide by the provisions of the warrant and that that is inclusive of the prescribed authority. In relation to the status of issuing authorities and prescribed authorities, I need to put on the record that 34SA is a standard protection and immunity offered to judges of the High Court. I am subject to correction on this, but I believe it was a protection which was spelt out in the legislation. It does not exempt them from the criminal law either. Judges have been charged with criminal actions. In no way is a judge exempt from criminal law. This section does not exempt
any prescribed authority from any crime and is there for a civil purpose so that they can go about their job without fear or favour in relation to a civil suit, but it will not stop any judicial review of their decision—that appeal remains. In relation to the person exercising authority under the warrant, any exercise of that authority is caught by that provision. I refer Senator Brown to that provision. It brings them within that ambit. So there is no implication there; it is spelt out very clearly.

Senator BROWN (Tasmania) (11.58 a.m.)—So the minister would be happy with an amendment which spells out that the prescribed authority must protect the interests, including the legal interests, of the person being interrogated?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.58 a.m.)—For the reasons I have outlined, there is provision in the bill for that, that is not needed. The question of the person exercising authority under the warrant is catered for. We say very clearly that that is covered. There is no need for an amendment.

Senator NETTLE (New South Wales) (11.59 a.m.)—I have questions to ask the minister that relate to the presence of the inspector-general. When I entered the chamber again a little while ago I heard the minister saying that the inspector-general would be present during the interrogation. I could have missed something, but section 34F(9)(c) of the legislation says:

(c) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security or the Ombudsman to make a complaint orally under a section mentioned in paragraph (b) if the person requests them.

So that part of the legislation explains that the person being detained must be given facilities by which they can contact the Inspector-General of Intelligence and Security.

Moving to another part of the bill, in 34Q we again have reference to providing information to the inspector-general. It reads:

The Director-General must, as soon as practicable, give the following to the Inspector-General of Intelligence and Security …

And then it lists a raft of things, such as a copy of the warrant, video recordings, statements relating to a range of different matters and one other requirement. To me, these all read as saying, ‘We must tell the inspector-general as soon as practicable what is going on, and we must allow the person being interrogated to contact the inspector-general.’ None of that reads to me as, ‘The inspector-general is present for the interrogation.’ Please point out for me, if I am wrong, where in the act it says that the inspector-general is present for the interrogation. I do not know if the inspector-general is happy to sit around for the week of questioning that is going to result from this bill. I would question whether in fact that was the most efficient use of the time of the Inspector-General of Intelligence and Security. Perhaps the minister can point out for me where in the bill it stipulates that, as he said, the inspector-general is present for those interrogations. Certainly I am finding that we must tell the inspector-general what is going on, but not that he must be there for the interrogation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.01 p.m.)—I will take that question on notice, albeit short notice. We will get the provision that deals with that. Still looking at Senator Brown’s question of a person committing an offence in relation to exercising authority under the warrant, the bill says a person commits an offence if:

(a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D ...
It goes on to say that the person exercises the authority or purports to exercise it and contravenes a condition of that. The warrant under 34D is simply a referral to a warrant for questioning, as I recall. Yes—’Person taken into custody under warrant to be immediately brought before prescribed authority’.

Section 24 of the act as it stands, under ‘Exercise of authority under warrants’, says:

(1) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may, by signed writing, approve officers and employees of the Organisation, and other people, as people authorised to exercise, on behalf of the Organisation, the authority conferred by relevant warrants or relevant device recovery provisions.

(2) The authority conferred by a relevant warrant ... may be exercised on behalf of the Organisation only by the Director-General or an officer, employee or other person approved under subsection (1).

So, under subsection (1), you are dealing with the director-general, a senior officer of the organisation and other people as people authorised to exercise. The question is: is that wide enough to encompass the prescribed authority? I will get further advice on that and advise the committee. I know that Senator Brown’s next question will be: ‘You’ve got this section 24 of the ASIO Act. It talks about people who are in the organisation. The prescribed authority is not a person in the organisation. Can it be some other person mentioned in that section who deals with the warrant?’ We will get back to Senator Brown on that point.

Regarding Senator Nettle’s question in relation to the inspector-general, I refer to 34HAB, which is entitled ‘Inspector-General of Intelligence and Security may be present at questioning or taking into custody’. It states:

To avoid doubt, for the purposes of performing functions under the Inspector-General of Intelligence and Security Act 1986, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning or taking into custody of a person under this Division.

The question was: is it mandatory for the inspector-general to be present? Is the word ‘may’ to be read as ‘shall’, which it sometimes is? I understand that the situation is that that is not mandatory, but the person has a right to complain to the IGIS during proceedings if there is a problem. As I outlined earlier, the warrant says that the prescribed authority has to read to the person all the conditions of the warrant—what the warrant is about. Part of that is that they have a right to complain to the inspector-general. For my part, I think that the inspector-general could have no better function. Senator Nettle said that the inspector-general would have other things to do. I could think of nothing else more important than being present. If the inspector-general were not present, I think they would have to give very good reasons as to why they were not present during the exercise of such very strong powers.

Senator NETTLE (New South Wales) (12.07 p.m.)—I thank the minister for clarifying that, when he stated earlier to the Senate that the inspector-general would be present, that was wrong. He has now clarified that, his previous statement being wrong, there is a capacity under which the inspector-general, or a representative or an employee working with the inspector-general, can be—may be—present at the questioning. It is pertinent for us to note, in the context of the answers that we are getting from the minister, that he has now corrected his mistake. We now all clearly understand that the inspector-general may be, or can be, present. I welcome the minister’s comments that he believes that it would be an appropriate role.
for the inspector-general to play. I thank the minister for his comments, for clarifying that for us and for correcting the mistake and saying that the inspector-general can or may be present during questioning.

Senator BROWN (Tasmania) (12.08 p.m.)—This of course means—and Senator Nettle is quite right—that the inspector-general can be absent and that the minister was wrong earlier. The person’s lawyer can be absent or not appointed. We also find that the faceless judge adjudicating over this one-sided process, where information comes from ASIO but no counterinformation is allowed, for example, in the selection of a lawyer, is not bound to ensure the rights of the person appearing before them. I foreshadow new section 34SA No.3 which states that:

A prescribed authority shall ensure that the legal and other rights of a person brought before that prescribed authority are upheld throughout.

I note that the minister has his people looking at the failure of the ASIO Act as it stands to cover prescribed authorities and therefore to put an obligation on them. I would be interested to see whether the minister can come back with an amendment which would serve to confuse things even more. It is very clear at the moment that the prescribed authority has a duty under this legislation to see that the questioning is carried out appropriately. That is very clear. Under the role of the prescribed authority I have listed what that person must do. That sets out extensively what the prescribed authority has to attend to and what has to be done. I fail to see where Senator Brown thinks that that is deficient.

Senator BROWN (Tasmania) (12.11 p.m.)—I will be moving my amendment because it is important for the minister to recognise that if what he says is so he should have no objection to the amendment. I am not at all convinced that the judge who is overseeing or adjudicating on this secret interrogation has obligations to look after the rights of the person brought there to be interrogated. I have asked the minister to specify the boundary that is drawn in the interrogation by the ASIO officer, who can be thoroughly unqualified in such matters, and the minister said that the inspector-general will be there and will intervene if there is legal trespass. Senator Nettle has discovered that the inspector-general can be absent. With a number of arrests being made around Australia at the same time of people whom ASIO wants information from, you can imagine that it is not going to be possible for the inspector-general to be there. In fact, it will clearly be the case that the watchdog—if it is a watchdog—will be there in ASIO’s interests, not in the interests of the person being interrogated. It will be the norm that the judge who is overseeing this process has been made clear. The safeguards that I have mentioned are there. You would not have a prescribed authority overseeing a regime of questioning which was inhumane or degrading. This bill places an onus on those concerned to see that that is carried out. We really cannot see any reason to incorporate an amendment which would serve to confuse things even more.
judge who is overseeing this process will not intervene.

With regard to cruel and unusual treatment, what is to prevent ASIO from going into the personal details of a person who is being interrogated to ask about their relationships, sexual activity, family relationships or personal affairs? I would say that that could be quite a degrading process for the persons involved. Where is the check on that? There is a check on that in the open court system, but for the first time we are establishing a closed court system here—a secret, behind the doors court system where the rules are suspended. I want to know from the minister where the line is drawn. I believe—and the Greens believe—that the line has been removed and that anything short of a physical affront on the person is, at some time or another, going to be entertained. There will not necessarily be an effective watchdog there.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.14 p.m.)—Of course, there are protocols which set standards for the questioning to be carried out. As I understand it, those protocols will be tabled in both houses of parliament. Those protocols will be settled after careful consideration. A warrant cannot be issued until the protocol has been settled, so nothing can happen until the protocols are in place.

In relation to the question about relationships, relationships may be relevant. A relationship might be the very thing that ASIO wants to make inquiries about. There is nothing untoward about that. It may be that the person who is being questioned does have a personal relationship with a person who is suspected of being a terrorist—a very close relationship. I would consider that to be entirely appropriate subject matter for questioning, because you would want to know how much they know. Do they know whether a person they are living with is planning to bomb an embassy? That is the sort of thing that may very well be the subject of questioning. Senator Brown is trying to say there is some problem with bringing in personal relationships or something of that sort. Unfortunately, when you are gathering intelligence, that could be the very subject matter of the questioning.

To maintain standards, we of course have protocols. The Parliamentary Joint Committee on ASIO, ASIS and DSD recommended that the bill be amended to provide for the development of protocols that would govern the custody, detention and interview process under the bill. The government anticipated that such protocols would be developed as a matter of course, and, to put the matter beyond doubt, we have included the development of protocols as a requirement of the bill. The bill requires the Attorney-General to be satisfied that written procedures for the custody, detention and interview of persons under a warrant are in place before consent can be given to the director-general to seek a warrant.

The written statement must be developed by the Director-General of Security in consultation with the Inspector-General of Intelligence and Security and the Commissioner of the Australian Federal Police. The statement must be approved by the Attorney-General, presented to each house of parliament and outlined in a briefing to the Parliamentary Joint Committee on ASIO, ASIS and DSD. In response to recommendations 22 and 23 of the Senate Legal and Constitutional References Committee’s report on the bill, the government is willing to amend the bill to set out in greater detail the matters that are to be included in the written statements. I think that provides the transparency and scrutiny of the standards which are to be set. That is something we have taken up as a result of the recommendation of a parliamentary committee.
The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Senator Brown, I think you mentioned that you wished to move an amendment. That matter is not directly before the chair at the moment. My understanding is that it will be slotted in later.

Senator BROWN (Tasmania) (12.17 p.m.)—Thank you; I expected that would be the case. The problem is that the protocols are not here. I ask the minister: will he table the protocols? The government is asking us to deal with legislation—which is going to inevitably have innocent Australians in an invidious position. They are being interrogated in secret without their normal support base or even legal representation.

The minister says it is quite all right to ask about relationships. I understand that that is a part of intelligence gathering. But, you see, you then immediately move on to the situation where ASIO reveals to this person held in secret without a legal representative that they are aware of an extramarital affair or that they are aware of some other matter that is highly sensitive to that person. What is to stop this becoming a blackmail situation? What do you do with a journalist, for example, or a politician who is caught in that situation and who suddenly realises that they have been watched and that ASIO knows about personal affairs they would rather did not become public and who is being required to produce information—tapes, interviews, names or addresses—which they feel bound not to produce? Suddenly, leverage is being put on them through the production of personal information about them which can lead them instantly into a blackmail situation, remembering that the usual protections that a person has in an open court of law are suspended here. What is to prevent that from happening?

I ask the minister to table the protocols now so that we can see what they say. It is totally unsatisfactory that the Senate be required to deal with a piece of legislation—and I reiterate that we got the government amendments yesterday, on the eve of this debate—without the protocols being available. We are being quite deliberately manipulated by the government, with the compliance of the opposition now, into a process which I think is serial entrapment of the parliament, because we do not have the information to assure us that this legislation is going to do what the minister says it will do. ‘Wait for the protocols,’ he said. No, in the absence of protocols we need an assurance that people’s rights are going to be upheld, that people are not going to be blackmailed, that they are not going to be traduced in secret and compromised.

We are dealing with secret police matters here. That is what they are. We as a parliament simply cannot abrogate our obligation to citizens by being told that there will be a protocol further down the line. Everything fails in this situation. Everything fails as far as the citizen is concerned. I want to have it from the minister: if a blackmail situation arises in interrogation, is the faceless judge required to intervene to prevent that happening?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.21 p.m.)—There are provisions, as I said, in relation to the contravention of the standards that I have mentioned, and they are that a person should be treated with humanity and dignity and also that they should not be degraded. In that, blackmail is certainly an aspect. What Senator Brown is really talking about is coercion, because that is what blackmail is after all—an attempt at coercion. So to coerce a witness or to coerce anyone is basically an aspect of duress, which is something that is totally prohibited
in this regime of questioning. If Senator Brown needs that to be restated, then I will do so, but I have certainly outlined what is required in the questioning, and that is that there have to be standards and breaches of those standards will attract a penalty.

I will refer to the bill again: 34NB is the subsection that deals with the question of contravention, and it states very clearly that a person who contravenes any of those measures or those requirements is liable to imprisonment for two years. If someone is coerced, that would be a breach, and blackmail constitutes a coercion, as would any other aspect of duress, such as a threat: ‘If you do not tell me this, I will harm your family,’ or, ‘If you do not tell me this, I will expose you in relation to various matters.’ That is not an allowable form of questioning. It is not allowed for in any shape or form in this bill. Any person who carried out that sort of questioning would be in breach of this bill.

**Senator Brown (Tasmania)** (12.24 p.m.)—I disagree. In a questioning process, where there is an extramarital relationship—let us settle on that, for example—and where an interrogator brings up this matter with, let us say, a journalist who is being interrogated and says, ‘You have had a relationship with such as such person,’ and they can state times and places, and then they get on with the questioning, you cannot tell me that that person is not immediately put under enormous coercion to comply if they do not want that matter revealed. There does not have to be any threat involved; it is just a revealing of information that ASIO has on such a person.

I reiterate, we are moving into a secret police situation here. It is not open to the norms of protecting innocent people that we have in our courts, and there is going to be creative questioning. We do not have torture in our country, but we do have the ability, under these circumstances, for people to be put through a different form of torture—that is, things that they do not want to be revealed to be brought up in front of them as being fact. Nothing has to be said but the very fact that ASIO is holding that information coerces that person. They have got no legal representation, and the checks and balances that we would expect would help them in that situation are gone. You cannot tell me that that is not going to coerce that person to bring forward information that ASIO wants. Of course it will.

You can imagine much worse combinations of pressure. Interrogation in this situation is about pressuring the person to give information. As Mr Mark has said—and I quoted him earlier—what is likely to happen here is that people who are innocent are going to be put under extraordinary duress. The terrorists are not going to worry about it. But I am here defending the Australian citizen who gets caught up in this awful situation and I say to the minister and to the opposition, yes, people will be put under duress here and they will be subject to degrading treatment. It is going to happen because the defence of the usual system of law is not there and that is why we oppose it. It is part of the suite of reasons why we oppose this legislation. Mind you, if what the minister says is true, that the prescribed authority is there to look after the rights of people, then my amendment, which says ‘this faceless judge shall ensure that the legal and other rights of the person brought before that prescribed authority are upheld throughout’ becomes of itself acceptable and in no way deniable.

**Senator Faulkner (New South Wales—Leader of the Opposition in the Senate)** (12.28 p.m.)—Senator Brown makes an important point and says to the committee that he is here defending those who will be caught up in the new provisions of this bill,
and I think that is to be acknowledged. I am here to do the same thing, too. I am going to defend those people and ensure that their rights and safeguards are appropriate. I am also going to defend those people who are at risk from terrorist attacks. I am going to make sure that all Australians are defended: those whom ASIO want to question, those at risk from a terrorist attack—all Australians.

I think we now have to put this debate into some sort of context. Terrorism potentially brings together, in one criminal act, the most serious imaginable offences under Australian law. Look at what terrorism involves—mass murder. It involves, possibly, the bombing of public buildings. It involves interfering with public utilities—water, gas and electricity systems, for example. It involves the hijacking of planes or other methods of transport.

We know now about New York, 11 September 2001. We know about Bali, 12 October 2002. These are the issues that this parliament has to give consideration to—the rights and safeguards and freedoms and liberties of people who are being questioned by ASIO, and the rights and safeguards and freedoms and liberties of all Australians and, for that matter, people who are at risk of terrorist attack around the globe. I do not forget what the intention, aims and objectives of terrorists are. Do not forget: terrorists try to achieve their objectives—often, as we know, their political objectives—by the most heinous acts and the most extreme violence.

So we ought not kid ourselves in this debate that the issues before us are not serious. These are difficult times. And the responsibility of this parliament and this Senate chamber is to get the balance right in responding to those challenges, and it has not been easy. It has been a tortuous process to try and achieve that. The ASIO bill was first before this parliament 15 months ago. The ASIO bill has been subject to the most exhaustive scrutiny by the Senate’s committee system and joint parliamentary committees of this parliament. I believe that those who participated in those inquiries, those who produced what were scathing reports on the legislation that was introduced into this parliament, had worked very hard to try and ensure we got the balance right.

But I want to be absolutely clear. I do not resile from this fundamental point at all and I do not want anyone in this chamber or outside to misunderstand. I do support ASIO having enhanced powers to deal with terrorism, and so does the Australian Labor Party. We have always said it and we do not say it lightly. We actually believe it. We want legislation to pass to ensure that there are appropriate new powers in this environment to deal with the serious, real threat of terrorism. So we have always taken the view that sensible enhancement to ASIO’s powers is a responsible thing for this parliament to consider and enact, and a responsible thing for a government or an opposition—or, for that matter, anyone on the crossbenches—to give proper consideration to.

The balance is difficult to achieve but there is a requirement for an enhancement of ASIO’s powers so that they can question people to gather intelligence in relation to potential terrorist acts. Our starting point with these bills, from the opposition’s perspective, is to ensure that we strike the right balance—the right balance between taking effective measures against terrorists and preserving the democratic freedoms that Australians and Australia hold dear. They are the sort of democratic freedoms that fundamentally are attacked by those who engage in terrorist acts.

There has been an awful lot of disinformation in the public debate. Some, I think, are still debating the worst drafted, most appalling piece of legislation that I suspect we
have ever seen introduced into the Australian parliament—a bill that was introduced some 15 months ago. Even in today’s newspapers I see people talking about that proposed legislation. For example, there is the statement of Mr Cameron Murphy from the Council for Civil Liberties that the ASIO bill will allow kidnapping. How grossly irresponsible those statements are. The truth is that now, thanks to this parliament’s committee system and thanks to the non-government majority in this chamber, a person being questioned by ASIO will have access to a lawyer. A person being questioned by ASIO will have that questioning conducted before a high-level judicial authority. If they are 16- to 18-year-olds, their parent, guardian or someone else whom they nominate can be present also. The Inspector-General of Intelligence and Security has the ability to stop the questioning. So much, of course, does depend on the authority and capacity of the prescribed authority in this instance.

But let us not debate the measures in the old ASIO bill. Let us look at what is currently before the parliament. It is a radically different bill with radically different provisions. In the first ASIO bill that was introduced in his parliament there was no access to legal advice—none at all. Now there is access to a lawyer of choice and there are safeguards to protect security information, but I have always said this and I am always going to defend the situation where questioning by ASIO can commence without a lawyer if there is a risk to national security. If the issue on one side of the balance is that a person being questioned by ASIO has information which might stop a terrorist event occurring and that questioning should start and the issue on the other side of the balance is that a person should have a right to a lawyer—which is a very important principle and one which the opposition holds dear—that questioning should not start until a lawyer is present, it is a no-brainer. Of course you have to start the questioning in those sorts of circumstances. Of course there is a greater principle and an obligation on all of us.

When this bill was introduced there was no age limit on who could be questioned by ASIO. There was not only no age limit but the only limit that I am aware of was that no-one under the age of 10 years could be strip searched. Now the government has moved to a position in relation to children where 16- to 18-year-olds will be subject to the provision of this bill, but only if they are suspects—not non-suspects but suspects. That is a radically different proposal that is now before the parliament. In relation to the supervision of this questioning regime, previously the government had a proposal where federal magistrates or AAT members would be the prescribed authority. We insisted on senior judicial officers, retired or current judges, or president or deputy president of the AAT. That is appropriate too because the responsibility and powers of the prescribed authority are so great.

No-one has mentioned the protocols in this debate, because there were no protocols when this bill was introduced into the parliament, none whatsoever. So many of the protections that we speak of are contained in those protocols. I am pleased that those protocols will be tabled in the parliament and will be a public document. There was no sunset clause when the bill was introduced. Now there is a three-year sunset clause and a range of other review mechanisms, including the Joint Parliamentary Committee on ASIO, ASIS and DSD reviewing the legislation where there is the reporting mechanisms. Frankly, the government should accept this issue about personal searches. Of course that should be thrown into the sunset clause to re-examine it in three years and review if required. I accept the point that is made in relation to that issue—not the whole kit and ca-
boodle but that issue can just be dealt with, and ought to be dealt with, quickly. The review mechanisms are important, now with the detailed reporting on the number of warrants, questioning, hours and, of course, the review by the parliamentary committee.

We have the broad issue in relation to the detention or questioning period. Where did we start? We started with the potentially indefinite incommunicado detention of non-suspects if ASIO believed they could provide intelligence in relation to a terrorism offence. Where do we find ourselves now? The position that this Senate adopted of custody for up to 20 hours questioning has been in large measure accepted by the government. We said four plus eight plus eight hours. The government now says eight plus eight plus eight hours. It says over a seven-day period. The Attorney-General says he cannot imagine questioning going for that period. We would want to see that seven-day period reduced and we will move amendments to ensure that occurs. But, again, it is a radically different proposal to the one we saw. The challenge for all of us in this committee is to get the balance right. It is not easy and it has not been easy, but I believe that the outcome has been a triumph of Senate accountability and a triumph for this chamber as a house of review. We do have a massive and radically different piece of legislation before us. We are still tinkering with it, as we should, but after we have done that we will have no alternative but to act in Australia’s interests and pass it.

Senator BROWN (Tasmania) (12.43 p.m.)—What a performance from the spokesperson from the ALP, who this morning has serially failed to get up to defend the indefensible clauses in this bill but who gets into a general peroration which would do Mr Howard proud. This is government stuff. That is the best defence of the government that I have heard today. This is the ALP becoming part of the government. Senator Faulkner says that, thanks to the non-government majority in the chamber, we have got this bill. Wrong! This is a government-ALP fix to take away the rights of Australians, to put innocent Australians into the hands of secret police, to give those secret police powers that have never been seen in this country before and to move court proceedings into secret court proceedings with faceless judges with people without their rights, including the right to access a lawyer. That is Labor Party policy and that is government policy, but the Greens are going to stand against that happening in this country. Hundreds of years of earned rights, which have stood through world wars and conflagration and which people have fought for, are being eroded by the Labor Party abetting the government in this legislation. The Greens stand in defence of those rights. This is a backdoor concession to terrorism. This is a whittling away unnecessarily of the rights of Australians by the Labor Party moving serially to accommodate this neoconservative Howard government that we have in this country today. Where is the Labor Party’s time-honoured support for the average Australian’s rights?

Progress reported.

MATTERS OF PUBLIC INTEREST

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

Queensland Government

Senator SANTORO (Queensland) (12.45 p.m.)—When the Queensland Treasurer brought down the state’s 2003-04 budget on 3 June, he said:

The Beattie Government has a clear vision for Queensland and a clear set of priorities. If only that were true! In fact, as the budget shows, and as reaction to it from business, community groups, the state’s own public
service and other interested parties clearly demonstrates, it isn’t true. Under Labor, the party for robbing Peter to pay Paul, the vision is looking through a glass darkly. It should not be so but it is. Queensland is the first state to begin to benefit from the strong positive flow of GST dollars—the growth tax that A New Tax System provides for the states and territories under the forward-looking and innovative Howard-Costello federal government—but I will talk about the volume of GST revenue flows to Queensland shortly. Indeed, there is a great inflow of Commonwealth dollars—dollars collected by the Commonwealth, which takes out all of the political pain, and given to Queensland, which takes absolutely no pain, political or otherwise. Yet the Beattie government, while singing its own praises—and it is very, very good at doing that—is forever crying poor. It is forever saying that it has been dudded by the Commonwealth. It is a government that has always got an excuse for failure, and it is no surprise that it always seems to be someone else’s fault.

There is no doubt that Queensland is still in the box seat as far as Australia’s state economies are concerned. Its balance sheet is without question the strongest in the country, and that is good news for Queenslanders. But if Queensland is the economic engine room of Australia—and it is, with growth rates that are the envy of other states and a bottom line that is still, because of previous coalition governments’ efforts, remarkably healthy—it is also an engine room that the Beattie Labor government is lubricating with a potentially dangerous brand of snake oil. It continues to proclaim Queensland’s status as a low-tax state. For anyone interested in looking up this claim—and honourable senators opposite can see how fair I am; I even direct you to where that boastful claim can be found—it can be found on page 71 of Queensland Budget Paper No. 2. Never let it be said that I do not strike a balance in speeches such as this! The Beattie Labor government tells us so because Grants Commission figures show Queensland’s tax effort at an index level of 85.7, which is lower than that of other Australian states, but it does not tend to remark very often that, as is clear from page 70 of Budget Paper No. 2, the tax effort by Queenslanders has risen by some five per cent in real terms since 1999-2000. Most of this increase in the state’s tax burden seems to have been by sleight of hand under cover of the federal addition of the GST and the belief that ordinary Queenslanders would not notice it.

The Queensland budget papers are interesting in another area. Table 1.2 on page 5 of Budget Paper No. 3 shows that it is definitely the case that in the 2003-04 budget the Queensland government has increased capital works expenditure from $4.8 billion this year to $5.2 billion next year. Again, I do not mind stating that for the public record. However, there is some very creative accounting going on within those figures—along with, I would suggest to honourable senators opposite, some daylight robbery. The table also shows that this improvement in vital spending has been financed by putting Queensland government owned corporations more into debt. I repeat: GOCs are going into debt to fund this extra infrastructure expenditure. Borrowings rise from $549 million this year to $1.351 billion next year. That is a massive increase. Even a casual observer might find it remarkable that the Queensland government is, at the same time, increasing both the dividends it takes from its GOCs and the debts that those businesses have to carry. This is a level of financial engineering on a par with that previously associated with Enron, and I say that with regret and after much reflection.

The Queensland government can only do this because the borrowings for the GOCs
are done by the Queensland Treasury Corporation using its AAA rated debt. That is the only reason why they can lift borrowings out of GOCs from $549 million this year to $1.351 billion next year, a massive increase loading GOCs up with debt. If these corporations have to borrow or are regarded by the financial sector as having to borrow in their own right then, given their reduced cash flow because of enforced dividends to the government and given their increasing debt ratios, their debt would increasingly be regarded as junk—nothing else but pure and simple junk. In other words, Beattie Labor is financing capital works expenditure by putting the commercial future of public businesses at risk or at least under pressure that they do not need, do not deserve and indeed should not have to bear.

As a result of the Treasurer’s raids on their funds, GOC dividend payments are expected to slump next year to $631 million. Yet, according to the government, these trading enterprises were feeling so generous that they all but rang up and offered the money. The stories that are coming back to people like me and to members of the state opposition in Queensland are just incredible, almost too incredible to believe, but they are true. Pressure is being put on GOCs to cough up dividends and to then cough up income derived by them going into debt—and that is long-term debt, debt that will impact on GOCs’ future dividends and cash flows. I ask honourable senators: how sensible is this as government policy? How good is it from an economic manager’s point of view? I can tell the Beattie government what the answers to those two questions are: it is not sensible and it is indeed not good.

The Beattie government says that it is all about delivery. It is not. If the delivery of essential services was good, one could almost—and I am not saying so—say that some borrowing is warranted given growth factors built in and given the fact that we are delivering well. But I will talk about delivery because it is not about delivery of essential services in Queensland; it is all about non-delivery of essential services by the Beattie Labor government.

Queensland’s unemployment rate is stuck on seven per cent and the state government expects no improvement over the year. That is a full two per cent higher than the five per cent Premier Beattie promised the electorate he would deliver many years ago. He has had five years and he has not delivered. What he has delivered is the country’s most regressive industrial relations regime, one that continues to mandate, and protect, big union power and control. What Premier Beattie does not seem to realise—but what many other sections of the Labor Party and the union movement have realised—is that those days of legislated union monopoly and control are over. But that is not realised by the Queensland government, headed by the former general secretary of the stationmasters union.

Delivering services is the job of state governments—basically, it is the only job of state governments these days and they openly admit that. My honourable colleague Senator Ludwig is shaking his head, but it is true. The Beattie government have been falling down even on that job. They are not only demonstrating themselves to be economic vandals but also falling down on the job of essential service delivery. They are failing to provide funding to support the real call Queensland makes on the public hospital system because of the regional and decentralised nature of the state. Last year, public hospital emergency departments in Queensland failed to meet Queensland Health standards in four of the five categories. Fewer and fewer Queensland children are seeing the school dentist—last year 320,000 did so, well below the Queensland Health target of 330,000 to 350,000.
Senator McLucas—What does the Commonwealth pay to the states for dentistry?

Senator Santoro—I hear my colleague Senator McLucas. Let us talk about Cairns.

The Acting Deputy President (Senator Bolkus)—Order!

Senator Santoro—Through you, Mr Acting Deputy President.

The Acting Deputy President—It will have to be directly to me rather than through me, Senator Santoro.

Senator Santoro—To you, Mr Acting Deputy President, of course. I can inform you as to what is happening in North Queensland with the mental health crisis, which again has been ignored in the latest Beattie budget. The budget, for the information of honourable members, failed to boost mental health funding in North Queensland. The Beattie government’s latest budget clearly fails to provide for extra mental health funding despite the recent resignation of the Cairns Base Hospital Director of Integrated Mental Health Program, Dr Keith Muir, after he was assaulted by a forensic mental health patient. I would like Senator McLucas to defend that particular indefensible non-achievement by the Beattie Labor government. The Cairns Base Hospital is not even supposed to house any forensic mental health patients—psychiatric patients who have committed a crime—because it lacks secure facilities. I would like Senator McLucas to defend that particular indefensible non-achievement by the Beattie Labor government. The Cairns Base Hospital also lacks appropriate and safe psychiatric evaluation facilities in its emergency department.

If honourable senators opposite want to interject about any region, about any town, I have all the information here. We will put it on the record and we will distribute it by media release and other direct mail to all your constituents, whom you are supposed to be faithfully representing. Senators opposite should not try to defend the indefensible.

These are service delivery factors for which the state government has direct responsibility—responsibilities it is failing to meet. Queensland is going backwards. For example, no new front-line staff have been committed to the key family services areas that combat abuse—we have heard so much about abuse in this place, particularly child abuse—despite the government’s own admission that reports of suspected abuse are growing at around eight per cent a year. Just in case honourable senators missed hearing what I said, I will repeat it: no new front-line staff have been committed to the key family services areas that combat child abuse, despite that massive increase in reported child abuse.

The Beattie Labor government has invested a considerable amount of funding in child protection but again it is failing at the front line. Figures released by the Australian Institute of Health and Welfare last year showed that 30 per cent of investigations by the Department of Families from 2001-02 remained unfinalised at the end of August—twice the rate of investigations not finalised in any other Australian state.

Some of the forecasts it has relied on in presenting the 2003-04 state budget are on the upside of optimistic in terms of potential for actual delivery. As the Courier-Mail financial analyst Paul Syvret wrote on 4 June:

At face value, the State is facing a time of wine and roses. Economic growth of 4 per cent, a fat operating surplus next year, no net debt, healthy jobs growth, no new taxes and record revenues.

Unfortunately, these predictions are based on a lot of assumptions in areas over which Queensland has little or no influence.

Just some of the variables which could come into play for the year ahead include the economic
health of the State’s major trading partners, the effect of a rising Australian dollar, the performance of world share markets and the impact of such chaos events as the SARS virus.

Of course, there is nothing wrong with being optimistic. It nearly always pays in improving one’s mood and motivation. That in itself can often be a spur to greater things. But at the same time, it is optimistic to count on the economic engine room performing forever in overdrive. It is particularly unwise in Queensland’s case because under Labor the state has the country’s most regressive and therefore fundamentally unprofitable industrial relations environment. Any progress that can be reported in Queensland on reform in the workplace or on incentives provided in Queensland workplaces accrues to that economy as a result of the enlightened industrial relations policy and workplace relations policies of the Howard-Costello government.

The state’s own taxation revenue is forecast to grow by 2.8 per cent in 2003-04 to $5,664.2 million. Gamblers are giving that a healthy lift—it might better be seen as an unhealthy lift—and are expected to contribute $680.2 million in 2003-04. Another area where tax increases are massive is transfer duties. Stamp tax, in other words, will fall by 10.9 per cent and mortgage duties by 12.2 per cent with the expected easing of the Queensland housing boom. But together they will still contribute $1.3 billion to the Queensland economy.

What I have been talking about in this contribution is a very unhealthy mix of policy and performance and a set of unrealistic expectations of performance in the Queensland economy under the regressive policies of the Beattie Labor government. We have been talking about record tax takes, record grabs of dividends and debt from GOCs, which some day will have to be repaid, and massive underperformance of basic service delivery. I mentioned one very specific example, which I hope the honourable senator representing the North Queensland region, who of course lives there, may be able to justify—and she needs to be very specific; we do not want rhetoric in reply—that is, the gross neglect in funding of the Cairns Base Hospital. I am running out of time to again remind the Senate and honourable senators of just how fortunate Queensland is in the GST take, which is above what it was expecting. If you do not believe that, just see what Premier Bracks and Premier Carr say about their misfortune in not getting as much as they think they should. *(Time expired)*

**Environment: Great Barrier Reef Marine Park Authority**

*Senator McLUCAS (Queensland) (1.00 p.m.)*—Before I make my speech in relation to the marine park tourism operators, I will have to respond to Senator Santoro; I cannot let that one go past. Senator Santoro has just used the classic Liberal political strategy: when you have nothing good to say about your own government, you get up and talk about another level of government. I commend to Senator Santoro yesterday’s *Townsville Daily Bulletin* editorial, in which it is very clearly recognised that this is the strategy that Mr Lindsay is using in that town: the direct mailing of a letter to the whole of his electorate, talking about the Townsville General Hospital, which is a state government responsibility. He is too embarrassed to talk about the Medicare package.

*Senator Santoro*—Talk about Cairns where you live.

*Senator McLUCAS*—I will talk about Cairns any day, but I actually represent Townsville as well. The point I am making, Senator Santoro, is that the editorial in the *Townsville Daily Bulletin* yesterday identified this strategy and suggested that Mr Lindsay and his colleagues could focus more on the work that they have some control
over—that is, fixing the problems that this government has caused for us all in Queensland.

Speaking of problems that this government has caused for people in Queensland, yesterday I raised in question time the issue brought about by this government that is affecting the marine park tourism operators in North Queensland. It is a very sorry example of government ineptitude and inaction. It is a shocking example of a government not taking responsibility for the actions of its own departments.

Since 1993 a visitation charge has been applied to every visitor who travels to the Great Barrier Reef. It is a charge that it is true to say was not welcomed by marine park tourism operators when it was introduced. But, in the wash-up, after the discussions, they agreed to collect the charge—called the environmental management charge, or commonly known as the reef tax in our part of the world. They agreed to collect that charge on behalf of the government. That was in 1993. The discussions between government and the industry were protracted but eventually, in good faith, agreement was reached between the government and marine park tourism operators, who agreed to collect the tax on behalf of the government. It was recognised by all that, if the government itself had to collect the tax, the charge would be much higher.

Currently the reef tax is $4 a head but will be rising very shortly. The funds, which are collected by the operators and remitted to the Great Barrier Reef Marine Park Authority, are used for the management of the Great Barrier Reef. There is some concern at the moment that the reef tax revenue is replacing revenue that should be provided through a government appropriation—it is replacing rather than supplementing that appropriation—but that is another story for another day.

In 1998, during the election, everyone who was involved in that election campaign remembers that there was a lot of discussion about whether or not it was appropriate for a tax to be placed on a tax—that is, was it appropriate for the GST to be attributed to any other tax? That debate in North Queensland focused around the GST being applied to the reef tax, the environmental management charge. Liberal-National Party candidates for those seats gave absolutely unequivocal assurances to the marine park tourism industry that the GST would not apply to the reef tax, the environmental management charge. Not only were those assurances given by those candidates at that time; the Association of Marine Park Tourism Operators also took its case to the then Assistant Treasurer to ensure that they were right—that the GST would not apply to the reef tax. On 5 June 2000 an adviser on taxation from the office of the then Assistant Treasurer wrote to AMPTO and said:

The Government intends to include the Environment Management Charge (EMC) in the list of taxes and charges that do not constitute consideration for the purposes of the GST.

The adviser also said:

... the Treasurer has recently made a Determination that lists the taxes and other Government charges that will not to be subject to GST.

That letter was received by AMPTO on 13 June in response to a letter that they wrote to the Assistant Treasurer on 23 February 2000. They did apologise for the delay in responding. That could not be more plain—the GST does not apply to the reef tax—and so AMPTO, in good faith, wrote to their members and said, ‘Do not collect 40c on the $4 that you collect on behalf of the government, because the GST does not apply to it.’ So the industry happily went about their business.
The marine park tourism industry is a very important part of our tourism business in North Queensland. It is a serious business and a major part of our industry. Operators are very professional in the way that they operate their businesses. As you know, they conduct diving and snorkelling, and that end of the business is also conducted very professionally. They operate efficient businesses, they are good business planners and they know their businesses, because it is very competitive. They track their costs very closely.

So it was more than a surprise in the second half of 2002 when the ATO started auditing these operators and decisions started being handed down that reversed this government’s commitment. Operators in North Queensland, and there are quite a few, have had bills from nearly $15,000 in one case to potentially up to $60,000 in another. These are retrospective payments having to be paid to the ATO because the ATO has now deemed that the GST is applicable to the reef tax. If you are running a business, you cannot be running it competitively when the rules are continually changing. Some of those bills have been paid, and they have been paid reluctantly; otherwise, over 11 per cent in interest would be charged to those operators. Naturally when this occurred at the end of last year those operators contacted their local members. Those local members then contacted, in one case, the Minister for Revenue and Assistant Treasurer and, in another, the Treasurer. Mr Lindsay wrote to the Assistant Treasurer and got this response from the Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell. The letter said:

Thank you for your personal representations to the Minister for Revenue and Assistant Treasurer of 27 August and 10 September 2002 on behalf of Ms L Crocombe, Adrenalin Dive ... concerning the application of the goods and services tax (GST) to the environmental management charge (EMC)/Reef Tax.

That was a letter advising Mr Lindsay that he had made personal representations to Senator Coonan. That is why I was very surprised yesterday when Senator Coonan said that she only heard about this last week. Mr Entsch wrote to the Treasurer. Mr Entsch said:

In the run-up to the introduction of the GST the Marine Tourism Industry successfully lobbied the government to have EMC exempted from the GST. I was intimately involved in this lobbying and was personally assured by the then assistant treasurer that the EMC would be exempted from the GST. The basis of our argument was that it was stated government policy not to levy a tax (GST) on a tax (EMC).

It is very clear that the view of North Queensland was that the EMC would not attract the GST. The response that Mr Lindsay’s letter elicited from Senator Ian Campbell—and he then writes to the dive operator—says:

You will note that the EMC/Reef Tax is not subject to GST when charged by the Great Barrier Reef Marine Park Authority to the operator as per the Treasurer’s determination.

He goes on:

However, it is payable when the amount charged by the operator to its customer includes the on-charged tax as part of the make-up of the price.

He has completely reversed the commitment that he and other Liberal-National Party members made to the industry in 1998.

This is a mess. It has only come to light and is only being acted on because I took the opportunity to question Senator Hill in the environment estimates committee hearings some weeks ago. Senator Hill agreed with me that there was a general view in the community and in the marine park industry that GST would not be applied to the EMC. I then went to the finance estimates committee hearings and asked questions of the ATO. Senator Coonan was there and did not make
any contribution. There is confusion even in the way that the ATO is applying its rulings. One operator has been told that if it is collected separately—that is, it is not collected in the ticket price—then the GST will not be applied. Another operator has been told that if it has been collected separately—that is, not in the ticket price—then the GST will be applied. There is absolute confusion in the industry.

I am calling on the government to hold to its promise of 1998 and 2000. It needs to act quickly to remove the questions over whether some businesses will have to find up to $60,000 to pay bills to the Australian Taxation Office. At the finance estimates hearings Treasury and the ATO advised me that it is within the power of the Assistant Treasurer to bring in legislation to clarify this matter once and for all. Those in North Queensland who operate businesses out to the Great Barrier Reef need certainty. They need to know where they stand. They need to operate efficiently and effectively because of the competitive nature of the business that they are in.

I go to the Cairns Post editorial of Thursday 5 June. The Cairns Post agrees with me and says that this mess has to be fixed up. The editorial says:

Given the government’s commitment that the GST would not be applicable, the solution is easy.

Our politicians can pass the required laws before Parliament rises for the winter recess; postpone their annual jaunts to the North and keep Parliament sitting while they amend the law; or face the ire of local tourist operators as the pollies trek north—and we would always welcome them—in coming months, when all the politicians really want to do is enjoy our beautiful weather.

I encourage anyone who is having a holiday over the winter break to come to Cairns, Townsville or Mackay and enjoy our Great Barrier Reef; but, before you come, please fix up the mess that you are causing marine park operators so that they can get on with their businesses.

Veterans: TPI Veterans

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (1.13 p.m.)—I rise to speak today on the very important issue, which is very much a matter of public interest, being faced by our veterans in the Australian community today. As I hope all senators are aware, there is a rally being held out the front of Parliament House this week of hundreds of totally and permanently incapacitated, or TPI, veterans and their partners and supporters from across Australia. Some of them have travelled from as far away as Perth and Queensland, my home state. The rally was organised by the TPI Federation as a result of this government once again taking no heed of the plight of TPI veterans in the recent budget. We have some 26,500 ex-service personnel who receive the TPI payment as compensation for disabilities that prevent them from undertaking paid employment for more than eight hours per week.

The TPI payment currently represents only 43 per cent of male total average weekly earnings. Of course, we all know that average weekly earnings are actually much higher than what the average person gets as a wage, and the TPI payment is only 43 per cent of that. By virtue of being totally and permanently incapacitated, they are not able to undertake significant extra amounts of paid work to top that up. So the level of poverty and hardship in the TPI community is very significant and I absolutely know that it is not being adequately acknowledged by the government. Indeed, I do not think it is recognised fully in the general community.

The Democrats believe the erosion in the value of veterans’ compensation must be
reversed and that the TPI must be benchmarked to try and turn around this decline in its value. I want to put on the record exactly what the TPI Federation asked for in the budget: firstly, to have Centrelink cease counting disability pensions, which are compensation payments, as income; secondly, to have indexation of the special rate to total average weekly earnings or the CPI; and thirdly, to immediately lift the special rate to 60 per cent of total average weekly earnings and, over the following two budgets, lift that progressively until 75 per cent is reached and then benchmark it at that level.

None of those things, of course, were acknowledged by the government in any way, yet all of them have been raised as concerns—not just recently, but for many years. Indeed, the issue of Centrelink counting disability compensation as income is something that was acknowledged by this government in its pre-election documents before it was elected for the first time, back in 1996. So, for all of that period of time—over seven years now—the coalition has acknowledged this anomaly and acknowledged it as an injustice, but has refused to do anything about it.

We saw, with last year’s budget, that there was even a specific request from the Department of Veterans’ Affairs to fund this measure. It was knocked back by Treasury and the expenditure review group. Yet, a few years ago, when questioned on this, the minister said that it would only cost about $21 million. To suggest that somehow the government cannot find around $21 million a few years later—perhaps it is now around $25 million, with inflation—for this long-standing need and anomaly is simply ridiculous.

In mid-February this year, the Clarke review on veterans’ entitlements was released and this was one of its recommendations. It has long been on top of the RSL’s priorities as well. We desperately urge the government to respond positively to that recommendation. It is outrageous that it was not responded to in this year’s budget. I have to say I really thought that this year, of all years, veterans would not have a need to rally outside Parliament House. I could not believe that, after all of the chest-beating this government have done about supporting our troops, saying how proud they are of them and having welcoming home parades again today, they have done nothing to actually assist troops who have returned. To continue to ignore those strong demands from veterans’ groups at the same time as wrapping themselves in the flag and saying how proud they are of our troops of today is just breathtaking hypocrisy. These are the troops of yesterday who have suffered as a result of their special service to this community and they should not be continuing to suffer because of inadequate assistance today.

The Democrats, of course, were clearly on the record as not supporting the recent war in Iraq, but we made it clear, as did this Senate, that that did not extend to our troops. There is a tradition of thought about just war—rules that have been established over the centuries on the right reasons to go to war and the criteria that must be met for war to be just. There is another set of rules for just conduct in war or rules of engagement. It has been well established that the Howard government failed the just criteria for going to war. However, in a number of ways, the criteria for just conduct in war have been met by the way Australians conducted themselves in Iraq, including higher standards of proof that targets are military rather than civilian and not supporting the use of cluster bombs or using depleted uranium armaments. It is only a shame that the government does not use its influence with our allies to ensure that they will do the same.
The Democrats opposed the justification given by the government in its decision to go to war against Iraq. But that is very different from recognising the job done by our troops, who fulfilled the primary mission we hoped for: they came home safely. That does not mean that, down the track, they will not have war related physical or mental injuries as a consequence of their service. For many of the men who are protesting outside parliament right now, there was no welcome home parade when they returned from Vietnam. Over the decades, they have had to continue to fight for the compensation and rehabilitation that we as a nation owe them.

I have been veterans’ affairs spokesperson for the Democrats since I came into this place in 1997. What I have seen is a steady rise, and obviously a particularly steep rise this year, in the amount of attention that this government is paying to medals, memorials and welcome home parades—in short, activities that allow coalition members to stand next to people who have really achieved something. What we have not seen is any of that funding and support going to increases in assistance for our veterans. I am not against the memorials, medals or marches, but the tangible benefits of repatriation and assistance have fallen behind.

It has recently been revealed that the $6.4 million budget for the London War Memorial has now blown out by $3.5 million, with a further $1 million blow-out to fund the dedication ceremony. In answering that issue yesterday, the Prime Minister said:

There is no government that has done more in relation to commitment to veterans than has this, but that does not mean to say that every proposition that is put to us on behalf of the veterans community is a proposition that we can meet.

The Prime Minister then went on to point to the only example of where he had actually addressed a proposition. That was in the budget—expanding access to the gold card to help veterans meet medical expenses. That was the one thing the Prime Minister pointed to. Even with that one, it would have been great if there had not been a subsequent crisis in the gold card system, with so many doctors now refusing to accept the gold card because the associated government reimbursement is too low. Basically, the government has been trying to get the medical profession to fund its lack of assistance to veterans in the health field. On the whole, the longstanding list of veterans’ issues has been ignored, with the exception of some limited measures taken for war widows a couple of years ago. I was very disappointed to hear the Prime Minister, on Perth radio on 15 May this year, say this about TPI benefits:

... somebody with eligible service on average you got between 90% and 115% of male average weekly earnings which is somewhere in the order of $44,000 a year.

A few weeks ago in Veterans’ Affairs portfolio budget estimates I asked departmental representatives to tell me what on average TPI veterans receive and they said they did not have that figure available. But that the Prime Minister of this country I can only presume was deliberately misleading the Australian people into thinking that the average TPI veteran gets around $44,000 a year, or between 90 per cent and 115 per cent of male average weekly earnings, when they get less than half of that is an absolute disgrace. We really need that rebuffed and the Prime Minister to clearly indicate that he was wrong, because it gives that false impression that somehow veterans are rolling in clover and living very well, thank you, thanks to the very generous government, when the fact is exactly the opposite.

TPI veterans with qualifying service are only one group. There are many veterans across the broader community who also require assistance, and there are wider issues there. But the specific focus of the lack of
improvements on the base payment for the TPI is one of the gaping holes in this government’s approach to veterans’ issues. The TPI Federation has pointed out that to say the gold card is part of an income package is to say that a veteran is paying for his or her own medical treatment. The value of the Medicare card is never quoted as an income component for others in society. For the government to try to use the gold card as a measure of income for veterans is simply dishonest. The government should not be misrepresenting to the general public the compensation that veterans receive.

A number of veterans and their partners have written to me and raised this issue. One in particular is the wife of a Vietnam veteran, who has had multiple heart attacks and strokes, and she now cares for him full time. She says it is obvious the general community increasingly believes she and her husband must be well off, and she feels increasing resentment when they access any sort of concessions that they are entitled to. She has written a very reasonable letter to both the Prime Minister and the Minister for Veterans’ Affairs asking them to reconsider what they say in issues regarding veterans benefits.

TPI and the issue of disability pension being counted as income are by no means the only veterans’ issues that require attention. The government’s response to the Clarke review, which in itself took quite a while, is yet to come and the draft new military compensation scheme is yet to come, and we hope that those will go some way to discharge the debt that we as a nation owe veterans. There is a Senate inquiry occurring presently, initiated by Senator Mark Bishop, into aspects of the Veterans’ Entitlements Act 1986 and the Military Compensation and Rehabilitation Service, MCRS, focusing on the offsetting calculations applied to veterans and ex-service personnel who opt to receive a pension in lieu of a previously paid lump sum. I attended part of the first hearing on Monday night and have seen some of the submissions. It is clear that veterans are being severely ripped off through having to pay back to the government more than they ever received in an initial compensation payment.

Another ongoing issue is revelations about the exposure of our troops to toxic environmental hazards from herbicides in Vietnam to potentially depleted uranium in Iraq and the impact these exposures may have not just on veterans but also on their children and grandchildren. I notice that Senator Allison made a speech last night in this place about the impacts of depleted uranium.

I urge all members of parliament to go outside and talk and listen to the veterans who were there. I acknowledge the presence of those veterans in the gallery today.

We have seen today apparently the government cancelling question time in the House of Representatives so that some members of parliament, including the Prime Minister, can attend the welcome-home parade in Sydney. I guess it is okay for people to go to welcome-home parades and acknowledge and thank the servicemen and servicewomen and troops who have recently fought in Iraq, but I hope that the Prime Minister and other members of parliament, as well as going to Sydney to be part of parades, walk just 100 metres outside the front of Parliament House and speak to some of yesterday’s troops, not all of whom returned safely, and TPI veterans who certainly have paid a very high price—a direct, personal price to the cost of their health—as part of their service to our country.

The Prime Minister and other members of parliament just having short conversations with a few of the veterans rather than being part of photo opportunities at welcome-home parades would be far more beneficial to the veterans of today and the veterans of the fu-
ture, who are of course the troops that we are welcoming home today. They will also be future veterans. I am sure we would all like wars to cease so that we no longer need to have veterans and people do not have to pay some of the prices that they do. But, whilst ever we have troops who will put themselves on the line to fight for our country, we have a special obligation to ensure that we do not just pat them on the back when they come back, give them a nice medal and put in the paper a photo of them next to the Prime Minister but also continue to support them in the many years ahead where oftentimes they will have direct consequences to deal with as a result of their service.

There are individual stories. One story I heard when speaking to people on Monday was about a veteran who is likely to have to sell his very modest house because he cannot afford the repayments. Because he has gone onto TPI, and the massive drop in income that that has caused, he basically has to sell his house. People should not be put in that situation as a result of their serving the country. Another issue that was raised with me when I was talking to a veteran was about recent reports that suggest that Vietnam veterans were exposed to twice the amount of dioxin than was previously thought. In the estimates hearing the other day the representative from the department indicated that the output of that study has been referred to the Repatriation Medical Authority. That is under way, which is good, but there is no research specifically into the potential impact on the health of children of veterans, and that was specifically confirmed. The ongoing program of monitoring the mortality experience of Vietnam veterans does not include their children. Again, that injustice needs to be addressed. (Time expired)

**Bull, Mr Tas Ivan**

**Senator STEPHENS (New South Wales)** (1.28 p.m.)—I rise to pay tribute to the life and contribution of Tas Bull, who died on 29 May. The enormous loss for his wife, Carmen, and sons Anders and Peder was also an enormous loss to Australia and to the world. Tasnor Ivan Bull was given the name Tasnor to commemorate the birthplace of his Tasmanian mother and his Norwegian father. Tas said he thought the Ivan was from an old boyfriend of his mother’s, and not Russian as some wanted to believe.

Tas was born in Sydney on 31 January 1932 and was a babe in arms at the opening of the Sydney Harbour Bridge. When he was five years old the family moved from Homebush to Hobart. Following his father’s untimely death when Tas was 12, his family’s reduced financial circumstances and his minimal interest in school prompted him to look for work to help his mother. He began with part-time jobs while at school, but his real desire was to go to sea. It was in his blood. Most of the men in his father’s family had been seafarers for generations. I suppose he showed early signs of his skills for networking, research, proactivity and general get-up-and-go by frequenting the Hobart wharves, looking at ships and talking with seamen, hoping to find a ship that would take him on.

In March 1946 he was successful. Leaving a very unhappy mother, he set sail for Melbourne to arrange the paperwork for his first job at sea. He was back in Hobart and school three weeks later, as the shipping master would not allow a 14-year-old to go overseas. Undeterred, Tas advanced his age and eventually got away in December 1946 on a British tanker bound for the Persian Gulf. He says his mother was so upset she could not eat the strawberries and cream that he had
brought home for her to celebrate his good fortune.

Tas’s early life as a seaman was a fascinating one. His autobiography, *Life on the Waterfront*, the royalties of which he donated to the MUA defence fund, described the many exotic ports and the hair-raising adventures, including jumping trains and sleeping in jails, enjoyed by Tas and his mates, with whom he maintained lifelong friendships. He developed a lifelong passion for travel but, more importantly, it was a time of great awakening and education. Tas himself said: ‘My union and political leanings were undoubtedly shaped by my mother’s stories of the Depression. The main influence, however, and my growing awareness of injustice, came from my time as a seaman, seeing people living in conditions I could not have imagined.’

His early experiences in industrial battles were during the waterfront strikes of 1954 and 1956 when, as a seafarer, he assisted the Waterside Workers Federation strike activity in Port Pirie and Hobart. He joined the Seamen’s Union of Australia in 1954 and the Waterside Workers Federation in 1956. His involvement in the infamous Hursey case in Tasmania led to him writing, in 1977, *Politics in a Union*, his account of that dispute. Tas left the sea and became a waterside worker in 1956. He was then elected as a full-time union official—a branch vigilance officer—with the Waterside Workers Federation in 1967, a branch president and federal councillor in 1970, and a federal organiser of the federation in 1971. He became assistant general secretary in 1983 and was elected general secretary from 1984, serving until his retirement in December 1992.

This was a time of great change, with containerisation—which Tas described as the most dramatic change in marine transport since the switch from sail to steam—and great workplace reform in the industry, culminating in 1993 with the amalgamation, under his guidance, of the Seamen’s Union of Australia and the Waterside Workers Federation, to form the Maritime Union of Australia.

The safety of seafarers and wharfies was always a great concern for Tas Bull. He recalled a Macquarie Street specialist, Dr McQueen, who in 1947 was appointed to weed out malingerers, and who concluded that he was ‘forced into a real admiration for a body of men earning a more or less arduous living, handicapped by gross and serious abnormalities and paying a shocking price of premature old age and physical calamity’. For Tas Bull, safety for workers was something on which he would not compromise. He guided his union’s protests against so many evils, including the flag-of-convenience rust buckets, the lack of asbestosis compensation, South Africa’s apartheid, the export of uranium, French nuclear testing in the Pacific, the Vietnam War and threats to dismantle Medicare.

Tas was vice-president of the ACTU from 1987 to 1991 and senior vice-president from 1991 to 1992. He played an important role in the ACTU’s Accord with the Hawke government, and after his retirement he was the chairperson of the ACTU’s Organising Centre from 1994 until his death. Even after retirement, he joined MUA bosses to fight Peter Reith and the Patrick company over its forced waterfront reforms in 1998.

Tas Bull was a member of the Communist Party of Australia from 1951 to 1957, at which point, amid splits and factionalism, he did not renew his membership. After being challenged by Simon Crean to stop being ‘outside and criticising’, Tas joined the Labor Party in 1974. He belonged to the Waterloo branch until 1976, when he transferred to the Hunters Hill branch. He was president of
the branch from 1993 until his death. I had the great pleasure of attending their 60th anniversary recently. Tas was too ill to attend, but his hand was evident in the organisation of the event. He inspired his local branch in the way he inspired the members of every group to which he belonged.

Tas was an international trade unionist and represented the Asia-Pacific region on the executive board of the International Transport Workers Federation for 10 years. He was the Australian member of the Fair Practices Committee and a director of the ITF’s Seafarers Club—the Boomerang Club—for over 20 years.

Tas Bull’s work was wider than his efforts for his fellow workers. He had long been interested in human rights and humanitarian matters, and after his official retirement he became chairman of Union Aid Abroad-APHEDA in 1995. In his eight years with APHEDA he made an enormous contribution to its development. He gave leadership and support in what APHEDA said was ‘an informed, open and inclusive manner’. He gave advice, ideas, new partnerships and much-needed humour and wit in times of difficulty. His counsel and advice was invaluable.

Tas was also directly involved in promotion, marketing, fundraising and program delivery and he visited projects and staff in Cambodia, Vietnam, East Timor, Thai-Burma refugee camps and Cuba. Tas had a special interest in Cuba. He was a founding member of the Cuban Children’s Fund in 1998. Tas led a mission to provide the William Soler Children’s Hospital with much needed funding and equipment worth hundreds of thousands of dollars to save the lives of newborn babies and young children with congenital heart diseases. It was typical of Tas that he discovered equipment surplus to the needs of the New South Wales health system at the time and managed to arrange for an airline to carry it to Cuba for nothing. Always with him as his companion in his involvement in human rights and peace campaigns was his wife, Carmen.

Tas maintained his love of the sea. He tried to go sailing twice a week, even after he retired. He was a director of the Australian National Maritime Foundation, which supports the National Maritime Collection at the National Maritime Museum. He was still writing, and this time it was a book about his seafaring adventures; hopefully, this will be published before the end of the year.

Tas Bull’s funeral began at the overseas passenger terminal, at Darling Harbour, with a march behind the funeral car, draped with the union banner, down the hungry mile. A four-hour stoppage to coincide with the march along Sydney wharves was supported by the two main stevedoring companies, Patrick and P&O. A minute’s silence was held by unionists around the country.

The gathering at Tas’s funeral read like who’s who of the Australian trade union movement. His son Anders observed that Tas would have loved this particular stop-work meeting—another chance to talk business and tell jokes. The National Secretary of the Maritime Workers Union, Paddy Crumlin, said that Tas ‘never stopped working for the union movement’. Last year, Paddy sent a message to Tas in Cuba, where he and his wife, Carmen, celebrated his 70th birthday with friends and colleagues from all over the world. He told Tas that he was ‘someone who combines the energy of youth with the wisdom of experience’ and that he was someone with ‘an abiding trust in building a more empathetic, compassionate and just society’. He could not have chosen a more appropriate location to celebrate, because Tas admired ‘the tenaciousness of the Cuban people in seeking to find a life for all partici-
pants in their society, free of prejudice, greed and exploitation’.

Jennie George commented at the funeral that Tas oversaw the transformation of an industry from which lots of jobs were shed but that he was able to retain the unity of his rank and file. Maybe this was because the rank and file knew not only that he was their advocate but also that, from his earliest days, when he went into a job he asked, ‘How will we work this job?’ He was always so inclusive.

Bob Hawke commented that Tas Bull had ‘a wide vision that went beyond the immediate interest of his workers but looked at the interest of the nation as a whole’. An old Hobart school friend and former shipmate, John Cleaver, said that Tas’s ‘deeply meaningful friendships were legion. His socialist morals and leadership made him a truly good human being’.

When John Coombs spoke of the open house that Tas and Carmen had for friends from all over the world, he said that Tas ‘even had friends from the employers’ side ... although mostly after they had retired and seen the error of their ways’. And Greg Combet remarked that Tas ‘made a difference to the lives of thousands of people in our society ... he was tough, intelligent and pragmatic, and he always maintained his integrity’.

Perhaps Tas Bull’s own words say it all. Commenting on the Howard government’s support for the tactics employed by the Patrick company, Tas wrote:

Surely this raises some questions. Where is Australia heading? ... We need to reset our course if we are to continue to be a country that truly believes in a ‘fair go’ where ‘mateship’ ... is still that; where concern for the battler is genuine, not a political gimmick; where we do care about the sick, the old and the unemployed; where we respect the Aboriginal people; and where we provide our kids with the schooling they need and the jobs that should follow. These are the values that make a country truly great ...

He also said:

We will never find peace and security while our neighbours, close or distant, suffer injustice; and while, notwithstanding the most advanced technology, we are surrounded by those at home and abroad who are hungry and homeless.

Vale, Tas Bull.

Budget 2003-04

Senator HARRIS (Queensland) (1.41 p.m.)—I rise in this matters of public interest debate to deliver One Nation’s response to the government’s budget. This is a budget that presents the Liberal and National parties’ continuing commitment to corporate socialism—the privatisation of profit and the socialisation of risk, the privatisation of the people’s assets, the advance of the user-pays principle, the demise of the family farm, the wholesale wrecking of manufacturing industries; and the domination of multinationals over small business.

No member of the government has demonstrated how free trade, deregulation and privatisation function to benefit the majority of Australians. The Treasurer says that Commonwealth debt has been reduced by $63 billion. It is not good economic management that has wiped out public sector debt; it is the fire sale of our nation. The government has sold $57 billion worth of property and infrastructure that belonged to the people. The sale and lease-back of 59 government properties will cost taxpayers millions in years to come. The rent on the R.G. Casey Building, headquarters of Foreign Affairs, is nearly $23 million a year. It was sold for $197 million. In fewer than 10 years we will have eaten up the capital from the sale of the building—short-term gain will inflict long-term pain.

Australia’s manufacturing industries were good industries. Free trade policies have de-
destroyed this sector. The Productivity Commission and the unelected bureaucrats sitting in Canberra recently declared that our textiles, clothing, footwear and leather industries would wind down by 2015. This means that 70,000 Australian jobs will be lost. The tariff on these items equates to 75c per year, per customer. Let me put that another way: for a cost saving of 75c per year, per customer, we are going to put the jobs of 70,000 workers at risk. I call on Minister Vaile to tell the Australian people how that will make us more globally competitive.

Senator McGauran—Mr Acting Deputy President, on a point of order: I want your ruling on Senator Harris’s contribution to the Senate at the moment with regard to it being specifically on the budget. There are many budget bills to be debated in this parliament and, therefore, I wonder whether it is appropriate that he use this time in the Senate to debate the budget rather than the time allocated to debate of the bills themselves.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Thank you, Senator McGauran. There is no point of order. Senator Harris is perfectly entitled to speak on a matter of public interest, and he is also entitled to speak on the budget bills that are presently before the Senate.

Senator HARRIS—Thank you, Mr Acting Deputy President. The Productivity Commission, like DFAT, is encouraging businesses to move labour offshore. Couple this with the General Agreement on Trade in Services, which is a WTO treaty that allows foreign workers to come here and work for low wages, and you have a recipe for danger. We have already had reports of Indian IT workers coming here as ‘natural persons’ under GATS. They will reportedly get paid $12,000 per annum whereas our Australian telecommunications workers would receive $60,000.

Unemployment, work force casualisation and job insecurity are the bitter rewards of free trade. We have a country where one in three workers will be casual workers by 2010. Free trade permits foreign competitors to ruin Australian industry while denying our manufacturers the ability to compete on equal terms with foreign rivals abroad. Such ‘freedom’ leaves us to the tender mercies of foreigners—our industry and commerce are dependent upon special laws and regulations. Free trade is not about helping Third World countries; it is about making Australia one of them.

Let me tell you about the very unpleasant future for our primary producers. Twelve months ago, 1,000 primary producers met in Mareeba, in Far North Queensland. The Deputy Prime Minister and National Party leader, Mr John Anderson, made the statement that there were approximately 85,000 primary producers in Australia and that it would only need 25,000 large corporate farms to provide the same product. Mr Anderson was telling those people in that area that one in every three of them could be done without, with enough product still being provided for Australia. Beef producers are averaging the same for their cattle—

Senator McGauran—Mr Acting Deputy President, again on a point of order: I seek your ruling on the comments just made by Senator Harris in regard to the Deputy Prime Minister, John Anderson. Firstly, he is reflecting on the integrity of the Deputy Prime Minister; secondly, he attributed a quote to the Deputy Prime Minister which is utterly unsourced and, given the record of the senator, probably untrue.

The ACTING DEPUTY PRESIDENT—Senator McGauran, whilst you are entitled to make your point of order and your contribution is understood, your comments about
Senator Harris were unparliamentary, and so I ask you to withdraw them.

Senator McGauran—I withdraw them.

Senator HARRIS—On the point of order, Mr Acting Deputy President: the quote that I attributed to the Deputy Prime Minister was made in front of me at that meeting.

The ACTING DEPUTY PRESIDENT—I think we have resolved—

Senator HARRIS—The Deputy Prime Minister was pointing out to that group of people that there were at that time 85,000 primary producers. The point he made was that 25,000 corporate farmers could produce the same amount of product. That is my point.

Senator McGauran interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Harris, let us not debate the point of order. Please proceed with your contribution.

Senator McGauran—Was it a private meeting?

Senator HARRIS—It was at a public meeting at which there were over 1,000 primary producers. Beef producers are averaging the same for their cattle this year as they were in 1984. Listen to what some of the farmers are actually saying: ‘Canberra advisers are useless’; ‘I might as well talk to a post’; ‘AFFA is in a world of its own’; and ‘ABARE have no idea when they say the drought is over.’ Farmers need help to preserve breeding stocks. They need genuine assistance for fodder and freight. They need more dams and water storage. Sugar mills are shutting down. Farmers are selling land for urban development and millers will not have enough produce to process. One Nation says to Minister Truss, ‘If you are going to help the farmers, why don’t you mandate ethanol in our fuel?’ This will assist the sugar industry, provided that the producers are guaranteed a fair proportion of the returns from the ethanol.’

One-quarter of dairy farms have gone out of business since deregulation, and the mass exodus is yet to come. There is no money in dairy exports. Some of the biggest farmers are now exiting the industry and one of Australia’s largest herd recording services is buckling. The losses from deregulation are compounded by the severe drought. An extension of the dairy assistance package is therefore vital. One Nation calls for deregulation and for farmers to get fair prices for their milk, and we support AMPA’s call for a new dairy industry plan and a royal commission. If we do not back farmers we face the dreadful possibility of importing UHT milk. It is quite possible that the entire market could be served by UHT milk—92 per cent of the Japanese market is already supplied by UHT milk.

Nature made Australia unique. Our strong quarantine laws keep it that way. One Nation opposes attempts to water down any quarantine laws. The SPS—sanitary and phytosanitary—sections of the WTO affect our quarantine laws. The intention of using food irradiation as a global standard will detract from our ability to keep out exports, exports that may possibly carry some form of disease. Irradiation could eliminate fire blight from New Zealand apples, Pierce’s disease from Californian grapes and black sigatoka from Philippine bananas. They would be allowed in to compete against our local produce. We must not let the SPS agreement become a backdoor measure to break down so-called technical barriers to trade. One Nation rejects proposals to weaken the risk assessment process for food imports.

One of the most destabilising issues in relation to primary producers is the uncertainty that now arises in property rights. It stems from a proliferation of state government leg-
islation that purports to take away the rights of the genuine Australian battler. In Queensland, the situation is compounded by the Labor government’s unwillingness to ensure leaseholders have a right of renewal on their properties. The combination of international treaties on the environment and climate change, which have been signed by the federal government and are being implemented by the state governments, mean that property owners are unsure as to what they can do on their own property, irrespective of whether their land is leasehold or freehold. On behalf of the Queensland people, I am taking a test case to the Federal Court to define the rights of property owners.

The coalition’s new weapon in its war against farmers is the proposed free trade agreement with the US. Corporations and their think tanks are driving this agenda. The major lobby group, the Australia-United States Free Trade Agreement Business Coalition, is spearheaded by companies like Cargill, Caterpillar, IBM, Kelloggs, Mobil, News Ltd and Proctor and Gamble. Agribusiness companies are the only ones lobbying for the free trade agreement. A report of the Rural Industries Development Corporation says that the impact of free trade areas on our farmers would be negative. The costs outweigh the benefits. It is a bridge too far. It is time we packed up the whole box and dumped it back in the WTO in Geneva, where it belongs.

People comment that Canberra is out of touch. The further away a decision-making body is from where that decision is going to have impact, the harder it is for those who are making the decision to implement something that is reasonable and reflects different areas. The IMF, through its annual articles of agreement with Australia, has attacked workers’ rights, reduced the welfare safety net and persuaded the government to abandon important social protections. For copies of that agreement, people can contact my Mareeba office.

Industry has announced extra funding for partnerships between CSIRO and the private sector. This is another step towards privatisation. One hundred and fifty people per year have been retrenched from CSIRO. Over 400 jobs have been lost in three years. This is slowly whittling away one of Australia’s premier research institutions.

In regional Queensland, small businesses are fighting a losing battle against Coles and Woolworths, the duopoly that controls 80 per cent of Australian supermarkets. They give the lowest prices to farmers, they import produce when it suits them and they dictate what farmers grow. Small business cannot compete with their buying power. I reiterate One Nation’s call for an inquiry by the Senate and by the ACCC into the supermarkets issue. Also in relation to the food sector, I repeat One Nation’s strong opposition to genetically engineered crops. They pose one of the most profound threats to the Australian environment.

The threat of terrorism has placed unprecedented pressures on fundamental rights. National security agencies have quickly and unnecessarily increased their mandates. ASIO’s budget has jumped more than $10 million in one year. And all we get is a fridge magnet for a security blanket. One Nation support the budget increase for our defence forces. However, we oppose outsourcing of defence contracts—some 60,000 per year taken up by 10,000 companies. This is a worrying development in our national security.

Education is being privatised by stealth. The following statistics reveal the true story. In 2003-04, non-government schools are to receive a 10 per cent increase in funding; it is proposed that government schools will get 5.5 per cent. Students in government schools
receive the equivalent of $51 each; students in non-government schools receive $284 each. Non-government schools receive more funding than the higher education sector—a difference of $59 million.

In higher education, students could pay an extra 30 per cent for accessing HECS. Most students will have a debt of around $50,000 by the time they leave university and will be paying around six per cent interest. Is this what we call giving our young people a good start in life? One Nation agrees that the new funding for higher education should not be linked to workplace reform. One Nation vehemently opposes the IMF’s workplace reforms. The government you elected should not be working for the IMF.

Once again, the federal government has overlooked the community broadcasting sector. Community broadcasters require government support for initiatives such as low-cost broadcasting and station management skills training. Community radio is the only truly local, independent media sector in Australia. It is a vital resource in regional and rural areas. (Time expired)

MINISTERIAL ARRANGEMENTS

Senator ALSTON (Victoria—Deputy Leader of the Government in the Senate) (2.00 p.m.)—by leave—I inform the Senate that Senator Robert Hill, the Minister for Defence, the Minister representing the Prime Minister, the Minister representing the Minister for Trade, the Minister representing the Minister for Foreign Affairs, the Minister representing the Minister for the Environment and Heritage and the Minister representing the Minister for Veterans’ Affairs, will be absent from question time today. Senator Hill is attending the Sydney march for defence personnel who contributed to operations in the Middle East. During Senator Hill’s absence, I will take questions relating to the Defence and Foreign Affairs and Trade portfolios and Senator Ian Macdonald will take questions relating to the Environment and Heritage portfolio.

QUESTIONS WITHOUT NOTICE

Iraq

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Abetz, representing the Minister for Foreign Affairs. I refer to the Prime Minister’s comments last Friday when he said:

The intelligence was that Iraq did have a WMD capacity and people should be more patient about the search that is going on.

Minister, why did the Prime Minister tell this parliament on 4 February this year that the international community must ‘act now to disarm Iraq’? If it is acceptable now to take time to search for Iraq’s banned weapons, why was it unacceptable for the UN weapons inspectors to take a few more months searching before the war, as Dr Hans Blix had expressly asked for in his address to the United Nations Security Council on 7 March?

Senator ABETZ—The government is very proud of the role that Australia has played in Iraq. I think the thousands of Australians lining the streets in Sydney today are a testament to the fact that the vast majority of Australian people are similarly very proud of their efforts on our behalf. The coalition of the willing’s actions have removed a murderous despot and ensured that Iraq’s weapons of mass destruction capabilities will be finally eliminated and, as a consequence, never allowed to fall into the hands of terrorists. Can I suggest to the Leader of the Opposition in the Senate that there would be a very big difference if that weapons of mass destruction capability remained in Iraq whilst Saddam Hussein and his despotic rule were still in government there. The fact that Saddam Hussein has been removed makes the
search for these weapons less urgent, of course, than it did when Saddam Hussein, with his reign of terror, was still in power.

We are confident that coalition investigations will uncover the full extent of Saddam Hussein’s weapons of mass destruction programs. Patience is needed as the process of investigating more than 1,000 suspect sites will take time. It will also require time to encourage the Iraqis involved in the programs to come forward and assist the investigations. The international investigative team of more than 1,000 personnel is only now being assembled and it includes around 16 Australian experts. Saddam’s regime had 12 years experience in concealing the program.

Senator Carr—I thought you had it all locked up. That’s why we had them over there.

Senator ABETZ—Senator Carr has been so busily defending North Korea and is now defending the Baath Socialist Party. Why you would seek to defend Iraq is beyond me. Saddam’s regime had 12 years of experience in hiding and concealing their weapons of mass destruction. Evidence suggests that weapons of mass destruction capacity might have been dismantled and hidden in different areas of Iraq before the war started.

Can I reiterate that the legal justification for going to war was Iraq’s non-compliance over 12 years with a series of UN Security Council resolutions. Does the Leader of the Opposition actually suggest that the UN resolutions over that 12-year period were labouring under a misapprehension that in fact there weren’t any weapons of mass destruction and that there was nothing to worry about? If that is what the opposition is saying, let them say so. But the reality is that the world community and the United Nations voted on 16 or 17 occasions because of the threat of weapons of mass destruction over a 12-year period that these weapons of mass destruction needed to be dealt with. Now we have this fantastic proposition being put forward by the opposition that there were never any weapons of mass destruction just because we cannot find them at the moment.

Opposition senators interjecting—

Senator ABETZ—Mr President, before those on the other side laugh, would they laugh at this proposition: do they deny the existence of Saddam Hussein? Have we ever found Saddam Hussein? No. But they would deny, on the basis of their logic, that Saddam Hussein ever existed. We on this side happen to know, as a result of United Nations reports, that weapons of mass destruction did exist in Iraq. (Time expired)

Senator FAULKNER—Mr President, I ask a supplementary question. I do note the minister’s answer, particularly his claim that current weapons investigations ‘will take time’. Minister, if it is acceptable now to take time to search for Iraq’s banned weapons, can you explain to the Senate why it was unacceptable for the United Nations weapons inspectors to take a few more months searching for the weapons of mass destruction before the war? After all, that was what Dr Hans Blix expressly asked for in his address to the UN Security Council. Why is it acceptable to take time now and not to have taken time on that search before the war?

Senator ABETZ—Every single day that Saddam Hussein was allowed to remain in power saw more young children die in Iraqi hospitals because of his deliberate withholding of medical supplies that were available within Iraq. People were taken off the streets and exterminated. There are mass graves that the opposition must be aware of—

Senator Faulkner—I rise on a point of order. I ask you, Mr President, to direct the minister to answer what I think is a clear question: could the minister explain to us, if
it is okay to take time now to search for weapons of mass destruction, why wasn’t it before the war? That is the question. I ask you to direct the minister to answer it.

The PRESIDENT—As you know, I cannot direct the minister in the way he answers a question. But, as far as relevance goes, I will be listening.

Senator ABETZ—I was developing the answer, which of course hurts the opposition. I was painting a picture of a brutal dictator who had no regard for human rights. Why would we want to leave weapons of mass destruction, and the capability of using them, in the hands of somebody like Saddam Hussein when he had a proven track record of using them against the Iranians and the Kurds within Iraq? Senator Faulkner and the Labor opposition would argue the case that he should have been allowed extra months with the potential to use those weapons. We say no—(Time expired)

Howard Government: Senate Powers

Senator SANTORO (2.08 p.m.)—My question is to the Deputy Leader of the Government in the Senate, Senator Alston. Will the minister inform the Senate of the next steps in the development of the Prime Minister’s proposed constitutional reform to ensure that elected governments’ efforts to act in the national interest are not unreasonably obstructed by the Senate? What evidence is there that this is a matter that needs to be urgently addressed?

Senator ALSTON—It is a very important question that Senator Santoro has asked, and the Prime Minister’s address to the Liberal Party convention a couple of weekends back really brought into focus what has been an ongoing problem with the Senate. In many ways, the media and others get it wrong because it is not really the Senate that is opposed; it is Labor that is opposed. What the Prime Minister’s proposal involves is a sensible proposition supported by Gough Whitlam—in fact, proposed by Gough Whitlam amongst others—which would allow for a joint sitting of the parliament to be held when important legislation is twice rejected during the term of the parliament. There have been a number of constructive suggestions made about the proposal. Certainly Mr Lavarch has put something on the table which is well worth further consideration.

The next step in this process is to have a discussion paper circulated for public comment. We very much expect that we will get some sensible contributions, but that has to be against the background of understanding why these sorts of proposals need to be seriously considered. It is essentially because, whenever it comes to serious legislation, the ‘just say no’ party takes its orders from its trade union masters and blocks it in principle—if it ever had any principles—because that is what it is about. We have just witnessed a riveting sporting contest. Who was the winner? The winner was the guy that Labor elected some 21 months ago. What did he say when he took over as Leader of the Opposition after the last federal election? He said—

Senator Carr interjecting—

Senator ALSTON—Take notes because this is very important. We know who you voted for. In any event, you should listen to this. Mr Crean said:

I want modern Labor to be known for what we propose, not just what we oppose.

Let us test their track record over that 21-month period. In my portfolio area, there are the cross-media laws. Before the last election, the Labor Party were running around telling everyone who wanted to listen that they were in favour of cross-media reform. But, no, when they are back in opposition, they just say no. We saw the same on legislation in relation to the postal sector. I note that
Senator Mackay is in the chamber. You do not even have to talk about legislation. The Labor Party make it plain in advance that whatever we put up they are opposed to—again, ‘Just say no.’ They have been opposed to legislation to try to restrict access to pornography and gambling on the Internet. I cannot understand why. They even opposed legislation to stop people using FOI to get access to child pornography taken from the Internet. You might think it is funny, Senator Lundy, but I do not think middle Australia does for a moment.

Senator Lundy—No, I think you’re funny.

Senator ALSTON—These are very serious public policy issues. When it comes to the budget, you would have thought—and some people will argue, ‘We only block a few here and there. We don’t block anything serious’—that reform of the PBS system and the disability support pension arrangements were absolutely crucial if you wanted to keep the budget balanced. I know they do not believe in balanced budgets, but we do. These are very important initiatives. The only way we are ever going to tackle these problems is to put the national interest ahead of internal reflection, which is where they have been to date. How many times have the Labor Party rejected unfair dismissal laws? On 33 occasions. It is unbelievable. With anything to do with IR, we know before we start that they get their instructions from the preselectors and away they go—just say no. It is about time Labor faced up to the fact that the public wants policy. (Time expired)

Distinguished Visitors

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of members of a parliamentary delegation from New Zealand, from the Select Committee on Education and Science, led by their chairperson, Brian Donnelly MP. On behalf of honourable senators, I welcome you to the Senate and I trust that your visit will be both informative and enjoyable.

Honourable senators—Hear, hear!

Questions Without Notice

Iraq

Senator CHRIS EVANS (2.13 p.m.)—My question is directed to Senator Abetz, the Minister representing the Minister for Foreign Affairs. I refer the minister to the evidence given overnight to the UK House of Commons Foreign Affairs Select Committee by two former British cabinet ministers, Robin Cook and Clare Short. Does the Howard government have any response to both these senior ministers’ statements that they had each been separately briefed by MI6 in the period before the military conflict in Iraq to the effect that Saddam Hussein’s weapons of mass destruction did not pose any immediate threat? Given that Australian intelligence relied heavily on UK and US source material, can the minister confirm that the Australian government was similarly advised that Saddam Hussein’s weapons of mass destruction did not pose any immediate threat?

Senator ABETZ—Let me correct Senator Evans. If the evidence was provided—and I am not aware of that evidence—he says it was provided by Robin Cook and Clare Short. Robin Cook and Clare Short are not ministers but former ministers who have fallen out with the New Labour government of Tony Blair. It is amazing how the Australian Labor Party do not wish to be identified with New Labour in the United Kingdom. They are still back in the 1950s and 1960s with their policies and they are unable to embrace Tony Blair, who has the overwhelming support of the British people.

In relation to the evidence that these two former ministers provided to a committee, I
am not aware of that evidence. Suffice to say, the government acted on the basis of the intelligence provided to it, which was shared amongst coalition countries. It acted in good faith. What is more, there has never been any doubt in the minds of the United Nations that there was a capacity for weapons of mass destruction. Otherwise we would not have had the 17 resolutions out of the United Nations over a 12-year period dealing with this very issue. Let me also remind honourable senators opposite that the only way Dr Blix was allowed to go into Iraq to look for these weapons of mass destruction was as a result of the build-up of certain coalition forces off the shores of Iraq. Dr Blix himself recognised that he would not have been able to get into Iraq for the search for weapons of mass destruction but for the presence of the United States and other forces off the coast of Iraq.

I find it somewhat disappointing that the opposition should be seeking to score political points on a day when we are having thousands of Australians welcoming home our troops that did such a fantastic job in the Iraq situation. We on this side take tough decisions on the basis of what is in the best long-term interests of this country and we have no doubt about the legality of what was undertaken by the coalition of the willing and we have no doubt about the morality and the properness of what we did.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I acknowledge what I think is a fairly confused response to my original question but I want to put the central point again to the minister. Can the minister confirm that Australian intelligence advice to government reflected the MI6 advice that Iraq’s WMD capability was such that it had no credible device capable of being delivered against a strategic city target? Can the minister confirm that advice was provided to the Australian government consistent with what was provided consistent with what was provided to the UK government?

Senator ABETZ—I do not think the Australian Labor Party ought to be starting on the basis of confusion. It is the Australian Labor Party that are providing very confused signals to the Australian people as to where they stood on this conflict.

Senator Chris Evans—Mr President, I rise on a point of order which goes to the question of relevance. This is a very serious issue. It is one of important public policy debate. The minister has had two goes at it and all he can do is rave on about the British Labour Party or the Australian Labor Party. He should answer about what the Australian government knows about the intelligence briefing given to it. He ought to be accountable to this parliament.

The PRESIDENT—There is no point of order, Senator Evans. The minister is only 17 seconds into his answer so I think you should give him an opportunity.

Senator ABETZ—Thank you, Mr President. It just shows the glass jaws that the opposition have on this issue. When I then seek to respond on that very point he gets up on a pathetic point of order to try to gloss over the embarrassment of the Australian Labor Party’s policy failure. If Mr Crean is going to roll out policies, let him roll out a consistent and coherent policy in relation to Australia’s involvement in Iraq and what he would have done if he had been Prime Minister. (Time expired)

Economy: Performance

Senator WATSON (2.19 p.m.)—My question is directed to Senator Minchin, the Minister representing the Treasurer. Will the minister advise the Senate of the benefits of the government’s sound economic management? Is the minister aware of any alternative policies?
Senator MINCHIN—I thank Senator Watson for that question. Parliament endorses our $2.4 billion a year tax cuts as they not only provide a significant benefit to Australian taxpayers, of course, but they are also another sign of the benefits of good economic management. We are just about the only country in the world meeting increased defence and national security commitments, investing in key services, cutting taxes and running surpluses. Today we see more evidence of the virtue of good economic management with consumer confidence hitting a nine-year high, driven in particular by low interest rates. We are unique among world economies because we did make the difficult decisions over the last eight budgets to control spending, run surpluses and reduce debt.

All through those budgets the Labor Party, the opposition, have responded in virtually every case with cynical and short-sighted opportunism. We in the government are intrigued that the opposition leader, now re-elected, is proposing to base his leadership from now on on big policies and big ideas and, presumably, on a big target strategy. That will be a 180 degree turnaround from the practice of both the opposition leaders that we have had since 1996.

At every opportunity the Labor Party are the party of the easy answer. On Medicare they say, ‘Let’s just throw another billion dollars at it.’ On higher education they say, ‘Just promise another 20,000 university places.’ They are still opposing our measures in relation to the 2002-03 budget on the PBS and the DSP. What they did not do was factor in that these measures involve savings. They have not factored that into their response to the budget. Their policy to oppose the PBS changes involves a cost of over $1 billion over four years. Their stance on changes to the disability support pension will cost over $300 million over four years. Without them having acknowledged these costs in their budget reply, we are already in a position of having a $1.3 billion hole in the opposition’s policy platform. Of course they are always pretending that their promises are costless, and of course they are not. Ross Gittins, who is not the most pro-government economic commentator in the Australian media, summed up this situation in Monday’s Sydney Morning Herald. He said:

On Medicare, Labor wants more money spent, but opposes increased reliance on user charges. On higher education, it also wants more money spent, but opposes increased reliance on user charges.

So, does that mean Labor would increase general taxation to square the circle? Gosh no. It would cut taxes a lot more … that the measly Liberals.

Gittins goes on to say:

So is Labor prepared to nominate significant spending cuts? Gosh no. That might offend someone.

Ross Gittins concludes:

Labor is selling two propositions: the Liberals aren’t putting enough money into government services and they’re making you pay too much tax. So it—

the Labor Party—

wants to portray itself as the party of bigger government and the party of lower taxation.

Which makes it the Magic Pudding Party. Under Labor, you can have your cake and eat it.

While Labor has been fighting over who is going to bake the magic pudding, we have been getting on with the job of responsible economic management.

Senator WATSON—Mr President, I ask a supplementary question. What are the consequences of that magic pudding?

Senator MINCHIN—The consequences of the magic pudding of both bigger government and lower taxation will of course be to return this country—
Senator Faulkner—I rise on a point of order. Are you seriously ruling in order the supplementary question from Senator Watson: ‘What are the consequences of the magic pudding?’

The PRESIDENT—I believe he asked about costs.

Senator Faulkner—Is that being ruled in order?

The PRESIDENT—I believe it is, because he asked a supplementary question about costs.

Senator MINCHIN—If ever they got back into government, the magic pudding party opposite would return Australia to the dark days of the Keating government, where we saw $70 billion of additional debt racked up in just five budgets, leaving us in a situation where we had $96 billion of debt to repay, two-thirds of which we have repaid. You cannot promise to spend more money and reduce tax at the same time, which is the Labor formula.

The PRESIDENT—Before I call Senator Faulkner for the next question, I remind Senator Brown and Senator Nettle of a statement I made after question time one day about approaching visiting delegations. You have obviously forgotten about that statement, but I believe it is not in order to approach visitors in our chamber during this time or at any other time.

Iraq

Senator FAULKNER (2.26 p.m.)—My question is directed to Senator Alston, representing the Prime Minister. I refer the minister to statements made on Monday by the Prime Minister concerning the discovery of a possible third mobile production lab for biological weapons in Baghdad. Is the minister aware of the 28 May 2003 report by the CIA titled *Iraqi mobile biological warfare agent production plants* in which the agency states: US forces in late April also discovered a mobile laboratory truck in Baghdad. The truck is a toxicology laboratory from the 1980s that could be used to support BW or legitimate research.

Is this the same truck that the Prime Minister declared to parliament on Monday to be: … a mobile biological weapons production facility and closely matches the description given to the United Nations Security Council in February by the Secretary of State.

Minister, why did the Prime Minister refuse to add the caveat that the US intelligence analysts believe that this mobile lab could be used for legitimate research?

Senator Bolkus—Because he’s a liar.

The PRESIDENT—Senator Bolkus, would you withdraw that?

Senator Bolkus—I withdraw the claim that the Prime Minister was a liar.

Senator ALSTON—As the Prime Minister has made clear on a number of occasions, it is a matter of taking into account a lot of intelligence information from a number of sources. As long as you are acting responsibly on that, are not embellishing it and are putting forward your best assessment of the chair whether you like it or not and I am responsible for order in the chamber. I believe, and I have said before, that it is not in order to approach visitors in our chamber during this time or at any other time.
impact and effect of that advice then you are, of course, in good standing.

Senator Robert Ray—Provided you go back and check it at a later time.

Senator ALSTON—If there are matters that are brought to your attention that lead to a need for a significant revision, they are clearly matters to be taken into account. But the Prime Minister is entitled to proceed on the basis of advice provided to him. In relation to mobile laboratories, I would not have thought there was much doubt that Iraq had mobile laboratories. If you want to give them the benefit of the doubt and say, ‘They could have been used for nuclear purposes, therefore we will presume they were not until some witness comes forward and gives evidence to the contrary,’ then you will never get anywhere. It is not a matter of assessing hard fact in this area; it is a matter of making judgments based on assessments.

The fact is that as recently as November last year the United Nations itself, by virtue of resolution 1441, accepted the proposition that Iraq did have a whole raft of weapons that were potentially able to be used for mass destruction. Whether it was anthrax or other disabling gases, the fact is that they were there. The question is: what have they done with it since? The question is not: ‘Let’s pretend they don’t have anything. As long as you can’t find something right now, that means that they never existed.’ That is not the basis on which this whole debate has been conducted.

It might suit your purposes to have a bit of revisionism in the post-mortem, but, quite clearly, the key issue is the basis on which advice was taken that led to the coalition of the willing going into Iraq and taking the action it did. It took that action on the basis of numerous intelligence reports, which obviously involved interaction between cooperative governments. I note also, for example, that former Iraqi Deputy Prime Minister Tariq Aziz is reported to have indicated that Iraq destroyed significant parts of its weapons of mass destruction program when coalition forces started arriving in the region. The whole premise for this question seems to be that, unless one can come up with something right now that is categorical evidence of the proposition, we are entitled to pretend that it never existed.

Senator Mackay—It’s a CIA report!

Senator ALSTON—The fact is that the whole UN itself proceeded on that basis. The debate was about whether more time should be given for dismantling these weapons and whether they should in fact have been given an opportunity to allow the inspectors in. As Senator Macdonald keeps saying, if Saddam Hussein did not have these weapons, why on earth didn’t he simply cooperate from the outset? He would never have had the problem. But, of course, he fought to the very end. He was obfuscating. Even Hans Blix and Mohamed ElBaradei were very concerned about the level of cooperation given. If that is the starting point in this debate, I do not think you should simply try and pin it all on what occurred after the event. It is the basis on which the original action took place that is paramount.

Senator FAULKNER—Mr President, I ask a supplementary question. This is a specific question about a statement made by the Prime Minister in the House of Representatives on Monday about a possible third mobile production lab for biological weapons in Baghdad. The CIA said it could be used to support biological weapons or legitimate research. I am asking why the Prime Minister failed to add the caveat that US intelligence analysts believe this mobile lab could be used for legitimate research. Could you please answer that. Given the government’s stated reluctance to have a parliamentary
inquiry to consider these matters, what action
does the government actually intend to take
to verify the accuracy of claims made regard-
ing Iraq’s weapons of mass destruction, a
very good example being the Prime Minis-
ter’s own claim about this third truck?

Senator ALSTON—The proposition
seems to be that if you get advice that says,
‘These weapons could be used for peaceful
purposes or they could be used for warlike
purposes,’ you say, ‘Therefore we won’t do
anything about it.’ That is what you are say-
ing. We do not accept that proposition. What
we are talking about is if they have a capac-
ity to cause harm. If you think that, given the
12-year track record of Saddam Hussein, he
should be somehow given the benefit of the
doubt, quite clearly you are never fit to run
the country. Quite clearly what was reported
in the Bulletin today is dead right: the Aus-
tralian people have fundamental reservations
about your capacity to deal with national
security issues.

Honourable senators interjecting—

Senator ALSTON—If you are going to
treat Saddam Hussein like someone in a kin-
dergarten who deserves to be patted and told
not to do it again, then you really will never
come to grips with the proposition. The fact
is that we did not give Saddam Hussein the
benefit of the doubt; we were prepared about
his capability based on his 12-year track re-
cord of intransigence. (Time expired)

The PRESIDENT—I remind honourable
senators that shouting across the chamber is
disorderly.

Housing: Affordability

Senator BARTLETT (2.33 p.m.)—My
question is to the Minister representing the
Treasurer, Senator Minchin. Does the minis-
ter acknowledge that Australia has experi-
enced a sustained housing boom and that in
the past two years housing prices in the Syd-
ney area have risen by 45 per cent and,
across all capital cities, by an average of 38
per cent? Does the government share the
concerns of the Reserve Bank Governor, Ian
Macfarlane, about the level of speculative
housing and unit investments in our cities?
What action is the government planning to
ensure that property investors invest in af-
fordable rental housing and home purchase
and not just overpriced units? What has the
government done in response to the calls by
the Brotherhood of St Laurence, Mission
Australia and ACOSS for a national housing
strategy or a plan to tackle the issue of hous-
ing affordability?

Senator MINCHIN—There are certain
facts on the table. Yes, house prices have
increased substantially in most capital cities
over the last few years but, as we have ac-
nowledged on numerous occasions—and I
think it is the reality—you have to under-
stand why that is and the consequences of it.
It is driven by the strength of our domestic
economy. It is driven by high levels of con-
sumer confidence—and today we have seen
consumer confidence at a nine-year high. It
is driven by us having what are, in Australian
terms, very low interest rates. The housing
mortgage rate was about 10½ per cent when
we came to office; it is now around six or 6½
per cent. The consequence of that is obvi-
ously that Australians have the confidence to
go out and borrow and invest in housing. We
also have a relatively high immigration rate
and a relatively high population growth rate
in this country by Western terms. That also
increases the demand for housing. The con-
sequence of that is that obviously that Australians have the confidence to
go out and borrow and invest in housing. We
also have a relatively high immigration rate
and a relatively high population growth rate
in this country by Western terms. That also
increases the demand for housing. The con-
sequence of that is that Australians, by and
large, are experiencing record levels of net
wealth. It is a de facto form of savings where
the consequences of housing ownership are
being reflected in the net worth of ordinary
Australians. That is at record levels.

We are very pleased that Australians are in
this situation—that they are experiencing this
level of consumer confidence and rises in
their own net wealth on the back of these low interest rates. All of us want to ensure—and those of us with children want to ensure—that future generations have access to affordable housing. The residential housing industry being one of the great deregulated labour market areas, the flexibility in the house building industry in this country means that house construction costs are relatively low and ordinary Australian families have as great an opportunity as probably any families in the world to buy affordable housing. Critical to that is keeping interest rates at affordable levels. That will only come from responsible economic management, keeping government debt down, keeping the government in surplus or balancing the budget and ensuring that there is less pressure on interest rates from the government sector. That is the best thing we can do. We can also ensure that the economy continues to grow so that people can stay in jobs because jobs and levels of employment are critical to the capacity for ordinary Australian families to continue to be able to afford housing.

While we acknowledge the issues that Senator Bartlett refers to, and while to the extent that if housing prices were to continue to increase at these rates you might reach a point at which you could start to have some concerns for lower income Australian families, everybody in the industry is saying that there must clearly come a day when housing prices start to slow down. Indeed, in relation to the unit market, as the Governor of the Reserve Bank has been warning, we are seeing prices flattening and most commentators predict that that will flow through to ordinary residential housing one day soon. We are conscious of the issues you raise. Some interesting propositions with regard to housing affordability were raised at the national convention of the Liberal Party and we will continue to keep policy proposals of that kind under consideration.

Senator BARTLETT—Mr President, I ask a supplementary question. If the government wants to ensure that housing does become affordable for purchase and for rent, surely it also needs to do more to keep housing prices down. Apart from record levels of net wealth, we are also at a stage of record levels of net debt. Does the minister agree that the housing market and housing investment are already failing to deliver an adequate supply of affordable housing? Does the government recognise that the lack of means testing for things such as the $1 billion first home owners grant, the negative gearing tax concessions which cost another billion dollars and the 50 per cent capital gains tax discount all result in very significant forgone revenues at the expense of low to moderate income Australians who cannot afford either home ownership or affordable rental housing?

Senator MINCHIN—There seemed to be a very odd intimation in that question that somehow the federal government should introduce price regulation of housing. That would be an extraordinary proposition and one that would be rejected by almost every Australian. However, I thank Senator Bartlett for reminding me of the First Home Owners Scheme which this government has in place. It has done an enormous amount to ensure that young Australians can find the deposit to purchase a house. It has been one of the best schemes we have had for ensuring that Australians can own their own homes, and it is a scheme of which we are very proud. I thank Senator Bartlett for reminding me of it.

Iraq

Senator ROBERT RAY (2.40 p.m.)—I direct my question to Senator Abetz, the Minister representing the Minister for Foreign Affairs. Can the minister confirm that the specific intelligence used in the Prime Minister’s 4 February statement to parlia-
ment about Iraqi attempts to procure uranium from Niger have since been comprehensively disproved in the United States? Can the government confirm whether intelligence agencies have provided further advice on the issue of African sources of nuclear material to Iraq which confirms that the original information was incorrect? Will the government now correct the public record?

Senator ABETZ—I am aware of the Niger situation in general terms. In relation to the other African sources referred to by the honourable senator, I am not aware of that and I will refer the question to the minister for a substantive answer.

Senator ROBERT RAY—Mr President, I ask a supplementary question. I thank the minister for confirming that he is aware of the Niger issue. He might like to comment to the Senate on whether the original statement has now been proved to be incorrect and, in light of that, whether there is a need for the government to hold some sort of inquiry to establish the veracity of the intelligence material that the government relied on in genuine circumstances to make their decision to intervene militarily in Iraq. Isn’t it a fact that if some of that material proves to be less than accurate, it is a concern for future government reliance on intelligence material?

Senator ABETZ—I thank Senator Ray for his supplementary question in which he did confirm that the evidence that was provided at the time was accepted in genuine circumstances. That is what product differentiates Senator Ray’s question from those of Senator Faulkner and Senator Evans earlier during this question time. In relation to the matters that have been raised in Senator Ray’s supplementary question, I will pass them on to the minister as well.

Iraq

Senator BROWN (2.42 p.m.)—My question without notice goes to the Minister representing the Prime Minister and the Minister for Foreign Affairs. I refer to today’s minute to the Prime Minister from John Eyers, the Acting Director-General of the Office of National Assessments—

Government senators interjecting—

The PRESIDENT—Order! Senator Brown, ignore the interjections and address your remarks through the chair.

Senator Alston—I rise on a point of order, Mr President. There are two different ministers representing those portfolio areas. Senator Abetz is looking after Foreign Affairs and I am looking after the Prime Minister’s portfolio.

Senator BROWN—I will start again. I will address my question to the Minister representing the Prime Minister. I refer to today’s minute to the Prime Minister from John Eyers, the Acting Director-General of the Office of National Assessments, which says that a report was given to the government two weeks before the Bali bombings by the office which, in part, states:

... an assessment by an expert analyst on the basis of knowledge of Indonesian Islamic extremists’ attitudes and objectives—

pointed out that extremists saw tourist hotels on Bali and Lombok as being—

havens of Western decadence—

and further—

that a tourist hotel in Bali would be an important symbolic target—

for terrorists. How on earth could the Prime Minister not have instructed the Minister for Foreign Affairs not to make that matter public? Did the Prime Minister know about that report? (Time expired)

Senator ALSTON—I can advise the Senate that the Australian government had no specific warnings of the Bali attacks. DFAT travel advice for Indonesia was based on all information available at the time. The gov-
ernment does understand that the submission to the Senate inquiry from the Office of National Assessments confirms that there was no intelligence warning of a possible terrorist attack in Bali. This fact has already been reported by the Inspector-General of Intelligence and Security who concluded that the government had no prior intelligence about the Bali bombings.

I am informed that one ONA analyst, during a broad briefing and in response to a question from the foreign minister, commented that Bali, Riau and Singapore could be attractive targets to terrorists. The analyst’s observation was based on speculation about what terrorist groups could do and was not based on any specific intelligence. There was not one mention of the possibility of an attack in Bali in any of the 20 written ONA reports on terrorism compiled between the foreign minister’s briefing in June and the Bali bombing on 12 October. At the time of the Bali bombing, the DFAT travel advisory for Indonesia was already very strong and was consistent with those of other Western countries such as the US and the UK.

Senator BROWN—Mr President, I ask a supplementary question. Was it not negligence on the part of the Prime Minister that the report which said that tourist hotels in Bali and Lombok were attractive to terrorists then operating in Indonesia was not passed on to the public? Moreover, I ask: is it government policy now that, where expert analysts say there are attractive targets for terrorists where there are Australian tourists in other countries, that will not be passed on to the public? If that is the case, the public has a right to know about that. Will the government not repeat the failure of the evidence brought forward that such tourists are in places which are potentially a target of a terrorist attack on the basis that it would be a symbolic target injuring the host country?

Senator ALSTON—You do not have to be a Rhodes scholar to speculate that, if terrorists were interested in soft targets, they could target areas that tourists might frequent. You could just as easily say, ‘Yes, and they might actually identify the Melbourne Cricket Ground as a high-priority target.’ It currently holds 70,000—maybe 100,000. Does that mean we should close down the Melbourne Cricket Ground? Of course it does not. You take the advice you get on the basis on which it is provided. If formal advice is given to you that certain specific tourist areas or buildings are likely to be targets of terrorism, then of course that is very specific intelligence information. You would expect that advice to also contain a recommendation that you bring that to the attention of the public. That is not what we are talking about here. I assume you are talking about the matter I canvassed in the earlier part of the answer, and that was in relation to speculation on the part of one analyst. That is a world apart from what you are pretending—

(Time expired)

Foreign Affairs: Travel Advice

Senator LUNDY (2.47 p.m.)—My question is to Senator Abetz, the Minister representing the Minister for Foreign Affairs. I refer the minister to submissions made to the Foreign Affairs, Defence and Trade References Committee published this week. Can the minister confirm that ASIO assessed the threat to Australians to be significantly increased following Osama bin Laden’s taped message of 3 October 2001? Can the minister also confirm that the Office of National Assessments briefed the foreign minister on 18 and 19 June 2002 and warned that Bali was an attractive target for Jemaah Islamiah? In light of the mounting evidence that the intelligence agencies were warning of a possible terrorist attack against Australian interests in Indonesia, including Bali, why did the government choose not to upgrade its spe-
pecific travel warning for Bali before the terrible events of 12 October last year?

Senator ABETZ—Senator Lundy, can I express disappointment on behalf of Senator Kemp that you did not ask him a question. Having dealt with that, Mr President, I understand Senator Lundy represents the Australian Capital Territory. One would have imagined that she might read her daily newspaper, the Canberra Times. If she had read the Canberra Times this morning, she would have seen there was a front-page article in fact answering the very proposition that she put.

Senator Forshaw—You tell us you can’t believe what you read in the papers!

Senator ABETZ—I accept Senator Forshaw’s interjection; it is one of the few times they have got it right. The situation is that certain advice was offered. Mr Downer asked a specific question. That was part of the Canberra Times front-page story today—that Mr Downer specifically asked, as a result of this advice, ‘Should a travel advisory be issued?’ The answer was no. As a result, it puts the complete lie to the suggestion of Senator Brown that there was some negligence involved, because the foreign minister, having been provided with some advice, then followed through and asked the question that one would expect every foreign minister concerned about his fellow Australians to ask—that is, should a travel advisory be issued? The response was that no, it was not necessary. To suggest that any foreign minister of any persuasion would deliberately not seek that sort of advice and thereby jeopardise their fellow Australians is beyond belief. It is beyond comprehension. That Senator Brown could even think of that proposition reflects on him and his mind-set, and it is very disappointing from the Labor Party that they should be following suit as well in this line of questioning when the answer to the honourable senator’s question was there for her on the front page of the Canberra Times this morning.

Senator LUNDY—Mr President, I ask a very specific supplementary question which I would like the minister to answer. Can the minister confirm that as late as 20 September 2002 the Australian Embassy in Jakarta was issuing a bulletin to Australian citizens in Indonesia that said: Bali is calm and tourist services are operating normally. Australian tourists in Bali and Lombok should observe the same prudence as tourists in other parts of the country.

In light of the evidence provided this week to the Senate committee, does the minister believe that this travel bulletin was accurate in all respects?

Senator ABETZ—I am aware of some of the submissions that have been put to the Senate inquiry. That is a submission, as I understand it, from one particular person. There may well be other submissions in response to that, to set the context. We have already found that Senator Lundy in her first question today misrepresented the situation by refusing to acknowledge that which was on the front page of her own newspaper. Similarly, I am not willing to accept that what she had just told us in fact represents the totality of the evidence before the committee.

Health: Disability Services

Senator KNOWLES (2.52 p.m.)—My question is directed to the Minister for Family and Community Services, Senator the Hon. Amanda Vanstone. Will the minister provide the Senate with the latest developments in the negotiations with the states and territories for a third Commonwealth State Territory Disability Agreement?

Senator VANSTONE—I thank Senator Knowles for the question. Along with other senators on this side of the chamber, she has
a particular interest in people with disabilities and the services we can offer them. Last year the Commonwealth offered the states a further $2.8 billion to assist them with their responsibilities under the Commonwealth State Territory Disability Agreement—$2.8 billion over five years to help them with accommodation, respite and day services. That is nearly $900 million more cash for the states than was provided in the last agreement. The condition was that the states would have to outline their five-year funding commitments in dollars, giving us the growth and indexation—in other words, putting their money where their mouths are.

The states were initially unwilling to match the Commonwealth’s growth for all of its Commonwealth, state and territory disability funding, which was about 7.3 per cent. Of course, the growth in our portion of it, for employment services, has been much higher than that; it has been over 12 per cent. But the growth for our whole Commonwealth State Territory Disability Agreement has been something like seven per cent, and the states were unwilling to match that. We expect the states to be improving services for which they are primarily financially responsible. Finally, after nearly a year has passed, I am pleased to inform the Senate that Victoria and Western Australia have signed up, and we expect the Northern Territory, the Australian Capital Territory and South Australia to sign shortly. Queensland has made an offer which looks very positive; Tasmania, sadly, has made an offer which does not. It does not provide a sufficient increase of commitment to people with disabilities from state funding. New South Wales is also still unable to make a reasonable offer, but I will come back to that point.

It looks like the new five-year agreement will provide state and Commonwealth funding of something like $5 billion more than the last one. That looks like the position we will be able to get to, which is a tremendous result for people with disabilities. But there is the matter of Australia’s largest state, New South Wales. Disability services in New South Wales do not have the same level of commitment from their government that those in other states and territories have. The first offer I received from New South Wales for growth funding to look after those who need specialist disability services was for 1.5 per cent per annum. That is derisory. It is a disgrace. It was insulting to disabled people and insulting to the other states to think that they could get away with putting in an offer of 1.5 per cent gross per annum, compared to a seven per cent average for us and, as I say, around 12 per cent in our own areas. The latest offer from New South Wales claims to be something like a four per cent increase, but we cannot see it from looking at their documentation. It looks more like only 3.6—far behind the other states. I have told New South Wales it is just not satisfactory.

If we look at what the Institute of Health and Welfare tell us, bearing in mind that New South Wales has a population a third greater than Victoria, they were able to assist just over 6,000 people in accommodation services; Victoria assisted over 7,000. So you have a much smaller state providing more assistance to people with disabilities. New South Wales just does not know how to run itself. Victoria provides 15 per cent more than New South Wales, despite being about 25 per cent smaller. Victoria spent $4,233 per capita; New South Wales spent just over $3,000 per capita. In other words, Victoria is a smaller state but it spends 40 per cent more per capita than New South Wales. And then, of course, there is the $40 million that New South Wales simply lost. (Time expired)

**Economy: Business Investment**

Senator CONROY (2.56 p.m.)—My question is to Senator Coonan, the Minister
for Revenue and Assistant Treasurer. Is the minister aware that AMP recently held an annual general meeting following a $2.6 billion write-off, an announcement that the company would de-merge its Australian and UK operations and an announcement of a capital raising worth $1.2 billion, and yet approximately 70 per cent of AMP shares were not voted? In light of the apathy of Australian institutional investors, demonstrated by this 30 per cent voting record, isn’t it time that the Howard government took action to require institutional investors to disclose their voting records?

Senator COONAN—I must say it is great to see Senator Conroy having recovered his voice. Chicken-hearted though it might be, it is great to have him back. I have missed Senator Conroy in dispatches. Senator Conroy, the situation as to voting shares and disclosing how shares may be voted is something that, as you well know, is being considered by the government as part of a suite of responses in relation to the CLERP 9 proposals. It has been referred to in the ASX guidelines and it has also been referred to in a number of discussion papers, as Senator Conroy well knows. Senator Conroy has rather latterly jumped on the bandwagon of disclosure—Labor having been asleep at the wheel on these issues for many years and, having woken up at about CLERP 9, of course, now supporting it.

There are some arguments in favour of disclosure of how shares are voted but it is certainly not the be-all and end-all. There are ways in which to influence boards other than by voting shares and by disclosing how you vote. It is paradoxical to suggest—as indeed I understand Senator Conroy does—that those who voted in relation to superannuation funds should be disclosed. What could a shareholder do if they did not agree with how a trustee voted?

The Labor Party oppose any choice, so a shareholder could not move if they did not agree with how shares were voted. It is a complete paradox the way in which the ALP try to frame this policy. They do not know which side is coming and which side is going. Senator Conroy, rather than looking on the Web and trying to see what is happening in the UK and the US and plagiarising all those policies, should get down to the real hard policy work of consulting on some of these issues so that he can understand what might be in the interests of shareholders.

Senator CONROY—Mr President, I ask a supplementary question. In the light of AMP directors awarding themselves a pay rise of 20 per cent as a reward for scrapping their retirement payout policy, whilst AMP’s share price continues to languish, would the minister agree that the self-regulatory approach of the Howard government has been a green light to corporate greed?

Senator COONAN—as I said in my previous answer, shareholder activism has some arguments to support it but it is not the be-all and end-all. Voting by superannuation funds is not of itself necessarily evidence of active monitoring, nor is it evidence of the exercise of influence. There are other ways in which retail shareholders can influence boards. The expense of having to get voting disclosed and to require compulsory voting on shares is not necessarily in the interests of shareholders and it is certainly not in the interests of transparency to require that to happen. Senator Conroy really needs to concentrate very carefully on what will deliver an outcome for shareholders. This is a typical knee-jerk reaction—it sounds good and looks good but it does not necessarily—(Time expired)

Senator Alston—Mr President, I ask that further questions be placed on the Notice Paper.
QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Manildra Group of Companies

Senator MINCHIN (South Australia—Minister for Finance and Administration)  (3.02 p.m.)—Yesterday, in response to a question about ethanol production subsidies from Senator O’Brien to me representing the Minister for Industry, Tourism and Resources, I undertook to obtain additional information. I seek leave to incorporate that further information in Hansard.

Leave granted.

The answer read as follows—

Can the Minister confirm that an ethanol production subsidy of $17.13 million was paid to the near monopoly company in Australia’s domestic ethanol industry, the Manildra Group, between October last year and May this year?
• Yes. Between October 2002 and the end of May 2003, Manildra Energy Australia Pty Ltd was paid $17,132,670.

Can the minister also confirm that during this period Manildra marketed fuel containing ethanol concentrations of 20 per cent—a level the government has now finally acknowledged is not safe for Australian cars?
• The Government had been advised by Manildra that it had been marketing up to 20% blends. The Government in consultation with industry has been examining the appropriate level of ethanol blends in petrol. On 11 April 2003, the Minister for the Environment, the Hon Dr David Kemp announced the Government’s intention to set a 10 per cent limit for the blend of ethanol in petrol effective from 1 July 2003, while tests on the effects of higher blends of ethanol in petrol on vehicles continue.

• The Government is taking action to amend the Fuel Quality Standards Act 2000 to allow it to require labelling of ethanol blends.

• The Government has taken this action because it believes consumers have a right to know whether the petrol they are buying contains ethanol and the nature of the blend.

• These measures are designed to restore consumer confidence in the use of ethanol as a transport fuel.

Why is the Manildra Group receiving more than $2 million per month from the Commonwealth to undertake exactly the same monopoly activities as before the subsidy was introduced?
• As part of the Government’s strategy to encourage the use of biofuels in transport over time, the Prime Minister announced on 12 September 2002 the introduction of production grants for fuel ethanol. At the same time, the Government removed the existing fuel tax exemption on fuel ethanol.

• These actions are consistent with the Government’s fuel tax objectives to provide a more consistent and robust tax regime for fuels and to provide a transition to an excise system which seeks to provide competitive neutrality across all transport fuels.

• Manildra is not the only producer of fuel ethanol in Australia. Ethanol production grants are also provided to CSR Distilleries and are available to any new producer of fuel ethanol.

• I understand there are some 15 fuel ethanol plant developments or expansions that have been proposed primarily in rural areas of Queensland and New South Wales. All of these new developments can apply to receive the fuel ethanol production grants once operational.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Iraq

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)  (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Alston) and the Special Minister of State (Senator Abetz) to questions without notice asked today relating to the existence in Iraq of weapons of mass destruction.
We have had a situation today where Senator Abetz has represented Senator Hill in the portfolio of Foreign Affairs and Senator Alston has been the Acting Leader of the Government in the Senate. They have been asked serious and important questions in relation to the issue of weapons of mass destruction, and the answers from both ministers have been absolutely woeful. The attitude of Senator Alston and Senator Abetz underlines the immediate need for a full and thorough parliamentary inquiry into weapons of mass destruction.

There has been no coherent argument presented by the government against such an inquiry. There is a great deal of public unease about the reasons the government gave for the troop deployment to Iraq, and none of those concerns has been alleviated in the parliament today. When Senator Abetz was asked why, if it is acceptable now to take time to search for Iraq’s banned weapons, it was unacceptable for the UN weapons inspectors to be given some time to continue their work prior to the invasion of Iraq—of course that is what Dr Hans Blix expressly asked the UN Security Council for on 7 March—there was no answer, no explanation, no reason forthcoming and no capacity from Senator Abetz to provide an explanation.

Senator Abetz was asked about the statements that former UK Ministers Cook and Short had made in the House of Commons foreign affairs committee. They said that they had been separately briefed by MI6, in the period before the military conflict in Iraq, to the effect that Saddam Hussein’s weapons of mass destruction did not pose an immediate effect. When Senator Abetz was asked whether the Australian intelligence services relied heavily on the same UK and US source material, there was no answer. Again, no information was provided to the Australian parliament on this very important issue of whether Australian intelligence services also proposed to the government the same advice that MI6 gave to the UK government: that Iraq’s weapons of mass destruction capability was such that it did not have a credible device capable of being delivered against a strategic city target. There was no answer, no explanation.

Then we had the key issue of what Mr Howard said about the mobile biological weapons production facility—again, a very important issue—a laboratory characterised as a ‘toxicological laboratory from the 1980s that could be used to support biological warfare or legitimate research’. Apparently the other two suspicious trucks were manufactured in Britain, to make hydrogen for artillery balloons. When we now know that that was the assessment of the CIA, why did Mr Howard provide such a qualified statement in the House of Representatives on Monday this week? I believe that Mr Howard is again trying to justify his case by misleading the parliament. He did not outline the CIA’s qualified assessment. There is no direct evidence that the third truck was used for biological warfare. The government’s case in relation to the issue of weapons of mass destruction, after question time in the Senate today, stands in absolute disarray. It is time for the government to come clean and to hold the parliamentary inquiry that is now long overdue.

Senator FERGUSON (South Australia) (3.07 p.m.)—One is not surprised when Senator Faulkner starts off his little tirade by suggesting that the answers given by Senator Abetz and Senator Alston today were absolutely woeful. It would not matter what answer was given to Senator Faulkner, he would only ever describe it as being absolutely woeful. I happen to think, and so do other members on this side of the chamber, that the answers given by Senator Abetz and Senator Alston adequately covered the issues
that were raised in the questioning. A judgment made on the basis of intelligence provided to this government has resulted in the removal of one of history’s great tyrants. The opposition seem to overlook that. A man who would put human beings through shredding machines has been removed from office and his regime has been removed forever, and the opportunity for weapons of mass destruction or the capability of building weapons of mass destruction has gone with that. I think that is what we ought to be rejoicing about in this country—the fact that such a tyrant no longer exists in Iraq and the horrific brutality that he inflicted on the people of Iraq over a long period of time will not be seen again for a long time.

When we think of the small number of casualties that occurred in this war, both military and civilian—which quite possibly were no more than the number that Saddam Hussein got rid of in a single day—that ought to put things in perspective. As a result of a judgment that was made on the basis of intelligence that was provided to this government, the coalition of the willing acted. It acted not only because of that intelligence information but also because of the fact that Iraq and the Iraqi regime had constantly repudiated some 18 United Nations resolutions—some 18 resolutions that they refused to obey. The reason and the legality for going into Iraq was the fact that they continued to refuse to comply with the United Nations resolutions.

Those resolutions, by their very nature, confirmed that Iraq did have weapons of mass destruction capability. It was agreed, before those resolutions were put, that in fact they did have weapons of mass destruction capability. On the basis of that and all the available information, this government took action to join the coalition of the willing to rid the world of this tyrant. I for one am very glad they did. I do not know how people feel in the Labor Party. They seem more concerned about how the decision was arrived at than the fact that this tyrant has gone. Whether they wanted him to stay I simply do not know. Maybe they did not want the Australian forces, together with Great Britain and the United States, to remove this person and his regime. Maybe they wanted him to stay, but I think that all the atrocities we have seen in recent times alone were enough reason for us to join the coalition of the willing to protect the people of Iraq.

They raised the issue in question time about what is happening with the British House of Commons committee which is currently taking evidence. I would have thought that revealing information that would have been given to former Ministers Cook and Short confidentially as ministers in relation to the intelligence that was available says much more about those former ministers than it does about the advice that they were given, which they have now made public. We have also seen that former ONA analyst Andrew Wilkie plans to appear before the foreign affairs committee. He is a private citizen, so he is quite welcome to go and give his views to that committee, but when thinking of Mr Wilkie’s contribution we ought to remind ourselves of the statement that was made by the Director-General of the Office of National Assessment, Mr Jones, concerning Mr Wilkie’s resignation in March, when he pointed out that he had been an analyst working mostly on illegal immigration issues in a branch that was not responsible for ONA’s coverage of Iraq. I think we ought to put that into proper context when we are thinking about the contribution that may be made by the former ONA analyst Andrew Wilkie when he appears before the House of Commons foreign affairs committee, if indeed he does. (Time expired)

Senator CHRIS EVANS (Western Australia) (3.12 p.m.)—This is an important de-
bate because I think, as we saw from Senator Ferguson’s contribution and the answers by Senator Abetz in particular today, the coalition government are trying to treat Australians like fools. They are trying to convince them that they ought not worry about the justification used for the war that was advanced before the war and that they ought to forget all that and say, ‘The end justifies the means.’ Senator Ferguson today reckoned it was all about the atrocities committed against the Kurds. It took 15 years for him to get angry about that. The reality is that the government said it was not about regime change. Senator Hill in this chamber and Mr Howard in the other chamber made it very clear that our involvement in Iraq was justified by the threat of WMD—the threat that Iraq and Saddam Hussein’s regime posed to the world, and to their neighbours in particular, through their use of and capability of producing WMD. That is all on the public record.

We see now that the government do not want to debate that. They do not want to focus on those important issues about whether that threat was real or not. They want to talk about how the end justifies the means and invent a whole new set of justifications for the war. We are trying to focus on a very important debate and a very important question—that is, was the intelligence used by the Australian government correct? Was the government’s decision to go to war in Iraq based on correct intelligence or was that intelligence flawed? There is a secondary argument going on in Britain about whether or not the British government somehow misconstrued, abused or fiddled with that information to create a case. The argument in Australia to this stage has been one purely about whether or not the intelligence received by the government was correct.

As shadow minister for defence, I received briefings on these matters provided by the government and, like all the opposition spokesmen and our leader, I took those briefings to be accurate. We, like the government I presume, responded to those briefings and assumed that the intelligence being provided to us, which formed the basis of those briefings, was accurate. If that is not the case, then there is a very serious concern for the whole Australian community. I think the government are trying to treat Australians like fools, because a lot of Australians, including many who supported the war most strongly, are concerned about the suggestion that the intelligence used to justify the war might have been flawed. It is a very important issue for Australia, and we need to get to the bottom of whether or not the intelligence that we relied upon was accurate. Just as we are concerned about what intelligence agencies might have provided in relation to the Bali bombings and whether we should have or could have known or could have had better information, equally in this case we want to have a very clear understanding of whether or not intelligence which we relied upon to go to war was in fact correct.

Senator Hill said in August 2002 that there was a need for evidence before we joined America in any military action in Iraq. He said that we could not join America in military action in Iraq unless that evidence was provided. So we then saw produced the intelligence assessments that Senator Hill and, obviously, the Prime Minister, along with the rest of the national security committee, used as their justification for war. Some of that, they claimed, was Australian sourced material. So it is not just a debate about what we got from the UK or the US; it is also a debate about Australian sourced material because the Prime Minister, in his address to parliament in February, in justifying military action in Iraq, made it clear that some of this intelligence was in fact Australian sourced; it was our own intelligence. So there are ques-
tions that go beyond the inquiries that are occurring in the United Kingdom and the United States, because they actually go to Australian sourced material and directly to the role of Australian intelligence agencies. It is important that we come to terms with that.

The Australian public are not mugs. They are not going to be convinced that the end justifies the means. They are glad that Hussein has gone, as we all are, but they do want to know whether or not they were misled, they do want to know whether or not our intelligence services are providing good quality product and they do want to be able to rely on our intelligence services to provide accurate information to justify major decisions such as going to war. We do need to be reassured about those things, and the government’s stonewalling on this issue only breeds concern and cynicism that there is something to hide. We ought to have a very full inquiry to be sure that what we were provided with was accurate and that there was no suggestion that that intelligence was manipulated. (Time expired)

Senator JOHNSTON (Western Australia) (3.17 p.m.)—Before I address the particular issues raised in this very important debate by honourable senators on the other side, my attention is drawn to the fact that, with our defence personnel having completed a very successful operation in Iraq, time needs to be spent on saying what a magnificent job our Australian Defence Force personnel did in Iraq. I refer to the SAS—fabulously proficient and professional in carrying out their very difficult and dangerous tasks, all with no casualties—and the Navy’s mine clearance divers—these very professional and proficient men carrying out a most dangerous task in disarming and clearing mines—and of course our FA18 pilots and our navy ships in the gulf. What a magnificent performance! Indeed, as their commanding officer said, they are amongst the world’s best at what they do. So the government has got it right on Iraq and the opposition, as usual, has got it wrong.

Saddam Hussein, so we were told by the opposition, was a terrible man and he must be removed, but he must be removed with the tick of the United Nations and with the tick of the French. As we in this chamber all know, the French were responsible for giving Saddam Hussein a nuclear reactor back in the eighties. What an outrageous concept for the Labor Party to bring into this chamber! He is a man who has murdered thousands upon thousands of people, hundreds of thousands of people—women and children, young people and the aged. As we stand here and talk now, they are digging bodies up and mass graves are being discovered—and the Labor Party wants to say that Iraq was not a threat. There are biological weapons manufacturing facilities which Senator Faulkner wants to say could have been used legitimately. Of course every scientific establishment that is used in the production of weapons of mass destruction could also be used legitimately; it is just so obvious it beggars belief that he would try to bring it into this chamber.

Importantly, let us look at why the Labor Party have got this wrong. They are the ones who simply could not address the issue of the threat. They could not understand this threat of weapons of mass destruction. They could not understand the history of the leadership of this despot in Iraq having murdered hundreds of thousands of people and having used gas and having used torture—all of the outrageous and repugnant methods used. They could not bring themselves to understand that weapons of mass destruction were a threat. Even when missiles were landing on Kuwait City, missiles that should have been banned and should have been declared to the weapons inspectors, the Labor Party were still not convinced that the regime in Iraq
had the capability of producing weapons of mass destruction. It really beggars belief. In fact, it is simply an example of the total lack of credibility of the opposition.

In this climate, when their own standing amongst themselves is in disarray, they are reduced to clutching at this straw, and what are they saying? They are saying, ‘Let’s check and see if the intelligence was correct.’ Let us do that, but of course if the intelligence is proved to be correct over a much longer period of time than the month and a half that has expired since we have had access to this country, let us not jump to conclusions because of a political convenience that the Labor Party need to hang a hat on in a time of crisis—and that is what this is all about. If we did have a viable opposition in this place today, they would have supported the government in identifying the threat. The comparison between Labour in England and Labor here is absolutely stark. It shocks the mind to think that people from a labour movement can be so completely opposed in logic and credibility. So for Labor senators to come here and say that Iraq is not a threat, and never was a threat in the face of all the history, simply underlines the fact that again on national security they have got it wrong.

Senator ROBERT RAY (Victoria) (3.22 p.m.)—We have heard a very misleading speech from Senator Johnston in which he claimed that Labor do not say that Iraq was or could have ever been a threat. What we are simply about here is asking that the intelligence on which this government based its actions be in fact benchmarked now and into the future. As I said in my supplementary question—I do not know why it surprised Senator Abetz—at this stage the Labor Party have not accused the government of tricking or duping the Australian public with regard to the intelligence it received. We know that accusation is made against the US and the UK governments in their own domestic political scenes and we will leave it there. The real question here is not whether the government has in any way misled the Australian public as to the nature of the intelligence; it is whether that intelligence was accurate enough for a government to base its activities on.

We know that there would be very little input into Australia from its own intelligence agencies on issues relating to the Middle East. Australia happens to be part of an intelligence club in which intelligence is shared. We share intelligence with the United States, the United Kingdom, Canada and New Zealand. We have our own specialities. We put into that pool; we withdraw from that pool material that others put in. The overwhelming, if not the exclusive, amount of intelligence and analysis on Iraq would have come from overseas sources and not Australian sources. We as a country, and the government, would have had to rely on that information. Having relied on that information it is time that it was checked—not just looked at to make the political point about whether intervention was justified in the past. That is not the major concern. As people have said, weapons of mass destruction and the sponsorship of terrorism were all reasons we worried about Iraq. If that does not prove to be valid then the very fact that it was a dictatorial, vicious and malignant regime may well justify the action. But think of the future. If the intelligence was not correct on that occasion, what acts will we take in future on inaccurate intelligence?

I am one that believes it is not fair to say that all intelligence agencies will get it right on all occasions. They are fallible. There is no way intelligence agencies can predict all future results. That is impossible. Given modern technology and the human mind, that becomes an impossibility. And it is an impossible expectation that we would place on them. Nevertheless, in saying a country is
developing or possesses weapons of mass destruction, we need to know how accurate that information is. I had no reason to disbelieve it six months ago. What we have had is evidence from a Senate estimates committee that only 20 per cent of the potential sites have been searched. Usually that is an indicator, but let us not take it as such. It is possible that there are hidden away somewhere in Iraq weapons of mass destruction. And, yes, the people searching for them should be given time. But the attitude of this government is extremely defensive. We had defensive answers today. We had misleading take note speeches, specifically from Senator Johnston, who tried to distract us from the basic issue. This government needs to front up to the issue: was its intelligence right or was it wrong? It is not a hanging offence if the intelligence agencies got it wrong for the government but it does mean that in future we might have to apply a little more critique to the intelligence and the analysis that we are receiving. We raised one issue today and that was the uranium coming from Niger. That has been disproved. The government will not go fully on the public record and say, ‘Sorry, we were wrong on that.’ The reason you have rubbers on the end of pencils is that everyone makes mistakes. And that was a mistake. But we need to know as a country how many other mistakes should be there.

I have argued strongly that there should be an independent inquiry into the intelligence—not rushed in a week or two in a politically partisan way, but in a mature way to evaluate that intelligence as it applies to the results found in Iraq. The government has not acceded to that and we could well run the risk later today of adopting a more radical and a more stupid approach to these matters than we otherwise should. This should have been a matter referred to the joint intelligence committee by the minister in order to establish the facts—to a committee that is basically fairly non-partisan, that is mature and that has a record of never leaking. We could have considered these matters. I hope that is the way it eventually transpires.

Question agreed to.

NOTICES
Presentation

Senator O’Brien to move on the next day of sitting:

That there be laid on the table, no later than immediately after motions to take note of answers on Thursday, 19 June 2003:

(a) draft regulations to be made under the Energy Grants (Credits) Scheme Bill 2003;
(b) draft regulations to be made under the Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003; and
(c) records of any meetings at which members of industry or other groups with a potential to be affected by the passage of these bills were permitted to examine the draft regulations referred to above.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes the report on the health of Iraqi children by UNICEF published in May 2003, which indicates that:
(i) acute malnutrition rates in children under five have nearly doubled since the previous survey in February 2002 and 7.7 per cent of children under five are suffering from acute malnutrition and, without treatment, are at very high risk of dying,
(ii) unsafe water from disrupted water services and the resulting rapidly increasing rates of diarrhoea may be playing a significant role in this malnutrition, and
(iii) one in ten children is in need of treatment for dehydration;
(b) notes the 19 May 2003 update from the United Nations (UN) Office of the Humanitarian Coordinator for Iraq, which indicates that in Iraq:

(i) distribution systems have broken down, largely owing to a lack of running costs at the Minister of Health and prevalent insecurity,

(ii) there are shortages of vaccines across the country, and

(iii) public health programs and disease control and surveillance have not yet been fully re-established; and

(c) calls on the Federal Government to seriously address these issues through its representations to the UN and the United States of America and by increasing its contribution to the rebuilding of Iraq through health services for Iraq’s children.

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

(a) condemns the most damaging effects of the Government’s proposed reforms to Medicare, which will create a user-pays, two-tiered health system in Australia and dismantle the universality of Medicare;

(b) acknowledges that the first of the damaging effects of the Government’s reform package is to cause bulk-billing rates to decline further, and that these reforms do nothing to encourage doctors to bulk bill any Australians other than pensioners and concession cardholders but make it clear that the Government considers bulk billing to be a privilege that accrues only to a subset of Australians, not an entitlement that all Australians have as a result of the Medicare charge;

(c) notes that the second most damaging effect of the Government’s proposed changes to Medicare is the facilitation and encouragement of higher and higher co-payments to be charged by medical practitioners, and that a central plank of the Government’s package is the facilitation of co-payments to be charged by doctors who currently bulk bill Australian families, as well as to make it easier for doctors who currently charge a co-payment to increase the amount of this co-payment; and

(d) notes, with concern, that the Government seeks to allow private health funds to offer insurance for out-of-pocket expenses in excess of $1,000, a measure which, if implemented, would inflate health insurance premiums as well as be a real step towards a user-pays system in Australia where people who can afford co-payments and insurance premiums will be treated when they are sick, whereas those individuals and families on lower incomes will be forced to go without medical assistance.

Senator Chris Evans to move on the next day of sitting:
That the Health Legislation Amendment (Medicare and Private Health Insurance) Bill 2003 be referred to the Select Committee on Medicare for inquiry and report by 9 September 2003.

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

(a) notes that the International Criminal Court’s Prosecutor commenced office in the Hague on 17 June 2003;

(b) reaffirms its support for the International Criminal Court and the important role that it will play in bringing to justice those who commit crimes against humanity;

(c) welcomes the adoption by the European Union of a revised Common Position on the International Criminal Court, obliging member states to cooperate with the court; and

(d) urges the Government to decline any request from a country seeking to enter into an agreement with Australia pursuant to Article 98 of the Rome
Statute, which would grant its citizens immunity from prosecution in the International Criminal Court.

**Senator Nettle** to move on the next day of sitting:

That the Senate—

(a) notes that 19 June 2003 marks the 58th birthday of Burmese democratic leader Daw Aung San Suu Kyi, who is under unlawful detention in Burma;

(b) recalls with horror the massacre on 30 May 2003, facilitated by the Burmese military regime and resulting in the death of approximately one hundred people and the detention and disappearances of several hundred others;

(c) calls upon the Government to pressure the Burmese military regime to comply with United Nations resolutions to implement the results of the 1990 Burmese elections;

(d) calls upon the Government to ensure that any projects, including the proposed 3-year humanitarian assistance and training programs, remain suspended until the democratic parliament is convened;

(e) recognises the Committee Representing People’s Parliament as the legitimate body to convene a democratic Parliament in Burma, according to the 1990 election result;

(f) calls upon the Government to exert economic and diplomatic pressure, including through restrictions on trade and investment, a tourism boycott and a downgrading of diplomatic relations against Burma until the regime enters into official dialogue with Daw Aung San Suu Kyi; and

(g) calls upon the Burmese regime to immediately release Daw Aung San Suu Kyi, U Tin Oo, Min Ko Naing and all political prisoners and restore democracy.

**Senator Nettle** to move on the next day of sitting:

That the Senate—

(a) calls on the Government to:

(i) rule out the establishment of any new United States (US) military bases in Australia,

(ii) rule out future use of Australian territory for US military training exercises,

(iii) rule out the transformation of any Australian ports into regular US military 'transit points',

(iv) inform the Senate of any formal or informal approaches made by the US Government to the Australian Government or Department of Defence in relation to any further deployment of US troops to Australia, or the establishment of any US military bases in Australia, and

(v) close the US military spy base at Pine Gap; and

(b) condemns the Government’s ill-considered pursuit of closer military ties with the US, without Parliamentary consultation or debate and despite the threat to Australia’s national interest that this policy poses.

**Senator Mark Bishop** to move on the next day of sitting:

(1) That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report:

(a) the adequacy of current arrangements within the Department of Defence for the health preparation for the deployment of the Australian Defence Forces (ADF) overseas;

(b) the adequacy of record keeping of individual health and treatment episodes of those deployed, and access to those records by the individual;
(c) the adequacy of information provided to individual ADF members, pre-deployment, of the likely health risks and anticipated remedial activity required;

(d) the adequacy of current arrangements for the administration of preventive vaccinations, standards applied to drug selection, quality control, record keeping and the regard given to accepted international and national regulation and practice;

(e) the engagement in this process of the Department of Veterans’ Affairs and the Repatriation Medical Authority for the purposes of administering and assessing compensation claims; and

(f) the adequacy of the current research effort focussing on outstanding issues of contention from the ex-service community with respect to health outcomes from past deployments, and the means by which it might be improved.

(2) That, in undertaking the inquiry, the committee consider recommendations for an improved system within the Defence and Veterans’ administrations which will give greater assurance to the individual that their health risks are minimised, and fully recorded for the purposes of future compensation where justified.

Senator Mark Bishop 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:

The options and preferences for a revised system of administrative review within the area of veteran and military compensation and income support, including:

(a) an examination and assessment of the causes for such extensive demand for administrative review of decisions on compensation claims in the veterans and military compensation jurisdictions;

(b) an assessment of the operation of the current dual model of internal review, Veterans’ Review Board/Administrative Appeals Tribunal, its advantages, costs and disadvantages;

(c) an assessment of the appropriate model for a system of administrative review within a new, single compensation scheme for the Australian Defence Forces and veterans of the future, including compensation claim preparation, evidentiary requirements, facilitation of information provision and the onus of proof;

(d) identification of policy and legislative change required to amend the system at lowest cost and maximum effectiveness; and

(e) an assessment of the adequacy of non-means tested legal aid for veterans, the appropriateness of the current merits test and its administration, and options for more effective assistance to veteran and ex-service claimants by ex-service organisations and the legal industry.

COMMITTEES

Selection of Bills Committee

Report

Senator McGauran (Victoria) (3.28 p.m.)—At the request of Senator Ferris, I present the sixth report for 2003 of the Standing Committee for the Selection of Bills.

Ordered that the report be printed.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 6 OF 2003

1. The committee met on Tuesday, 17 June 2003.

2. The committee resolved to recommend—

That—
(a) the provisions of the Taxation Laws Amendment Bill (No. 5) 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 11 August 2003 (see appendix 1 for statement of reasons for referral);

(b) the provisions of the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 20 August 2003 (see appendix 2 for statement of reasons for referral);

(c) the provisions of the Export Market Development Grants Amendment Bill 2003 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report on 24 June 2003 (see appendix 3 for statement of reasons for referral); and

(d) the following bills not be referred to committees:

- Acts Interpretation Amendment (Court Procedures) Bill 2003
- Australian Film Commission Amendment Bill 2003
- Australian Prudential Regulation Authority Amendment Bill 2003
- Criminal Code Amendment (Terrorist Organisations) Bill 2003
- Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003
- Defence Legislation Amendment Bill 2003
- Excise Tariff Amendment Bill (No. 1) 2003
- Customs Tariff Amendment Bill (No. 2) 2003
- Health and Ageing Legislation Amendment Bill 2003
- Health Care (Appropriation) Amendment Bill 2003
- Health Legislation Amendment Bill (No. 1) 2003
- Industrial Chemicals (Notification and Assessment) Amendment Bill 2003
- National Handgun Buyback Bill 2003
- National Health Amendment (Private Health Insurance Levies) Bill 2003
- National Health Amendment (ACAC Review Levy) Bill 2003
- National Health Amendment (Collapsed Organization Levy) Bill 2003
- National Health Amendment (Council Administration Levy) Bill 2003
- National Health Amendment (Reinsurance Trust Fund Levy) Bill 2003
- Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002
- Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003
- Ozone Protection (Imports) Amendment Bill 2003
- Ozone Protection (Manufacture) Amendment Bill 2003
- Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003
- Sexuality Anti-Vilification Bill 2003
- Superannuation (Government Co-contribution for Low Income Earners) Bill 2003
- Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003
- Superannuation (Surcharge Rate Reduction) Amendment Bill 2003
- Taxation Laws Amendment Bill (No. 6) 2003
• Taxation Laws Amendment (Personal Income Tax Reduction) Bill 2003
• Trade Practices Legislation Amendment Bill 2003
• Workplace Relations Amendment (Award Simplification) Bill 2002
• Workplace Relations Amendment (Choice in Award Coverage) Bill 2002
• Workplace Relations Amendment (Compliance with Court and Tribunal Orders) Bill 2003.

The committee recommends accordingly.

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

Bills deferred from meeting of 17 June 2003
• Customs Amendment Bill (No. 1) 2003
• Customs Tariff Amendment Bill (No. 1) 2003
• Health Legislation Amendment (Medicare and Private Health Insurance) Bill 2003
• Migration Legislation Amendment (Sponsorship Measures) Bill 2003
• National Transport Commission Bill 2003
• National Transport Commission (Consequential Amendments and Transitional Provisions) Bill 2003

(Jeanne Ferris)
Chair
18 June 2003

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Taxation Laws Amendment Bill (No. 5) 2003

Reasons for referral/principal issues for consideration
Thin capitalisation:
appropriateness of the test being the criteria of an internationally recognised rating agency
revaluation of assets
accounting standards
$2 million threshold for requirement to maintain records about an Australian permanent establishment

Possible submissions or evidence from:
Treasury, ATO, interested financial institutions, professional accounting bodies

Committee to which bill is referred:
Economics Legislation Committee

Possible hearing date:
Possible reporting date(s): 11 August 2003
(sign)
Sue Mackay
Whip/Selection of Bills Committee Member

——

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Trade Practices Amendment (Personal Injuries and Death) Bill 2003

Reasons for referral/principal issues for consideration
need to examine the implications of the proposal for consumers, especially the interaction of the bill with the other reforms in response to the insurance crisis.
explore the case for amendments which limit rather than remove the right to sue for personal injury damages under Part V Div 1 of the Trade Practices Act.

Possible submissions or evidence from:
ACCC, Australian Consumers’ Association, Consumer Laws Centre Victoria, Australian Plaintiff Lawyers’ Association, Insurance Council of Australia, Treasury

CHAMBER
Committee to which bill is referred:  
Economics Legislation Committee
Possible hearing date: 13 August 2003
Possible reporting date(s): 20 August 2003
(signed)
Sue Mackay
Whip/Selection of Bills Committee Member

Possible submissions or evidence from:
Austrade, Export Consultants Associations

Committee to which bill is referred:
Foreign Affairs, Defence and Trade Legislation Committee
Possible hearing date:
Possible reporting date(s): 24 June 2003
(signed)
Sue Mackay
Whip/Selection of Bills Committee Member

NOTICES
Postponement

Items of business were postponed as follows:

General business notice of motion no. 1, under committee reports and government responses, standing in the name of the Chair of the Standing Committee of Senators’ Interests (Senator Demman) for 19 June 2003, proposing amendments to the resolutions on senators’ interests, postponed till 11 September 2003.

General business notice of motion no. 478 standing in the name of Senator Ridgeway for today, relating to forestry practices in Tasmania, postponed till 19 June 2003.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator McGAURAN (Victoria) (3.30 p.m.)—by leave—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, 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 provisions of the Civil Aviation Amendment Bill 2003 be extended to 24 June 2003.

Question agreed to.

Joint Standing Committee on Foreign Affairs, Defence and Trade

Meeting

Senator FERGUSON (South Australia) (3.31 p.m.)—I move:

That the Foreign Affairs Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Monday, 23 June 2003, from 5.30 pm to 6.30 pm, to take evidence for the committee’s inquiry into Australia’s relationship with Indonesia.

Question agreed to.

DEPARTMENTAL AND AGENCY CONTRACTS

Senator FORSHA W (New South Wales) (3.31 p.m.)—by leave—The notice of motion that was originally put forward in my name as Chair of the Finance and Public Administration References Committee proposed certain changes to the order of the Senate of 20 June 2001 relating to departmental and agency contracts. In particular, one of those proposed changes was to include a paragraph in the order which would have extended the operation of the order for
publication of contracts to bodies subject to the Commonwealth Authorities and Companies Act 1997 and that such change should take place from 1 January 2004. That proposed change was in line with a recommendation of the report of the Finance and Public Administration References Committee of December last year.

The Minister for Finance and Administration, Senator Minchin, has corresponded with the committee and has raised certain issues as to the applicability of that proposal and he indicated that the government was not disposed to agree to it. I might point out that this was a unanimous recommendation. We have taken on board—and the committee has discussed it—the government’s views. Accordingly, I have amended the notice of motion for today to delete that particular part of the motion, so the order will therefore continue not to apply to bodies under the Commonwealth Authorities and Companies Act. However, this order is the subject of ongoing review and report by the committee and this is a matter that no doubt can be considered by the committee in due course. I also understand from the minister that the government’s response to the committee’s report will be tabled tomorrow. Having made those comments, I now move:

That the order of the Senate of 20 June 2001 relating to departmental and agency contracts be amended as follows:

(a) paragraph (1), omit “the tenth day of the spring and autumn sittings”, substitute “2 calendar months after the last day of the financial and calendar year”;

(b) at the end of paragraph (2)(b), add “the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings”;

(c) paragraph (7), after “first”, insert “and second”.

Question agreed to.

TEXTBOOK SUBSIDY BILL 2003

First Reading

Senator STOTT DESPOJA (South Australia) (3.35 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to subsidise students’ purchases of educational textbooks when studying at education institutions, and for related purposes.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (3.35 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator STOTT DESPOJA (South Australia) (3.35 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

The Textbook Subsidy Bill 2003 aims to extend the Educational Textbook Subsidy Scheme (ETSS). The subsidy scheme is part of the Book Industry Assistance Package negotiated by the Australian Democrats in 1999 in an attempt to alleviate the impact of the GST on the price of textbooks for students and their families.

I would like to make it clear that while this Private Senator’s Bill pertains to textbooks, I believe all books should be exempt from the GST. “A Tax on Books is a Tax on Knowledge” is the slogan all Democrats endorsed in the 1998 campaign.

That we reneged on that promise is a continuing source of principle and electoral pain for the Party. It remains something of which I am ashamed and explains partly my decision to oppose the GST deal struck between the Government and the Democrats.
The ETSS was appropriated for only four years when the GST was introduced, and is due to lapse after June 30 next year.

Although there was no formal agreement between the Government and the book industry to extend the scheme beyond this date, until this year the Department of Education, Science and Training (DEST) included forward estimates for the scheme for 2005 and 2006 in the Budget.

However, no forward estimates for 2005 and 2006 were included in this year’s Budget and the Government has since confirmed that it will not be extending the scheme past June 2004.

The Educational Textbook Subsidy Scheme currently subsidises educational textbooks purchased from participating booksellers by 8% of their GST-inclusive price.

In this way, the ETSS assists students by reducing their costs of studying at educational institutions. Approximately 70% of the scheme’s allocation currently relates to higher education (universities and TAFEs).

Importantly, the Educational Textbook Subsidy Scheme has maintained access to textbooks for students, and, therefore, access to education and knowledge.

It buffers the increase to textbook prices as a result of the GST.

As predicted, book prices rose by almost 10% after the introduction of the GST.

These price increases also affect libraries, which have started charging GST on inter-library loans. This unfair charge hits out at the poorest in our community, I have had a number of complaints on this issue.

The subsidy also assists the Australian book industry by encouraging the purchase of educational textbooks published in Australia.

The GST hit the Australian book industry hard, as was anticipated. In the year following the introduction of the GST, the number of books sold decreased by 19% compared to the previous financial year.

A comparative pricing survey by the Australian Competition and Consumer Commission in June 2002 found that, on average, bestsellers are cheaper to buy in Australia than in the United States or the United Kingdom.

Other studies have found bestsellers cost 78% more in the US and 52% more in the UK, while the price differences are even more dramatic for first release fiction.

This is an indication of the impact decreased book sales has had on the Australian book industry.

DEST consulted with a range of industry organisations about the best way to implement the ETSS. These organisations included the Australian Publishers Association, the Australian Booksellers Association, the Australian Campus Booksellers Association and other individual publishers and booksellers.

It was decided that only books included on “prescribed textbooks lists or recommended reading lists at Australian Education institutions” would be eligible for the subsidy.

The scheme operates thus: students or their parents are paid the subsidy in the form of an 8% discount when purchasing textbooks. The bookseller is then able to claim the discounted amount back from DEST (after first registering with the Department).

According to the Australian Publishers Association, 65% of all claimants lodge their claims over the Internet.

The scheme has been administered in an efficient and effective manner by the book industry, with DEST-commissioned post-payment random audits revealing only a small number of errors and no deliberately false claims.

The subsidy is well regarded, having proved popular and successful with students and all involved with administering it - including educational institutions, authors, publishers and booksellers.

The Textbook Subsidy Bill 2003 is part of a process pressuring the Government to extend the subsidy beyond June 30 next year.

This could be done either through an extension of the Government’s current agreement with the book industry, or through legislation.

If the scheme is not extended, the increased price of textbooks will become a further barrier to education for many students and their families.

CHAMBER
This Government is infamous for placing unbearable burdens on kids who want an education. This Government discourages older people from upgrading their education by putting the same burdens on them.

It is abysmal that these barriers are being introduced and supported by politicians who largely did not pay for their education.

So even the old mantra of “I did it, so can they,” is not applicable in this case.

We know students and their families are already struggling to afford the increasing costs of education, and extra costs will further decrease the accessibility of education, especially for indigenous students, students from low socio-economic background and rural, regional and remote students.

Participation of these groups improved from the early 1990s until 1996 but have subsequently fallen back to about 1991 levels following the introduction of differential HECS, declining student income support levels, lower parental income means test, and, the reduction of Abstudy.

It is bad enough that the Government allows these barriers to waste so much potential.

We cannot let them introduce further barriers that will place education out of reach of even more Australians.

Australians simply cannot afford to pay more for their education. More than 10,000 Australians signed a petition opposing the GST on books in 2000. Students and their families are crying out, but will the Government act on their concerns?

The Australian book industry will also suffer if the ETSS is not extended.

Booksellers will incur significant costs in dismantling ETSS systems. In addition, they will have to advise students and parents, who are now fully aware of the existence of the ETSS, that the subsidy is no longer available.

And this is not the first time the book industry has been adversely affected by a Government change of heart in relation to the GST.

The Enhanced Printing Industries Competitiveness Scheme (EPICS), designed to offset the effects of the GST on the book printing industry and another part of the Book Industry Assistance Package, was axed in last year’s Budget. Funding for EPICS was restored by the Government as a result of my discussions, as Leader of the Democrats, with the Prime Minister.

Although the Government declared there would be no GST on education and, theoretically, exempted many educational items from the GST (although we know that strictly speaking this is not the case), it is clear that a GST on textbooks is a GST on education.

Books are an essential part of obtaining an education. They are considered the very basis for obtaining literacy and numeracy skills – an area the Government has highlighted as of particular importance.

Given the Government’s exclamations and promises in relation to literacy in education, it is appalling that the GST has been applied to books.

The revenue which would be forgone as a result of zero-taxing books is almost insignificant when compared with the benefits that Australians can derive from improved literacy and learning.

That is why it is imperative, that at a very minimum, educational textbooks are exempt from this tax on knowledge.

Putting a rotten tax on textbooks was a rotten idea in the first place.

Every barrier you put between people and further education is a disaster for this country’s present and future.

I hope the continuation of the ETSS will go some way to alleviating the burdens that already exist.

I commend the Bill to the Parliament.  

1 Australian Bureau of Statistics 1363.0  
2 Australian Publishers Association  
3 Australian Publishers Association, September 2002  
4 Australian Publishers Association  
5 Australian Publishers Association

I seek leave to continue my remarks later.

Leave granted; debate adjourned.
Senator BROWN (Tasmania) (3.35 p.m.)—I move:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 August 2003:

The role, operation and effectiveness of Australia’s security and intelligence agencies in the lead-up to the Iraq war, including:

(a) the discrepancies, if any, between claims made by the Australian Government and its agencies concerning Iraq and Iraq’s weapons of mass destruction (WMD) program and information supplied by Australia’s intelligence agencies;

(b) the discrepancies, if any, between information gathered by Australian intelligence agencies concerning Iraq and Iraq’s WMDs before the war and the actuality of the WMD program discovered after the conflict;

(c) the discrepancies, if any, between Australia and other nations, including the United States of America, in intelligence received regarding Iraq and Iraq’s WMD program; and

(d) any other matters relating to claims concerning Iraq or Iraq’s weapons of mass destruction.

Question put.

The Senate divided. [3.40 p.m.]

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

Ayes............ 10
Noes............ 37
Majority........ 27

AYES

Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.

Greig, B. Murray, A.J.M. Ridgeway, A.D.

NOES


* denotes teller

Question negatived.

ASIO, ASIS and DSD Committee

Extension of time

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.43 p.m.)—by leave—I move the motion as amended:

That, pursuant to section 29 of the Intelligence Services Act 2001, the following matter be referred to the Parliamentary Joint Committee on ASIO, ASIS and DSD for inquiry and report by 2 December 2003:

(a) the nature and accuracy of intelligence information received by Australia’s intelligence services in relation to:

(i) the existence of,

(ii) the capacity and willingness to use, and

(iii) the immediacy of the threat posed by, weapons of mass destruction (WMD); and

(b) the nature, accuracy and independence of the assessments made by Australia’s
intelligence agencies of subparagraphs (a)(i), (a)(ii) and (a)(iii) above;

(c) whether the Commonwealth Government as a whole presented accurate and complete information to Parliament and the Australian public on subparagraphs (a)(i), (a)(ii) and (a)(iii) above during, or since, the military action in Iraq; and

(d) whether Australia’s pre-conflict assessments of Iraq’s WMD capability were as accurate and comprehensive as should be expected of information relied on in decisions regarding the participation of the Australian Defence Forces in military conflict.

Question agreed to.

Senator MURRAY (Western Australia) (3.45 p.m.)—I want to record the fact that I voted against the motion. I do not believe there should be a secret inquiry; I think there should be a public inquiry.

Senator Ian Campbell—Mr Deputy President, I rise on a point of order. Was Senator Murray the only member of the Australian Democrats who voted against that motion or did all the Australian Democrats vote against it? If they did all vote against it, then the motion would have been lost and the vote would need to be re-committed.

The DEPUTY PRESIDENT—It is not a point of order. Senator Murray stood and asked for his vote to be recorded. I did not take what Senator Murray said to indicate anything other than a position of Senator Murray. Normally a party position is indicated, Senator Ian Campbell. It is in your court now.

Senator Murray—If I may assist: it was a personal vote, not a party vote.

Senator CHERRY (Queensland) (3.45 p.m.)—I want to note that I did not vote in favour of that motion either, although the vote of the rest of the Democrat party room was certainly in favour of that motion.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.46 p.m.)—by leave—It begs the question of whether the Greens voted for that motion. We are now getting down to one or two votes to see whether that motion got up. Obviously in these cases we need to find out if the will of the chamber has been expressed.

The DEPUTY PRESIDENT—The response that I would offer to Senator Ian Campbell is that the question has been put and passed.

Legal and Constitutional References Committee

Meeting

Senator MACKAY (Tasmania) (3.47 p.m.)—On behalf of Senator Bolkus, I move: That the Legal and Constitutional References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 18 June 2003, from 5.50 pm.

Question agreed to.

Scrutiny of Bills Committee

Report

Senator CROSSIN (Northern Territory) (3.48 p.m.)—I present the fifth report of 2003 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table the Scrutiny of Bills Alert Digest No. 6 of 2003, dated 18 June 2003.

Ordered that the report be printed.

Senator CROSSIN—I move:

That the Senate take note of the report.

Tabling this report is my first duty in the Senate as chair of the Scrutiny of Bills Committee. I would like to start my tabling statement by thanking the outgoing chair and farewelling our secretary, Senator McLucas, who assumed the chair’s role after the retirement of former senator Barney Cooney.
last year, remains a member of the commit-
tee but has stepped down as chair. On behalf
of the committee, I would like to thank Sena-
tor McLucas for her work as chair over the
past year.

On behalf of the committee—and, indeed,
possibly on behalf of the Senate—I would
also like to thank David Creed for his work
as secretary to the committee. David Creed
retired earlier this month after 15 years with
the Department of the Senate. Although
David became secretary to the Scrutiny of
Bills Committee only last year, he brought to
our work years of valuable experience in
scrutiny roles, having been the secretary
of the Regulations and Ordinances Committee
for 10 years. During his time with the Sen-
ate, David made a significant, if not out-
standing, contribution to the development of
the scrutiny committees of many parlia-
ments. He attended many national confer-
ces and prepared a number of significant
papers on aspects of the scrutiny of legisla-
tion. He also provided advice to other com-
mittees interested in following the lead of the
Senate in developing an effective scrutiny
role, including committees from various state
parliaments and the parliaments of the
United Kingdom and New Zealand. David
would probably not appreciate any lengthy
valedictory statement but I am sure all hon-
ourable senators join with me in wishing
David and his family well in his retirement.

Observers of the work of the Scrutiny of
Bills Committee would be aware of the
committee’s current interest in improving
the transparency of the legislative process, both
to ensure that senators are fully informed as
to the implications of bills prior to debating
them and to improve the quality of the legis-
lation passed by this parliament. The com-
mittee contributes to this aim by recording
against its terms of reference its concerns on
individual bills. These concerns and the
committee’s correspondence with the gov-
ernment are presented to the Senate in Alert
Digests and reports.

The committee has also been pursuing
improved transparency through correspon-
dence with the government on the standard
of explanatory memoranda and on the confu-
sion occasioned by practices in the naming
and numbering of bills. These issues have
been canvassed in tabling statements by my
predecessor, Senator McLucas, most recently
on 14 May 2003. The committee will further
consider these issues and has arranged a
briefing on them from the First Parliamen-
tary Counsel.

Senators would also be aware that the
committee often comments adversely on the
quality of explanatory material. I would
therefore like to finish by highlighting one of
the committee’s more positive comments on
the explanatory memorandum for the Cus-
toms Legislation Amendment Bill (No. 2)
2003, which we found to be ‘a model of clar-
ity and completeness’. Unusual as it may be
for me to compliment a minister of this gov-
ernment, this explanatory memorandum
does, however, meet the standard that is ex-
pected by this committee and should be
noted.

Question agreed to.

DOCUMENTS
Auditor-General’s Reports
Report No. 50 of 2002-03

The DEPUTY PRESIDENT—In accor-
dance with the provisions of the Auditor-
General Act 1997, I present the following
report of the Auditor-General: Report No. 50
of 2002-03—Information Support Services -
Managing People for Business Outcomes,
Year Two: Benchmarking Study.
Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.54 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I 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) (3.55 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—

ACTS INTERPRETATION AMENDMENT (COURT PROCEDURES) BILL 2003

I am pleased to introduce the Acts Interpretation Amendment (Court Procedures) Bill 2003 for consideration by the Parliament.

The purpose of the Acts Interpretation Amendment (Court Procedures) Bill 2003 is to ensure the continued effective and efficient prosecution of Commonwealth offences in State and Territory courts.

As some members may be aware, the Commonwealth does not have its own criminal courts – our offences are prosecuted in State and Territory courts.

The efficient administration of Commonwealth justice requires seamless coordination with State and Territory legislation. Recently New South Wales has moved to amend its criminal procedures, moving from the old system of a summons laid upon an information or complaint to a system of court attendance notices. It is always possible that more States and Territories may make similar changes in the future.

This Bill inserts a new provision into the Commonwealth Acts Interpretation Act 1901, to make it clear that a reference in Commonwealth legislation to a summons, information or complaint, or other current forms of initiating proceedings, includes all relevant methods of initiating proceedings. This will include the new court attendance notices in New South Wales and provide for any similar amendments to State or Territory procedures in the future.

This Bill does not change the way that Commonwealth laws interact with State and Territory procedures – it merely ensures that the status quo is maintained.

As the New South Wales changes to criminal procedure commence on 7 July 2003, I ask that this Parliament pass this Bill promptly to ensure that there is no gap in the effective and efficient administration of Commonwealth justice in New South Wales.

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2003

The Export Market Development Grants Amendment Bill 2003 will refocus the EMDG scheme to further assist small and medium business, and in doing so better support the government’s goal of doubling the number of exporters by 2006.

Each year this government invests $150.4 million in the EMDG scheme to support eligible export promotion activities of small and medium Austra-
lian businesses by partially reimbursing their eligible expenses.

The EMDG scheme has been regularly reviewed and is consistently hailed as a benchmark of effectiveness in terms of government industry support programs. In 1999/2000, following extensive econometric analysis of the scheme, Professor Bewley of the University of NSW found that an additional $12 in exports was generated as a result of every grant dollar spent.

Last year around 3,100 small and medium exporters received grants through the scheme. These businesses generated approximately $5 billion in export revenue and employed over 60,000 Australians.

Support was provided to small and medium enterprises across virtually all industries and in all parts of Australia. Importantly, 21% of grant recipients were located in rural and regional Australia.

Demand for grants has grown considerably in recent years, demonstrating the continued success of the scheme. Austrade informs me that it has received over 4,000 applications for the 2001/02 grant year, an increase of 23% by number on the previous year. Over 1,500 businesses applied for a grant for the first time.

Small business is one of the fastest growing sectors of the export community and is the key to doubling the number of Australian exporters. Austrade estimates that 97% of all Australian exporting firms are SMEs – these are the businesses that need to be nurtured.

Accordingly, since 1996 we have made a number of changes to make the EMDG scheme much more attractive and accessible to small business. These include:

- Reducing the minimum expenditure required to access the scheme from $30,000 to $15,000;
- Doubling the grant rate available to the tourism industry;
- Improving access for family businesses;
- Reducing red tape and documentation requirements;
- Introducing a $5,000 minimum grant; and
- Broadening the range of eligible export promotion expenditure.

The government has also taken steps to improve access of small businesses in rural and regional Australia to the scheme by ensuring that related domestic costs are included in the EMDG Overseas Visits Allowance.

The changes proposed in the Export Market Development Grants Amendment Bill 2003 will further simplify the scheme and put greater focus on assisting small and emerging exporters – that is, those businesses that most need assistance.

The proposed amendments include:

- Reducing the income ceiling for applicants from $50 million to $30 million;
- Reducing the maximum grant amount from $200,000 to $150,000;
- Reducing the maximum number of grants from 8 to 7;
- Removing the $25 million export earnings ceiling; and
- Removing the provision for additional grants for entering new markets.

The proposed changes are to take effect for EMDG claims from the 2003/04 EMDG grant year onwards. In other words to applications received and grants paid from 1 July 2004 onwards.

The total budget for the scheme will not be affected by the changes. Funding will remain at $150.4 million – a decision that reflects both the government’s firm commitment to the scheme and its strong fiscal stance at a time when there are significant demands on the Federal Budget.

The proposed amendments will, in fact, ensure that a greater number of claimants from the scheme’s target group (small business) receive a grant.

The EMDG scheme is but one important element of our government’s comprehensive strategy to double the number of Australian exporters by 2006. Last year for instance, we committed $21.5 million to expanding the TradeStart program over 4 years. TradeStart is designed to assist small businesses break into potentially lucrative overseas markets through an extensive network of specialist export advisers in 51 locations across metropolitan, rural and regional Australia. It also
puts the international market expertise of Aus-
trade’s global network across 58 countries at the
fingertips of small business.

And the early signs are encouraging. In 2000/01,
the base year for the doubling target, the Austra-
lian Bureau of Statistics estimated there were
approximately 25,000 exporting companies in
Australia. Last financial year that number in-
creased by almost 6,500 firms or over 25%.

But there is still an enormous amount of work to
be done. In considering this bill it is important to
keep in mind that the EMDG scheme is all about
assisting small businesses to become sustainable
exporters.

One such business is Queensland company Aleis
International. Since humble beginnings in 1987,
Aleis now provides its electronic livestock identi-
fication products to most major properties,
saleyards and abattoirs across Australia. In the
last few years the company has looked at expand-
ing into overseas markets and recently won a
tender (the biggest of its type) to provide elec-
tronic identification equipment for the entire cat-
tle herd in Botswana. In 2002 Aleis received its
first grant under the EMDG scheme enabling it to
defray some of the costs associated with market-
ing its products around the globe.

Aleis and thousands of small companies like it are
the unsung heroes of Australia’s continued eco-
nomic success. This bill will ensure that EMDG
funding is focused on cultivating small and
emerging exporters such as Aleis, and in turn
contribute to the long-term strength of the Austra-
lian economy.

While the Commissioner concluded that APRA
did not contribute to or cause the collapse of HIH,
he did find that it should have been more inquir-
ing in its approach. In particular, he found that
APRA “missed many warning signs, was slow to
act and made misjudgements about some vital
matters”.

This is a significant finding, and one that requires
the full attention of APRA moving forward.

The Commissioner made a number of important
recommendations that describe a preferred model
governance for APRA given its important role.
APRA’s governance arrangements will be further
strengthened and refined to better suit a body with
APRA’s important responsibilities.

In summary, the effect of the measures contained
in this bill is to achieve four related objectives
that flow from the recommendations of Justice
Owen.

The first objective is to replace APRA’s current
part-time board with a full-time executive group
comprising at least three and no more than five
members.

The members would collectively exercise APRA’s
responsibilities, while preserving its status as an
independent statutory authority.

This approach allows APRA to retain its name
and identity, and to move forward and continue
its process of evolution, with minimum disrup-
tion.

The second objective is to implement a number of
changes that will better represent APRA’s place
within the financial system architecture.

This will better define how it relates to other bod-
ies while ensuring it remains independent of un-
due political influence in conducting its opera-
tions.

The second objective is to implement a number of
changes that will better represent APRA’s place
within the financial system architecture.

This will better define how it relates to other bod-
ies while ensuring it remains independent of un-
due political influence in conducting its opera-
tions.

At the same time, it permits more flexible com-
munication between the Government and APRA,
particularly on priorities, required policy changes
and any other matters that might impact on finan-
cial system stability.

The third objective, given the proposed executive
status of the new APRA members, is to apply an
enhanced disclosure and conflict of interest
framework.

AUSTRALIAN PRUDENTIAL REGULA-
TION AUTHORITY AMENDMENT BILL 2003

This bill will effect changes to the leadership and
governance of Australia’s prudential regulator, in
accordance with recommendations made by the
Royal Commissioner the Hon. Justice Neville
Owen in his report of 4 April 2003. Justice Owen
had inquired into the collapse of the HIH Insur-
ance Group.

The Treasurer released Justice Owen’s report on
16 April 2003.
This will enhance the integrity of the office of an APRA member and apply similar requirements as exist for other executive regulatory bodies.

The fourth, and final, objective, is to clarify the operation of provisions that allow APRA’s engagement with other agencies.

APRA’s greatest asset is its core of committed and professional staff.

The changes introduced by this bill are designed to establish a dedicated leadership team to guide APRA through the challenges that lie ahead of it. These changes should have minimum impact on the dedicated people who comprise the heart of APRA while positioning the organisation for the future now that the HIH Royal Commission has concluded.

I commend the bill to the Senate.

Debate (on motion by Senator Mackay) adjourned.

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

WHEAT MARKETING AMENDMENT BILL 2002

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator HEFFERNAN (New South Wales (3.56 p.m.)—As the chair of the Rural and Regional Affairs and Transport Legislation Committee, I present the report of the committee on the provisions of the Wheat Marketing Amendment Bill 2002, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator HEFFERNAN—I move:

That the Senate take note of the report.

It would be fair to say that this committee hearing, which was really about the Wheat Export Authority’s levy, has generated a fair bit of interest right across Australia from all quarters of the wheat industry. Most arguments got put on the table and there was a fair bit of conspiracy around that it was somehow going to be an attack on the single desk. Early in its deliberations, the committee decided that any debate around the single desk was well outside the terms of reference for this committee. The inquiry was held in Canberra and Perth during March 2003 and included examination of the role of the Wheat Export Authority and the proposed conduct of the 2004 review of AWBI’s performance as the current single desk exporter of Australian wheat.

The committee heard submissions from all participants in the industry as well as from the Wheat Export Authority, AWBI and AWB on the role of the Wheat Export Authority from its foundation in 1999 to the present. The submissions included some basic and well-founded criticisms of the performance of the Wheat Export Authority, the effectiveness of its role and doubts as to its ability to properly and fearlessly monitor the activities of the AWBI—the international single desk. As Senator Ferris has just reminded me, there were criticisms that it was in some ways a toothless tiger.

Among the doubts raised was that of the ability of the Wheat Export Authority to obtain all information regarding the operations of AWBI and fully report on them to growers in a timely and transparent manner. Also among the doubts raised was whether the Wheat Export Authority retains the confidence of growers. Some people said absolutely that they had grave reservations about their confidence. Another doubt raised was whether the Wheat Export Authority will be in a position to credibly and effectively conduct the 2004 review of the AWBI’s performance as the single desk exporter of Australian wheat. It is very important that whoever conducts that inquiry has to first of all
gain the confidence of the industry to give that report credibility when it is produced.

This committee has been a wake-up call for Australia’s wheat growers. The wheat industry is constructed in such a way that 20 per cent of our growers grow 80 per cent of our wheat and 80 per cent of our growers grow 20 per cent of our wheat. Most blokes that are in the 80 per cent that grow the 20 per cent are too busy at home feeding sheep, putting in the crop, milking the cows and feeding the dogs to be worried with the detail of what happens at the AWB.

It would be fair to say further that the AWB is a public company that has obligations to its shareholders, which it correctly and unsurprisingly carries out. It also has constitutionally an obligation to the growers. One of the points of contention throughout these hearings has been whether that was a conflict of interest that not only was perceived to be there but was in fact there. It would be fair to say that there were questions raised, especially in Perth, about whether there were any peepholes in the china walls between the two companies, given that all but two of the directors of both companies are the same directors. So there were some questions, and Australia’s wheat growers should be well comforted by the fact that this committee has put some pretty fair discussion on the table on their behalf.

There were also questions raised about whether the Wheat Export Authority, in processing applications for export of Australian wheat in bags and containers, needed to be there. Obviously, there is a great need for quality control. Given there were only 150,000 or 160,000 tonnes exported last year in bags and containers, the question raised was whether there is a need for that to be subject to a permit system. Another question raised was whether the Wheat Export Authority should contest the service agreement between AWB Ltd and AWBI with respect to a very large range of noncontestable services provided by AWB Ltd to AWBI. We were given evidence that there was no disaggregation of those services, which made it almost impossible—and I guess it is impossible—for the Wheat Export Authority to come to terms with the individual supply of those services, and we questioned whether they are contestable and whether they are actually getting good value for money. A particular concern in this regard is the funding of the following services provided by AWB Ltd to AWBI: transport, freight handling, financial services, currency arrangements, market analysis and related commercial advice.

In addition, the committee is concerned that growers better understand the arrangements for the operation of the Australian Wheat Board’s Geneva desk and its role, funding, administrative and cost oversight arrangements. The committee has—and I emphasise this—a long commitment to the statutory position of a single-desk exporter of Australian wheat. There has been widespread support for that. Some presentations have been made in understandable self-interest against that position, but there is widespread support. It is fair to say that the average wheat grower wants a fair season, wants to grow a good crop, wants to have a clear harvest, wants to safely store that wheat and wants to get the maximum price for that wheat with the least cost. The great danger for Australia’s wheat growers is that, if there is no continuing scrutiny—and it is fair to say that scrutiny is required—then, like some other institutions, such as the NRMA, who forgot that they were there just to fix broken-down cars, the Australian Wheat Board could easily lose sight of what it is really there for. I emphasise that this report does, however, set out some steps which can be taken to provide for a better and more transparent
oversight and eventual review of the single desk arrangements.

Senator O’BRIEN (Tasmania) (4.03 p.m.)—This inquiry is one of the most important activities undertaken by the Rural and Regional Affairs and Transport Legislation Committee during my time in this place. I believe the report findings will have a profound impact on the public debate about the management and oversight of Australia’s single desk for wheat exports. It is fair to say that all members of the committee, certainly those that participated in its hearings, agreed that the existing regulatory structure is manifestly inadequate. Those familiar with the activities of the Rural and Regional Affairs and Transport Legislation Committee will know that its members endeavour to operate in a nonpartisan manner. This inquiry is no exception.

We focused on the task of producing recommendations that best protect grower and community interests. The committee has reached a general consensus on the key issues associated with the bill, but members have different views about how those issues should be addressed. Much of the evidence presented to the committee was motivated by self-interest—something of little surprise to any fair-minded observer. It was the committee’s responsibility to consider that evidence and form a balanced view on behalf of growers and the wider community. The diverse views presented to the committee also reflected to some extent the broader community debate about the single desk. That is why Labor senators have recommended a timely, independent and wide-ranging inquiry into the current management of the single desk and future management arrangements. In this respect, we share the view of the government majority that the Wheat Export Authority lacks the capacity to undertake this task, though we differ in the manner in which we believe that problem should be addressed.

The independent inquiry recommended by Labor senators would greatly assist policy makers to develop the most appropriate policy framework for the future. It is most important that grower interests are not crowded out of the debate by the big corporate players. Labor senators proposed that the review consider the following matters: the performance of AWB (International) Ltd as holder of the wheat export monopoly; the impact of export marketing arrangements on Australia’s domestic wheat market, including related competition issues; the benefits and detriments for the Australian wheat industry and the Australian community in maintaining the current statutory export monopoly beyond 2004; desired changes, if any, to export monopoly arrangements; and options for future monitoring of those arrangements.

It is essential that this review be comprehensive and independent in character if it is to be acceptable to all stakeholders. Mr Truss believes a comprehensive review of wheat marketing arrangements is not necessary until 2010. In the context of the current industry environment, 2010 is light years away. The recently announced recommendation of the Grainco board that shareholders accept a merger proposal from GrainCorp reflects the continuing evolution—some would say revolution—in the wider grains industry.

The committee was told that the performance of the Wheat Export Authority in monitoring the single desk marketing arrangements has been inadequate. That fact has been clear to me for some time based on the authority’s performance at Senate estimates hearings. A particular point of interest for the committee was the power of the Wheat Export Authority to compel AWBI to provide it with advice. It is clear that this power—and,
accordingly, the powers to monitor AWBI—
is very limited. The Wheat Export Authority
told Mr Truss in a letter dated 14 March
2000 that it did not have the power to do its
job. Mr Truss’s department was made aware
of this problem in January or early February
2000, and the minister was advised accord-
ingly. If the minister had acted on the advice
provided to him and amended the Wheat
Marketing Act, the problem could have been
fixed years ago. This is yet another example
of the minister’s failure to act to protect the
interests of Australian primary producers.

It is also worth noting that the Wheat Ex-
port Authority has regularly reported to Mr
Truss on AWB International’s performance,
but growers have received just two general—
and, I might say, generally worthless—
reports. It is clear that growers’ interests have
come a distant second in the industry ar-
rangements established by the Howard gov-
ernment. The current arrangements for non-
bulk exports require the exporter to apply to
the Wheat Export Authority for a permit and
the authority to consult AWB International.
Labor senators believe that this arrangement
should be abolished and that a simplified
system of permits should operate through the
Department of Agriculture, Fisheries and Forestry. The permit system for bulk wheat
exports should also be transferred from the
Wheat Export Authority to the department
and existing controls on the export of bulk
wheat maintained subject to the outcome of
the proposed independent review.

In my view, the single desk arrangements
should be maintained if an actual benefit
from those arrangements is enjoyed by
growers and the community. This benefit
must be proven, not just stated. The ar-
rangements should not be left in place until
2010 because some people derive a warm
inner glow from their existence. If the cur-
rent export single desk arrangements still
provide the best means of maximising re-
turns to growers, then we need to know it.
We need to know and we need to buttress our
defence against countries seeking to force
change in the guise of free trade. But if there
is a better way of doing business—a way of
building better returns for growers, for re-
gional communities and for the Australian
economy—we need to know about it so we
can act on it. Finally, I thank all members of
the committee for their contribution to this
inquiry and I extend my gratitude to the
committee secretariat for another fine effort.

Senator CHERRY (Queensland) (4.10
p.m.)—Like Senator O’Brien, I wish to note
the work that all members of the Senate Ru-
ral and Regional Affairs and Transport
Legislation Committee have done on the
inquiry into the provisions of the Wheat
Marketing Amendment Bill 2002 and, again,
the extraordinary work of the secretariat. It is
significant that, whilst there are three sets of
recommendations in this report, they are all
fairly close in their tenor and their sugges-
tions. It became clear as we went through the
evidence in this inquiry that something is
significantly wrong in the Wheat Export Au-
thority and the single desk marketing ar-
rangements and that there is a need for those
matters to be fixed sooner rather than later if
we are to maximise benefits to wheat grow-
ers. I should acknowledge that this inquiry
started as a reference from Senator O’Brien
to the committee and, since then, we have
taken evidence from a whole range of wheat
grower groups around the country as well as
bulk handlers, AWB, AWBI and a range of
other interested groups.

What was quite clear was that the near
unanimous view that this committee received
in 1998 when it first looked at the Wheat
Marketing Act in support of the single desk
for wheat marketing is no longer as unani-
mous as it was then and that there is in fact a
clear need to actually look at the benefits of
the single desk once and for all—as Senator
O’Brien said—to work out whether the benefits are there or not. This was originally pencilled in for 2010 under the arrangements which the government put in place in 1998, but I agree with Senator O’Brien that that needs to be brought forward. In doing that, we have to recognise that the changes in the wheat industry since 1998 have been quite substantial and very significant. AWB has become quite an aggressive private company. This has been shown, for example, in the number of objections raised by its subsidiary AWBI to containerised and bagged export applications. These have risen from objecting to around about 26 per cent of applications in the first year of the WEA arrangements to 67 per cent last year. That shows a much more aggressive corporate attitude from AWBI, and also from AWB in the consolidation of its investments.

The Democrats are of the view that in principle the single desk should be supported unless and until it is shown that it is not benefiting growers. That should be part of the 2004 review, and to that extent I agree with what Senator O’Brien said. What is also clear is that the 2004 review will need to be a bigger exercise than the government originally envisaged. This is because the industry has changed much faster than we thought it would and there is now a need to look at all the different changes to industry arrangements and to work out what is the best way of maximising grower returns in this changed environment. From that point of view, the Democrats would support a broader review in 2004 conducted by an independent panel.

We are of the view that the WEA is starting to do some very useful work. I am not as critical of the authority as some other members of the committee. I recognise that, in starting a new authority and a new regulator, it does take time to get your performance monitoring frameworks in place. It has taken this authority some two to three years to get the framework in place. It now has a robust framework and it would be a pity to throw all that work out at this stage. Having said that, we do have to test whether the current marketing arrangements are in the interests of growers or not. From that point of view, the Democrats would support funding the WEA for at least another year. In the meantime, let us complete the 2004 review.

The other items raised in both the majority report and the Labor senators’ report deal with the issue of the secrecy provisions and the confidentiality agreement between the Wheat Export Authority and AWBI. The Democrats strongly support the view that the Wheat Marketing Act will need to be amended to ensure that the Wheat Export Authority has sufficient powers of discovery to obtain information and report that information to growers without having to deal with confidentiality agreements. That is a matter that the Senate needs to deal with as a matter of some urgency, because clearly it is a fundamental flaw when an industry regulator does not have the powers to do its job, and that is what has become quite clear out of this inquiry.

The other item I did want to discuss very briefly at this stage is the recommendations to deal with the export permits for containerised and bagged wheat exports. The Democrats are certainly aware that there has been evidence to the committee that the role of AWBI in the approvals process for containerised and bagged wheat is probably inappropriate and anachronism. But at this time I am not prepared to sign off on a recommendation to end that and to change the approvals process, because I am not yet convinced there is sufficient evidence on the table to argue that it is currently detrimental to growers. I am quite happy for that to be part of the 2004 review. We have an open mind on it. But at this time I think it would be somewhat
premature to make judgments on that based on incomplete information.

With those very short comments, I commend this report to the Senate. It is an excellent report, reflecting some very hard thinking by all committee members. It is unusual that a report is tabled which has such criticisms and also some constructive suggestions on improvements to wheat marketing arrangements not just from the Democrat or Labor senators but also from the government senators. I think the government would be very foolhardy to ignore this report and the very important conclusions the committee has made. I would hope that we actually deliver a better wheat marketing arrangement acting in the interests of all growers.

Senator McGauran (Victoria) (4.16 p.m.)—I also want to add a small contribution on this fine report of the Senate Rural and Regional Affairs and Transport Legislation Committee into the provisions of the Wheat Marketing Amendment Bill 2002. I support the bulk of the recommendations, because they relate to the transparency and accountability of the wheat marketing arrangements. It is in the interests of the growers, the industry as a whole and the economy as a whole that, for this major export product of Australia, transparency and accountability is forever present in the industry. But there is one recommendation I want to place on the record that I would question, if not dissent on, and that is the fourth recommendation. I will read it in full:

The Wheat Marketing Act should be amended to authorize the WEA to approve the export of bagged and containerized wheat without reference to AWBI subject to enforcement of appropriate quality accreditation.

I refer the chamber to two submissions to the committee, the first from the Grains Council of Australia and the second from the Australian Wheat Board, for the very extensive objection they have to that recommendation. I will not go through it, except to make the following points. Firstly, I believe this recommendation possibly undermines the integrity of the single desk. Secondly, this recommendation certainly will give succour to those who object to the single desk. There is an element within the industry—and there always is; there are always barbarians at the gate—that does not support the single desk and does not support orderly marketing. Speaking as a National Party member, indeed that is why this party was formed—to support orderly marketing. So we are only too aware and always alert to the barbarians at the gate.

Given that a review is to be undertaken in regard to the single desk in 2004, I am sure that this recommendation will give succour to those who wish to undermine the integrity of the single desk. The government members of this committee have all stated privately, publicly and in this report that they are supporters of the single desk. I simply point out that, for those who are not, this recommendation indeed gives them succour. They will see it as a crack in the dam wall and a brick from the citadel.

Senator Heffernan—Mr Acting Deputy President, I raise a point of order. I hope the senator is not making an inference against any members of the committee, given that he did not actually attend any of the hearings.

The Acting Deputy President (Senator Lightfoot)—I did not construe an inference there, Senator Heffernan. There is no point of order. I am sure that the senator is too careful to imply things of that nature.

Senator McGauran—That was a vexatious point of order there by my good friend and colleague, which I will take up with him in the corridors of this parliament. Privately, I can simply answer his objection. Senator Heffernan has stated quite clearly to me privately and in this report that he sup-
ports the integrity of the single desk. I take that to be the truth. I simply say that, for others within the industry, a small minority, this recommendation would give them great succour. Anyway, I was only going to make a few points. I refer senators to the submissions by the Grains Council and the AWB for a more extensive answer and objection to this recommendation.

My third point is that there is already an existing permit system that works perfectly well, which ironically is not even properly utilised, is not taken to its limit. The existing permit system works well and to the benefit of all grain growers, so it is not as if this niche market is being denied. In fact, there is already a process to meet this niche market. Fourthly, I simply say that what it really will do is introduce cherry picking. Given that the pool is an average price, cherry picking will, in all, lower the average price of the pool, which is detrimental to all grain growers. Of course, if you do not support the collective system, then basically you do not mind creating new niche markets, dismantling the single desk or cherry picking in the market. But I simply say that this is possibly the effect that this recommendation will have.

Question agreed to.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Reference

Senator BROWN (Tasmania) (4.22 p.m.)—I move:

That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 20 August 2003:

The burning of Australia’s biggest tree, in Tasmania, having regard to:

(a) its discovery;
(b) what protective measures were put in place;
(c) why these protective measures failed;
(d) whether any rescue is possible;
(e) how to prevent similar episodes;
(f) any related matters; and
(g) the role of the Commonwealth in all these issues.

The intention of this motion is to set up an inquiry into the—

Senator Ferris—Silly boy. It won’t save you, Julian.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! Please proceed, Senator Brown.

Senator BROWN—I am not sure how the senator’s interjection that ‘It won’t save you, Julian’ refers to me.

The ACTING DEPUTY PRESIDENT—It had no reference to you at all, Senator Brown. Please proceed.

Senator BROWN—Thank you. I was distracted. Let me say at the outset that I am aware that the government and the Labor Party will oppose this motion and therefore, unless I can convince them in the coming few minutes to change their view, the inquiry that I propose will not proceed. I think it should and it must.

On 12 April this year a regeneration burn by Forestry Tasmania took place which burnt to death the biggest known flowering plant on the face of the planet. Forestry Tasmania calls the tree El Grande—that is, ‘the big one’—and it is in the lee of Wyldes Craig in central Tasmania near Blue Creek on a ridge top overlooking the Derwent River. I suspect I am the only person in this parliament who has seen this tree. So let me give a description of it. It is a massive, living entity. The tree is 80 metres high. It is some 20 metres in circumference and six metres in diameter. If you can imagine...
dent, it is higher than the Sydney Opera House and is as high as the top of the flag-pole on this parliamentary building, measured not from the top of the hill on top of Parliament House but from the baseline of the Senate chamber in which we are now sitting. It is way higher than the 15-storey Wrest Point casino tower in Hobart and it has been growing on the ridge for hundreds and hundreds of years. I have measured the tree’s circumference at about 22 metres. Forestry Tasmania says it is 19.5 metres, but let us not be concerned about the difference. That is measured at chest height. Its base would fill an average living room or bedroom. From that base the sides rise almost perpendicularly. It is an absolutely massive structure.

In the middle of last year the tree was brought to the notice of the Wilderness Society and Forestry Tasmania by Mr Wally Herrmann, who was working of his own accord. It was rapidly recognised to be the biggest tree in Australia by a long way. In fact, it is the largest hardwood tree on the face of the planet. So far as a search of records can discover, it is the largest tree anywhere in the world outside North America. The tree is full of wildlife. It is an old tree, so it has dropped its branches. It has nesting sites. It is full of habitat for possums, gliders, nesting birds, of course insects and bat species.

It was on top of a ridge overlooking a giant forest. How do I know it is a giant forest? By the time I arrived there, the downhill forest had been logged by Forestry Tasmania and Gunns Ltd, the latter being the biggest export woodchipper in the world. The tree is quite amazing because, though it sits on top of the ridge and therefore comes out of the forest above the trees in its surroundings, and there are other very big trees near to it, as it has grown in the forest it has been able to withstand extraordinary storms and tempests—in fact, the biggest and worst storms of centuries. The tree, I submit, would have been logged had it been left to Forestry Tasmania. Indeed, downhill there are stumps 15 metres in circumference—as big as an average garage—that are the remnants of giant trees that have been taken off to the woodchip mill. But these are gone. They have been taken, cut down, destroyed.

Forestry Tasmania said, ‘Now that our attention has been brought to this tree, we will not only protect it as a giant but we will also place it on the top of the list that we draw up under the heading “Our 10 most massive giants.”’ That list, which is on Forestry Tasmania’s web site, points out that the tree had an estimated volume of 439 cubic metres, measured last year. It was therefore celebrated by Forestry Tasmania and given protection status. However, it was determined that, Gunns having logged the forest, 12 April this year was the day to put a regeneration burn through the forest on the downside slope. Can you imagine it, Mr Acting Deputy President? Here is this tree sitting on top of the ridge. You look to the north-west of the slope. It is a very steep hill. It goes down and, for 100 hectares or more, everything has been logged and is flat. With some of the stems, the volume has been taken out to the woodchip mills, but hundreds of tonnes more is left on the ground, along with the stumps.

Along comes Forestry Tasmania—and I am not sure what it did on this day; it lights fires by hand but it also has a habit of dropping it from planes—with hundreds of incendiaries. These are like napalm. They are dropped from the plane onto that logged coupe of 100 hectares or more and when they hit the ground they explode into flame. The idea here is to create a firestorm. The idea of that firestorm is to kill everything on the block, to not leave any seed, any root, any cotyledon—that is a little sprig that might come up from the rainforest species which are mixed there with the eucalyptus—
and to create total death of the natural eco-

Atop the ridge stood ‘El Grande’, our na-
tion’s grandest tree. Did this lead to afore-
thought from Forestry Tasmania, from the
Tasmanian government, from the woodchip
giant Gunns? We are told it did. They knew
it was there and they knew it was at risk of
burning in this firestorm. But what happened
creates an impression that, in some way or
other, though they knew the protection of
that tree was a paramount objective in the
public interest, that all lapsed. At best, it was
a mind-block that took over everybody on
that site and back in headquarters in Hobart,
including the minister—the Hon. Paul Len
non, the Deputy Premier of Tasmania, who
knew about the tree as well and therefore
was the public representative in charge—and
Premier Bacon. They firebombed that hill-
side on that hot day with a northerly or
north-westerly breeze blowing across it.

What happened then was that the whole
hillside exploded into flame and this fire-
storm swept up the hill and burnt the nation’s
greatest tree as if it were sitting on top of a
bonfire. I went out there some days later and
was astonished by the sight. There were still
burning remnants of the coupe on the floor,
but at El Grande itself great branches half a
metre thick had been ripped from this tree.
These branches begin about 50 metres up in
the tree. Can you imagine that? That is half a
football field in height up the tree before you
got to the first branches. These large
branches had been ripped from the side of
the tree by the power of this Dresden-like
firestorm and were left as debris scattered
around the tree on the ground. The trunk of
the tree—and remember that trees live
through their living inner skin—was seared
right around, up to 40 or 60 metres high, by
the ferocity of the storm. When you got to
the branches high up in the trees, not one
green leaf was left. Every leaf was dead.

What I did not know, but what Forestry
Tasmania knew and what Gunns knew, was
that these giant eucalypts—Eucalyptus reg-
nans—do not regenerate. They do not sprout
anew after bushfires like other species of
eucalypts. They are not built to withstand
such a firestorm. The Wilderness Society got
an independent expert, a tree doctor, a scien-
tist in tree pathology, to go and look at it and
he has declared that the tree is dead. The La-
bor Party wants to side-shuffle this inquiry
and for us to instead bring in a meek, totally
insufficient motion which says: ‘Let’s get
somebody to look at the tree. Let’s get the
Tasmanian government to look at the tree.’
The Labor Party and the government know
that Forestry Tasmania has already done that
and has said—much like the Prime Minister
says on weapons of mass destruction which
have not been found, but with regard to the
life in this tree which has not been found—
‘Let’s wait. Be patient. We’ll put it off till
some other time so that the sting is lost, and
maybe it will spring to life further down the
line.’ I do not know—maybe it will—but I
do know this: that tree, as a living wonder, is
lost to this nation through the unforgivable
negligence of all involved in its care and
maintenance. That is a national tragedy. This
was our nation’s iconic tree.

Senator O’Brien—I’ve never heard of it.

Senator BROWN—Senator Kerry
O’Brien makes throw-off comments on the
side, but I treat this matter seriously. This
tree had been saved by the intervention of a
citizen. It was brought to notice and put un-
der protection, and then it was burnt by the
Tasmanian government and its authorities
under a system which is supposed to protect
such things. What I have asked for here is no
less than if a national monument of human
importance had been destroyed by an act of
vandalism like this unforgivable failure of
duty by the authorities involved. We would
have had to have a national inquiry to dis-
cover what happened and to ensure that those who were at fault were brought to book and to ensure that whatever could be would be done to stop a repeat.

We are involved with repeat offenders: these are people who destroy giant forests and who are, as we meet today, logging in the Styx Valley of the Giants, south of this big tree. They are logging in the Tarkine rainforest in the north-west of Tasmania, the nation's largest temperate rainforest. They intend to log into the heart of that in search of what is called red myrtle. They are logging into the north-east highlands of Tasmania, into the magnificent forests there on the Tasman Peninsula. There is an intention by Gunns to log the north-east peninsula of Recherche Bay and southern Tasmania, where the walls of the French garden from 1793 remain.

Senator O'Brien interjecting—

Senator BROWN—Senator O'Brien says that there is no intention to log the north-east peninsula. That is just not right. Let me say this: the Labor Party had a very difficult job dealing with its Tasmanian counterparts on the issue of the Franklin Dam. But, due to the power of people of the day like Neville Wran and Bob Hawke, they did that. In the nation's interests they said, 'We cannot support a dam in south-west Tasmania which would destroy this magnificent wilderness.' Thank goodness they did, because the consequence has been enormously positive for the nation, whether you look at it environmentally, employment-wise or economically.

Here again is a challenge to the Labor Party: it must intervene in this disgraceful, destructive industry which is so cavalier about the nation's heritage: its forest heritage, its wildlife heritage and its wilderness heritage in Tasmania. Only 13 per cent remains of the Eucalyptus regnans area that existed when the British arrived in Tasmania, and half of that is earmarked for logging. As I have just described, the biggest trees of the lot are vulnerable to destruction by this industry.

We should be having an inquiry into this. This is a national disgrace that has occurred in the mountains of central Tasmania. This was the nation's biggest tree and now it has been destroyed. This is a failure by people who knew what they were doing and it deserves a Senate inquiry. It will be enormously remiss if we do not get that inquiry. If the Labor Party fails to support this it will have moved far from that ethos of 20 years ago when it went to the aid of the Franklin, against its Labor counterparts in Tasmania. I have spoken with the Labor Party about this. I have said that it has to get back its gumption on the environment. It has to be able to move in on the environment, even where sectional Labor Party interests support, curiously enough as they do in Tasmania—they do not support jobs, because they are lost all the time in this industry—the biggest corporate vandal in the forests of the Southern Hemisphere: that is, Gunns Pty Ltd.

There is an unholy alliance between the Labor Party and this corporation in Tasmania, and in between is squeezed Forestry Tasmania. Out of that unholy alliance came the destruction of this big tree. This nation should never have allowed that to happen. This federal government has an obligation not to allow that to happen. This Prime Minister's signature is on the regional forest agreement based on the forest policy that came before it and which was not supposed to allow this to happen. It has happened and it is absolutely critical that we have an inquiry into it. That is why I recommend this motion to the Senate and urge so strongly that Labor not join the government in turning it down but be open enough and honest enough to allow the inquiry to take place to find out what happened to allow the destruc-
tion of such an important piece of the nation’s heritage.

Senator O’BRIEN (Tasmania) (4.43 p.m.)—I would have to say that the opposition views with some concern the recent inadvertent burning of Australia’s biggest tree, the tree that Senator Brown dubs with the title ‘El Grande’.

Senator Brown—No, Forestry Tasmania dubbed it that.

Senator O’BRIEN—Thank you for that.

Senator Brown—You don’t know that; I’m just helping you.

Senator O’BRIEN—Thank you for your help, Senator Brown. I am grateful for your help on some occasions. The proposition before us today is that we should have a Senate inquiry into this event. I was wondering, while I was listening to Senator Brown’s comments, why that would be. It seemed that Senator Brown had all of the facts. He was able to tell us the dates and the logging circumstances. He even knows enough to tell us that every single log off the coupe went for woodchip. I am almost certain I could bet you, Mr Acting Deputy President, that that is not the case, and certainly in a forest where there is a tree of the stature of ‘El Grande’ there would be many others that would be of a quality sufficient for other, higher purposes than woodchipping. I will be interested to inquire—and I will—as to whether this was a site where every stick went to woodchip. I very much doubt that to be the case.

The opposition is keen to do the appropriate thing here, and so I move:

Omit all words after “That”, substitute “in regard to the recent inadvertent burning of Australia’s biggest tree in Tasmania, the Senate—:

(a) notes that Forestry Tasmania had measures in place to protect the tree;
(b) expresses its concern that the tree has been burnt;
(c) calls on the Tasmanian Government to determine whether any rescue is possible; and
(d) calls on the Federal Government to work with the Tasmanian Government to determine how the protective measures failed on this occasion and to ensure that similar episodes do not occur in the future.”

I would have thought that the latter point would be the most appropriate step that could be taken. No-one can say that we can reverse the event or go back and make it not happen. It has happened, and the opposition thinks it is regrettable. We need to find out if there is a possibility of rescuing the tree, and we need to learn from the experience, as it were, to make sure that, if there are deficiencies in the protective measures, they can be improved upon.

A Senate inquiry could do a whole range of things. Equally, there are opportunities which Senator Brown and others—including those in other parliaments, for example Senator Brown’s colleagues in the Tasmanian parliament—can pursue with regards to the performance of state and federal governments and state and federal authorities. Indeed, recently the Senate had an estimates process and the Tasmanian parliament had an estimates process. I was interested to see what the arrangements were in each of the two parliaments in relation to estimates, and the Tasmanian parliament has an open estimates process. I noted that there was an exchange between Mr Lennon—referred to by Senator Brown in his contribution—and a Mr McKim, one of the Tasmanian Greens in the Tasmanian parliament. I was surprised by some of the things I read. Having heard Senator Brown rail in this place against, for example, the logging of old-growth forests, I noted the following exchange, where Mr Lennon said to Mr McKim:
But you support the logging of old-growth forests.

Mr McKim, who is, I stress, a member of the Tasmanian Greens, said:

We support selective logging of some areas of old-growth forest, that is correct.

I did not know that that was the position of the Greens, but it is an interesting position. It is interesting to look at the Senate estimates process. The process is revealing, as is the process in the Tasmanian parliament. Mr McKim spoke in the legislative assembly chamber in Tasmania about the policy, which has apparently been of some standing within the Tasmanian Greens, which supports selective logging of old-growth forests. It is important that that be noted because all these facts should be on the record.

In Senator Brown’s contribution, he has laid out matters which seem in some respects to reflect the factual circumstances of the burning of the tree. But the opposition does not believe that the fact that it occurred warrants a Senate inquiry. In terms of the development of public policy, the opposition believes that the proposition it advances is the desirable course of action. It calls on both governments to undertake certain tasks with a view to arriving at a position where, insofar as it is possible, repeat events in other coupes and other forests can be avoided. I referred to the estimates process because, in the Tasmanian parliament and the federal parliament respectively, members of the Tasmanian legislative assembly and senators have the opportunity to inquire as to what has happened and what was discovered. There are also ample opportunities for pursuing this course by putting questions on notice.

The opposition would agree in many cases to a proposition for an inquiry where it was warranted, but in this case we do not believe it is warranted. It is not as if the inquiry will reverse the events that took place. It appears, on Senator Brown’s statement of the facts, that the facts are well known—that is, the escape of a regeneration burn which may have been unwise in the first place. If we were going to have a Senate inquiry to discover the facts that Senator Brown says are there—he seems to know them already and they seem to be on the public record—one would have thought that there could be better uses of the time and resources of the Senate in pursuing inquiries which would be important to the Australian people about various aspects of this government’s policy. That, I suspect, would be much more profitable in developing a public policy position for the Australian Greens, the Labor Party and the government. We do not support this proposed reference to an inquiry of the burning of what is described as Australia’s biggest tree.

There was, however, one aspect of Senator Brown’s presentation that somewhat perplexed me. On the one hand, Senator Brown said that *Eucalyptus regnans* did not regenerate after fire—they do not sprout anew after fire—and that an expert had found that the tree was dead. On the other hand, in another part of Senator Brown’s contribution he cast doubt on that by saying that he did not know whether or not the tree would live. There is only one test that will establish whether that is the fact. Those who have seen bushfire affected areas know that many trees do sprout anew and some do not. It is that response which will give us the answer—nothing more, nothing less. Within a season or two we will know the fate of this tree. No Senate inquiry is going to reveal that; nature itself will reveal it. If that is the purported purpose of the inquiry, I would suggest it is pointless.

Having said that and not wanting to take too much more of the Senate’s time, I ask that the Senate endorse the amendment that I have moved to Senator Brown’s motion, which is in our view a more sensible course
of action in the circumstances. I look forward to the opportunity on other occasions to talk about the deep red myrtle issue or the issue of the archaeological site at Recherche Bay in southern Tasmania when those issues are more germane to the debate. They are not on this occasion, but we have become accustomed to Senator Brown introducing a variety of matters in his contributions. He takes every opportunity to pursue the issues that are dear to him, but in this case the pursuit is perhaps not well directed.

Senator CHERRY (Queensland) (4.54 p.m.)—The Democrats wish to place on the record our deep regret and our concern over the burning of El Grande in the Tasmanian forest. It is a tragedy for Australia that this particular event occurred, it is a tragedy that this occurred as a result of breaching of containment lines in a Forestry Tasmania regeneration burn exercise and it is a tragedy for Australia that the practices of Forestry Tasmania are still not satisfactory to the extent that we can be assured as a nation that native forests will be protected in Tasmania, let alone that their plantation forests will be operated effectively.

I place this on the record because it is very important. In fact, our forestry spokesperson, Senator Ridgeway, gave notice of a motion yesterday to place clearly on the record the Democrats’ view that the practices of Forestry Tasmania in respect of native forests are substandard, inappropriate and worthy of condemnation. That motion is on the Notice Paper, and hopefully we will deal with that in the Senate tomorrow. It is worth noting that over 20,000 hectares of native forest are logged in Tasmania each year and that Tasmania now has the second highest rate of land clearing in Australia, second only to my state of Queensland—for which the Beattie Labor government also stands condemned.

The level of logging of native forests in Tasmania is clearly threatening the natural and cultural heritage values of Tasmania and is contributing quite clearly to the increase in Australia’s greenhouse gas emissions. The Democrats condemn Forestry Tasmania and the Tasmanian Forest Practices Board for their regulation of forestry operations and management of Tasmania’s native forests. In particular, we are concerned about Forestry Tasmania’s conduct of management activities and the Tasmanian Forest Practices Board’s failure to ensure that a robust forestry practices code is effectively implemented. Having said that, I also wish to note that the Democrats supported very strongly Senator Murphy’s initiative for the Senate inquiry into plantation forestry practices in Tasmania that is currently being conducted—a very extensive inquiry—by the Senate Standing Committee on Rural and Regional Affairs and Transport, chaired by Senator Ridgeway. I understand it is having another couple of days of hearings in Tasmania shortly.

Having put all that on the record, I wish to note that the Democrats will not be supporting this particular motion, because we believe it is appropriate that the Senate express our concern, which we will do by putting out a notice of motion, and because we believe it is appropriate that we complete and make our findings on the current inquiry into Forestry Tasmania’s plantation forestry practices. I would also note, as chair of the Senate Environment, Communications, Information Technology and the Arts References Committee, that we have an incredibly full agenda at the moment—in fact our private meeting tomorrow will be considering two new, very significant inquiries which will certainly occupy us for the rest of the year. It simply would not have been possible to complete this inquiry by the date that Senator Brown has set, and if he had rung me I would have told him that.
It is disappointing that we are in a position where we will have to vote against this particular inquiry motion, but I do wish to note quite clearly that the Democrats have put our views of these activities very strongly on the Notice Paper. We would urge the Tasmanian parliament to engage in proper accountability oversight of Forestry Tasmania, whether it is through the estimates process or through the Greens in that parliament initiating an appropriate inquiry. We do not think that at this time it is an appropriate matter for the Senate environment references committee to deal with. Having said that, we look forward to completing the plantation forestry report and seeing if there are further matters we need to look at after that.

I wish to make it quite clear that the Democrats are not satisfied that Forestry Tasmania did all in its power to protect El Grande from the regeneration burning exercises that have occurred in Tasmania. This is a national tragedy for which Forestry Tasmania stands condemned. We will not be supporting the Labor Party’s amendment to this motion because I do not think we can note that Forestry Tasmania had measures in place to protect the tree when it did not protect the tree. That is very important, and from that point of view we cannot support the amendment moved by Senator O’Brien—but we will not be supporting Senator Brown’s motion either.

Senator EGGLESTON (Western Australia) (4.58 p.m.)—I speak as the chair of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee. The government joins with Senator Brown in expressing great concern that this tree was burnt. It is certainly an environmental tragedy that more care was not taken to protect this tree. Nevertheless, the government does not support an inquiry into this event but will support the ALP’s proposed amendment to the motion.

Senator MURPHY (Tasmania) (4.59 p.m.)—Having had a long interest in forestry matters, it is appropriate that I make a few comments in respect of what Senator Brown is proposing by way of his motion to make a reference to the Senate Environment, Communications, Information Technology and the Arts References Committee about this matter. It is a very important matter and another demonstration of the problems that are associated with poor management practices—practices that are often not suited to the type of forest being harvested.

If you have a commercial forestry operation, you need to take an approach whereby you manage it in a way that maximises a whole range of things. Environmental protection and protection of forest species and other flora and fauna is very important. Unfortunately in Tassie—but not just in Tasmania—practices that have been, and still are, employed by some forest management agencies are clearly not up to task of achieving what are stated objectives in this country. We would like people to believe that we employ world’s best practice in forest management. That clearly is not the situation, and the chickens are coming home to roost on that issue. As Senator Cherry pointed out, the plantations inquiry will at some point in time be able to provide this parliament with evidence that would suggest very much that that is the case.

With regard to what Senator Brown is proposing in respect of an inquiry about this specific matter at this time, we have that other inquiry which has to look at management practices that are employed to harvest both public and private native forests. Whilst it might not cover specific matters relating to this tree, it will therefore deal with some issues relevant to the harvesting and management practices that are applied within the state.
Insofar as what Senator O’Brien, on behalf of the Labor Party, has proposed by way of amendment, I have a tendency to agree with Senator Cherry that, where it is noted in paragraph (a) that Forestry Tasmania ‘had measures in place to protect the tree’, it might be more to the point to say that they may have endeavoured to have measures in place to protect the tree. I would move an amendment—if not an amendment to what Senator O’Brien has proposed—to at least have something done, something investigated by the two relevant departments. Both the Commonwealth Department of the Environment and Heritage and the state department of the environment ought to be required to conduct an investigation on the measures and why the measures failed to protect the tree and on whether or not a rescue is possible—whether or not something can be done to assist what is a very old tree to at least continue to live—and how that might be funded.

I would like to propose that by way of amendment to either Senator Brown’s motion or Senator O’Brien’s proposed amendment, I would move that the Senate call on the Commonwealth and the Tasmanian government, through their departments of the environment, to conduct an investigation on the measures—that is, the fire protection measures—that were in place for the tree and why they failed, whether rescue is possible and how that might be funded. I do that because I think it is important.

If we were to actually do this, it would be a test for both the Commonwealth and the state departments of the environment to see whether they are up to the task of protecting environmental arrangements that take in things like the protection of this big tree and other flora and fauna, because that is important; they have a responsibility. I do not recall reading anything from the state department of the environment. They may have made some comment about this but, frankly, the Commonwealth department has a responsibility under the Environment Protection and Biodiversity Conservation Act.

I suggest that we ought to at least take some steps towards conducting an investigation. I suggest to Senator Brown that maybe prior to the proposal for any Senate inquiry we at least call on the Commonwealth and state departments of the environment to conduct an investigation, which they should be able to do. They have the expertise—they can employ the expertise to do it—and they should be tasked with that responsibility and report back to the parliament.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Senator Murphy, in relation to your proposed amendment, you can either move it in substitution for paragraph (d) or add a new paragraph (e).

Senator MURPHY—I cannot do that unless Senator O’Brien changes his paragraph (a), because I do not agree with it. That is agreeing to something that I am asking to be investigated.

Senator Cherry—Senator Ridgeway has given notice of his intention to move a motion, No. 478, to deal with this matter, which is being dealt with in the Senate tomorrow. It might be appropriate that we incorporate this into the motion at that point in time.

Senator MURPHY—I am assuming that the Democrats are going to proceed with that tomorrow. I am happy for it to be dealt with at some point in time, because I think it is important. The context of the investigation that needs to be conducted is important. As I have said, given that this debate was taking place at this point in time, I looked to at least see some outcome for what is a very serious matter. If that can be done tomorrow, I am happy to do it tomorrow. But certainly I think that something needs to be done.
The ACTING DEPUTY PRESIDENT—Thank you, Senator Murphy. That can be done tomorrow with the Democrat proposal.

Senator BROWN (Tasmania) (5.07 p.m.)—There are some times when you can get disspirited enough with this place to feel like you might as well pack it in and go. The proceedings that we have heard in the last little while would make me think in that direction. The opposition does not give a damn about what is happening in the forests of Tasmania, because it is its policy. The Democrats had such a noble history of standing for the environment, and Senator Cherry says that it is ‘disappointing’ that they will have to vote against this inquiry. Like the Labor Party, the Democrats express their concern at this national tragedy. Senator Murphy says that he will vote against it as well and, of course, the government will.

Here we have what speakers have said is a national tragedy, but the ducking and weaving, insincerity and cynicism of the contributions make me sick. What other national icon could be vandalised like this at the hands of officials and not immediately have this chamber in uproar with a demand for an inquiry? Would the daubing of Uluru not lead to that? Would the looting of the Opera House not lead to that? On the logic I have just heard from the three or four previous speakers, if you are holding an inquiry into the arts and the Opera House happens to be in some way or another vandalised in the meantime, you would not go to another inquiry into the Opera House because you are doing something in that realm in general! That is what is being said by the Democrats and by the Labor Party here: ‘There’s an inquiry into plantation forestry, so why should they have another inquiry into the burning of the world’s biggest flowering tree, here in Australia?’ It defies belief.

I have to be careful what I say here, because I feel so strongly about this. This place sometimes is devoid of spirit and heart. There is much more attention given by parliamentarians to assassinating each other’s characters, trying to catch people out over foibles and sensationalising the minutiae. But when it comes to matters as important and nationally significant as this, Labor brings in an insincere, concocted set of words which actually go some way towards endorsing Forestry Tasmania’s behaviour at this tree site, and the rest of the Senate that is supposed to be in opposition falls into line with that and the government says yes. I am thoroughly disgusted. This behaviour is totally intolerable. Senators should hang their heads in shame. The Greens alone are doing the right thing here.

I am aware that the environment does not count in the agenda of the majority of this parliament. I am aware that there is a cavalier attitude to it. I am aware that when it comes to global warming nothing is being done—there will be a bit of shadow-boxing here and there, but leave that to the next generation. I am aware that when it comes to salinity the Prime Minister says, ‘We’ll put $100 million in there,’ or ‘We’ll do something about it,’ and then does not spend the money, and we will get another commission up and we will even have inquiries into that but basically the matter is not tackled. I am aware that we are threatened, and this is on the government’s own advice, with the loss of one-third of our bird species in the coming decades—not centuries but decades—and that there are mammals on the verge of extinction and being forced in that direction in a whole sweep. Australia is the worst performing of the developed nations in the world in past extinctions and impending mass extinctions. Who is debating the issue? Who cares?
Along we come today to consider this destruction of a living giant of global significance and the Senate, except for the Greens, say, ‘We don’t even want an inquiry into that.’ I will tell you why: because there are big commercial interests being defended; because Gunns is a big corporation with big outreach, and the Labor Party is within the tentacles of that outreach. And on its board sits former Liberal Premier Robin Gray, he who called the Franklin a ‘brown, leech-ridden ditch’ just 20 years ago.

We are the custodians of this nation’s natural heritage and, with the exception of a number that could be counted on one hand—two Greens in the Senate, no doubt our colleague in the other place and perhaps some Independent members in the other place—the rest of this parliament turn their faces from it. They do not have the gumption, they do not have the spirit, they do not have the intellect to be able to take on this issue and say, ‘That demands an inquiry.’

I will not get dispirited about this. I will not give up on it. I am faced with those log trucks going down the roads of central Tasmania to the woodchip mills and taking that vast national forest repository to the rubbish dumps of Japan, Korea and elsewhere every day of the week—150,000 log trucks of it this year. Even when they say they will protect a stem or two out of the millions being destroyed each year, they cannot do that. And even then the Democrats and Senator Murphy join with the Labor Party and the government in saying: ‘Let’s not have an inquiry into that. It is not important enough. It is disappointing that we cannot support an inquiry.’ It is outrageous! It is a dereliction of parliamentary duty. It is a squandering by the Democrats and the Labor Party of the public faith in terms of their past defence of the nation’s heritage.

Senator O’Brien, the defender of Mr Bacon and Mr Lennon in this place, makes the snide imputation that Senator Brown knows everything about it, so why should we have an inquiry. There is a haughty attitude of, ‘Let’s just palm it off and not take it seriously,’ by the Labor spokesperson representing the Hon. Simon Crean in this place. And there is no doubt that he is instructed, because I made sure that the Labor Party knew the importance that we Greens attach to this matter. I made very sure of that. It is not just Senator O’Brien speaking here; it is the Hon. Simon Crean, Mr Kelvin Thomson, the shadow spokesperson for the environment, and all their fellow members represented in both houses of this place, together with all the Democrats and Senator Murphy. It is totally remiss.

But there is a future, you know, which has to be envisaged. There is a future in which humanity needs the beauty, inspiration and grandeur of nature. The rest of you might think that it is derelict to think about that, but we Greens do not. The rest of you might think that it is irrelevant. The rest of you might think, ‘As long as we have some economic gain going, let the devil take the environmental inspiration on this planet.’ Of course, that is not what people think. This is a specific test. This is a gross and reprehensible act of destruction of a national icon which was in the specific custodianship of a government entity under the Tasmanian government, with the authority of Prime Minister Howard, who signed the Regional Forest Agreement. When we cannot say that we should have an inquiry into that, it shows how little is thought of the environment by this chamber and by the parties other than the Greens in this place.

We are now going to get a vote on this cuckold—this cuckoo—of an amendment, brought in by Labor to make it appear as though it is doing something, in which Labor
says, ‘Measures were in place by Forestry Tasmania.’ That is very much like saying: ‘Measures were in place when the building fell down. We have building measures. Although 20 people were crushed to death we will not look at that, because there were measures in place to prevent that happening beforehand.’ What an extraordinary line of logic! In comes this motion—this amendment—whereby Labor will remove the need to have a vote on an inquiry. It does not make any difference that the amendment is being opposed by every member of the Labor Party, the Democrats and everybody in this place, as far as we know, except we Greens.

Senator CHERRY (Queensland) (5.19 p.m.)—by leave—I appreciate Senator Brown’s passion on the issue of forestry and I think it is commendable. It is good to have passion in this place. I too am passionate about a lot of things, but they are still not appropriate for a Senate inquiry. For the record, the Democrats condemn Forestry Tasmania for the practices that have led to this event. I also wish it to be noted that the Democrats continue to work on a whole range of environmental issues. We have an awful lot of activities going on as we speak. I know that once this vote has occurred Senator Brown will go down to Tasmania and tell everybody how the Democrats voted against this inquiry into the greatest tree—

Senator Brown interjecting—

Senator CHERRY—Yes, you will do that. I hope you remind them that we got $16 million for wetlands protection in the Great Barrier Reef and $40 million for Sustainable Cities and air quality measures so far this year. I hope you remind them that we negotiated with the government over the Queensland government’s $75 million land-clearing package; that there is going to be a 30 per cent extension of the Great Barrier Reef Marine Park as a result of a long-running campaign run by Andrew Bartlett; that we are also campaigning on genetically modified food; that we are seeking to negotiate amendments to the heritage legislation; that the Sydney Harbour Federation Trust is about to come into operation with a whole range of environmental measures negotiated by the Democrats; and that low-sulphur diesel standards will be coming in later this year. These are all things we have negotiated. I hope you remind them about all these things as well, because that is what happens when you use the parliamentary process properly.

I am the chair of this committee and it really offends me that you have not bothered to negotiate this with me. We have a full program of environmental and communications matters coming up, so we do not have time to conduct this particular inquiry. An inquiry on forestry in Tasmania is already being undertaken by a Senate references committee, into which we have put a lot of time and effort. I think it is very unfortunate that Senator Brown will probably use this to attack the Democrats in Tasmania even though we have a very strong record of using this place to achieve outcomes for the environment, rather than just talking about them.

Senator BROWN (Tasmania) (5.22 p.m.)—I seek leave to reply to Senator Cherry.

Leave not granted.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—That is fine. You have got it on the record.

Question put:

That the amendment (Senator O’Brien’s) be agreed to.
The Senate divided. [5.26 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes……….. 39
Noes……….. 10
Majority…….. 29

AYES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. * Calvert, P.H.
Campbell, G. Carr, K.J.
Colbeck, R. Cook, P.F.S.
Crossin, P.M. Denman, K.J.
Ellison, C.M. Evans, C.V.
Ferguson, A.B. Forshaw, M.G.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Johnston, D.
Kirk, L. Ludwig, J.W.
Lundy, K.A. MacDonald, I.
Macdonald, J.A.L. Mackay, S.M.
Mason, B.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Ray, R.F.
Santoro, S. Scullion, N.G.
Sherry, N.J. Stephens, U.
Tchen, T. Watson, J.O.W.
Webber, R.

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

* denotes teller

Question agreed to.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002 [No. 2]

In Committee

Consideration resumed.

Senator GREIG (Western Australia) (5.36 p.m.)—I just want to clarify how we are going to proceed with this matter. I understand that when we left off we were debating Labor amendments (7), (8) and (9). To facilitate things, it might be best if we deal with those and then return to the Democrat amendments, which I foreshadowed but which I have not yet had an opportunity to speak to.
The TEMPORARY CHAIRMAN (Senator Hutchins)—I shall divide the question on Senator Faulkner’s amendments. The question is that Senator Faulkner’s amendment (7) on sheet 2953 be agreed to.

Senator NETTLE (New South Wales) (5.36 p.m.)—Could Senator Faulkner remind us of the nature of opposition amendments (7), (8) and (9) that we will be asked to vote on.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.37 p.m.)—I am not entirely clear why we are dealing with opposition amendments (7), (8) and (9) first, but I am happy to assist the committee. Will these amendments be put first?

The TEMPORARY CHAIRMAN—Yes, because they are amendments to government amendments.

Senator FAULKNER—So amendment (7) will be put separately and amendments (8) and (9) will be put together?

The TEMPORARY CHAIRMAN—Yes.

Senator FAULKNER—I think that will assist the committee. Senator Nettle—I assume in the interests of sorting through her papers—has asked me to briefly outline what these amendments involve. As I indicated previously to the chamber, these are fundamentally technical amendments regarding legal advice. Our amendments provide that any objection by ASIO to the presence of a particular lawyer is focused on the lawyer in question. I have indicated, and I think we are all aware, that in a situation where a lawyer has been blackballed the prescribed authority should assist the person to locate another lawyer.

It is worth us recalling that one of the key recommendations of the Parliamentary Joint Committee on ASIO, ASIS and DSD—one of their key concerns—on the original bill went to the question of the lack of provision for legal representation. The opposition’s view on this is very clear: we have said that a person who is questioned ought to have access to legal advice. We also accepted from the outset that it is possible that a lawyer might prejudice an investigation. We have always accepted that if the prescribed authority is satisfied on application by ASIO a person could be denied their lawyer of first choice.

Ordinarily, we would be expecting that, in most cases under the regime, time would be given for someone to contact a lawyer, but I have made it clear, as I think interested senators would know, that we have always contemplated a situation where if there is an emergency—and this is the balance I was speaking about before question time—such as the imminent threat of terrorist activity, that is one issue for the parliament to give consideration to, and it is obviously a very important issue. On the other hand, you have the important question of the right to a lawyer. They are, if you like, the balancing principles—and sometimes you do have balancing principles in legislation.

I do not have any difficulty in clearly saying that in that sort of emergency, in that sort of urgent situation, waiting for a lawyer is not tenable. I do not think any reasonable Australian would say that it was tenable. Anyway, that has probably given Senator Nettle enough time to look through her papers—she obviously appreciates that—and we can move on.

The TEMPORARY CHAIRMAN—The question is that opposition amendment (7) on sheet 2953 to government amendment (45) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that opposition amendments (8) and (9) on sheet 2953 be agreed to.
Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that Democrat amendments (15), (16), (17) and (19) on sheet 2923 revised to government amendments (15), (25) and (45) be agreed to.

Senator GREIG (Western Australia) (5.43 p.m.)—I will take this opportunity to speak to those amendments briefly. Amendment (15) is designed to ensure that a person who is required to appear before a prescribed authority for questioning has a right to legal advice. Under the current provisions, only a person who is taken into custody and detained for questioning has a right to have a lawyer of their choice present during questioning. A person who is not taken into custody but who is nevertheless required to appear before a prescribed authority for questioning does not have that right. In those circumstances the warrant may—and I stress the word ‘may’—permit the person to contact a lawyer, but it does not have to. With so much cross-party focus on the right to a lawyer under this regime, it seems to be artificial to draw a distinction between those who are detained under the regime and those who are not. The distinction is particularly curious given that the heavy penalties which apply for noncompliance under the regime are not limited to people in custody; they apply to any person who is required to attend for questioning before a prescribed authority. As such, it is important that these people have a right to legal advice, and that right should be enshrined in the act.

Democrat amendments (16) and (17) are designed to address the situation in which a person does not know or know of a lawyer whom he or she can engage whilst being questioned before a prescribed authority. At present, the act does provide that a person may have a lawyer present after the person has provided the identity of that lawyer and after ASIO has had the opportunity to ensure that the lawyer does not present a security risk. The problem with this system, I would argue, is that it is entirely conceivable that a person detained under the act may not know of any particular lawyer which he or she could engage. Given that the regime continues to apply to nonsuspects, it may well result in the detention of people who have never previously had any reason to engage a lawyer. A person should not be deprived of their right to legal advice simply because he or she does not happen to know the name of a particular lawyer or legal firm. They should, I think, have the opportunity to request legal advice, even if they are unable to nominate a lawyer. These Democrat amendments seek to achieve that. They provide that, if a person is unable to identify or engage a lawyer of their choice, the prescribed authority must assist the person to locate a lawyer who is competent and available to provide advice in those circumstances.

Finally, Democrat amendment (19) seeks to ensure that a person who is being questioned before a prescribed authority has access to a lawyer of their choice, if they want one, at all times during the questioning. The exception to this rule is that questioning can commence before the lawyer arrives if a terrorist attack is imminent. In its present form, government amendment (45) places severe and unwarranted limitations on a person’s right to a lawyer during questioning. Clause 34TB(1) provides that a person may be questioned in the absence of a lawyer, but it fails to specify the particular circumstances in which that is allowed. We Democrats are concerned that the generality of this section might enable the practical undermining of a person’s right to a lawyer. The Democrats accept that circumstances may arise where, because of overriding and imminent security concerns, a person may need to be questioned before their lawyer arrives at the place
of questioning. Of course, questioning can also occur in the absence of a lawyer if the person has indicated that they do not want a lawyer to be present. We Democrats feel very strongly that these exemptions need to be set out clearly, and that is the purpose of the amendments we have before us. I seek the chamber’s support for them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.48 p.m.)—The government opposes these amendments. I think I may have mentioned earlier that the government does not see that these amendments are necessary. In relation to amendment (15), the government has already agreed to amendments to ensure that a person taken into custody has the right to contact a lawyer. That is to ensure that persons are not held incommunicado. In relation to Democrat amendments (16) and (17), if the person does not have any particular lawyer in mind, it is really open to the prescribed authority to suggest that that person contact a legal organisation such as Legal Aid. We do not think that it needs a specific amendment for that. I understand that the Democrats say their amendment (19) is designed to remove any doubt about the right of the interview-subject to be informed of his or her rights to contact a lawyer of their choice. We believe that the bill already sets out very clearly the rights of the person who is being interviewed. We believe that the threshold which is imposed by Democrat amendment (19) would result in lengthy delays before urgent questioning could commence. Of course, that could be used as a delaying tactic to prevent ASIO from getting on with the job and dealing with what would be a very urgent situation, potentially of great threat to the community. So, for those reasons, the government opposes Democrat amendments (15), (16), (17) and (19).

Senator CHERRY (Queensland) (5.51 p.m.)—I rise to support the Democrat amendments moved by my colleague Senator Greig. I want to speak very briefly on a general concern I have about this legislation and the reason that I think it is absolutely essential that these amendments need to be passed. The concern we have is generally about the accountability of ASIO to this parliament. The amendments ensure that accountability is at least in the legislation for the activities that ASIO is engaging in. My concern arises from the lack of proper parliamentary scrutiny of ASIO’s activities. The committee which has been established under the Intelligence Services Act 2001 earlier today was authorised by the Senate to conduct an inquiry into weapons of mass destruction. My concern arises from the lack of proper parliamentary scrutiny of ASIO’s activities. The committee which has been established under the Intelligence Services Act 2001 earlier today was authorised by the Senate to conduct an inquiry into weapons of mass destruction. My concern arises from the lack of proper parliamentary scrutiny of ASIO’s activities. The committee which has been established under the Intelligence Services Act 2001 earlier today was authorised by the Senate to conduct an inquiry into weapons of mass destruction. My concern arises from the lack of proper parliamentary scrutiny of ASIO’s activities.
my consideration as to whether to support the earlier reference.

These amendments are absolutely essential because of the flaws in the accountability mechanism. It is worth noting that, under section 4 of the schedule to the Intelligence Services Act, the minister responsible for an agency can prevent the disclosure of operationally sensitive information. Section 6 makes it clear that, where a review is conducted in private, the committee must not disclose or publish or authorise publication of the evidence or the contents of a document without the written authority of the person who provided it. Under section 7 there are restrictions on disclosure to parliament. Most importantly, the one I was particularly concerned about was under section 20, the proceedings: the committee must not without the approval of the minister responsible for ASIO, the minister responsible ASIS or the minister responsible for DSD conduct a review in public.

I raise these matters only because it is fundamentally important when we talk about these matters, whether it be ASIO or the advice this government received prior to the war in Iraq, that we ensure that there is opportunity for proper public parliamentary scrutiny. Whilst there should be appropriate and reasonable exceptions given for intelligence matters, it is not appropriate to allow these sorts of levels of secrecy to occur in inquiries. It is the reason why I opposed the Labor Party’s reference to that committee of the matters dealing with the Iraqi war, why I would have preferred to have seen a public inquiry, why I think these particular amendments that Senator Greig has moved are so essential in making sure that there is proper legislative accountability for the activities of our intelligence agencies and why I think it is absolutely essential that this government agrees to a full inquiry, judicial or whatever, to ensure that we get to the bottom of what Australia did and did not know in the lead-up to the Iraqi war.

Senator NETTLE (New South Wales) (5.54 p.m.)—The Minister for Justice and Customs, in responding to these amendments put forward by the Democrats, talked about the desire of the government to be able on occasions to start the questioning of—let us remind ourselves—innocent and known to be innocent people without the presence of a lawyer under this legislation. The minister indicated that he wanted to allow ASIO to begin that questioning when he believed an imminent terrorist threat was about to occur. Could the minister point me to where in the legislation there is a stipulation that questioning can begin of people, perhaps known to be innocent, without a lawyer being present in the instance that there is an imminent terrorist threat? Could the minister point me to where there is a reference? References have been made to ‘imminent terrorist threat’. The Leader of the Opposition in the House made references to ‘national security issues’. I am not familiar with those phrases being in this particular piece of legislation with regard to this decision being made about when questioning should begin without a lawyer being present. Could the minister point me to where there is reference in the legislation either to the term ‘an imminent terrorist threat’ or to the term that the Leader of the Opposition used, which was ‘an issue of national security’?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.56 p.m.)—I have said previously that the Democrat amendment would prevent any questioning of a person before the prescribed authority in the absence of a lawyer of choice unless the prescribed authority were satisfied that there was a threat of an imminent terrorist act. I am not saying that that phrase is in the bill, because it is not. What we are saying here is that there could be an imminent threat
of a terrorist act—the threat is on your doorstep—and you need to question that person there and then. If the Democrat amendment were passed, it could be used to delay any questioning which would need to be done on an urgent basis. That is what we are saying in relation to that.

Senator NETTLE (New South Wales) (5.57 p.m.)—Perhaps I did not make myself clear to the minister. I was not intending to use this occasion to get into a debate as to whether the questioning should be able to begin with or without a lawyer being present. I understand that the minister is saying the prescribed authority can make a determination as to whether or not the questioning should begin on the basis of the range of factors that the minister has outlined to the chamber. I want the minister to point me to where in the legislation the guidelines, the protocols and the requirements are for the prescribed authority to make that determination on the basis of the factors that the minister has outlined to the chamber. I am not currently here to debate with the minister whether or not the questioning should be able to start without the lawyer. I am happy to have that debate with the minister if he would like. At the moment I am simply asking: can the minister show me where the guidelines are for the prescribed authority to enable them to make a determination as to whether there is an imminent threat and whether the questioning should begin without a lawyer being present?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.58 p.m.)—There is no express provision for that because there does not need to be—that is a factor which a prescribed authority would take into account. Obviously ASIO, in its obtaining of the warrant and dealing with the issue, would bring to the attention of the prescribed authority the seriousness of the issue. You cannot regulate that for every circumstance of human endeavour because, if you do so, you will not have any room to move whatsoever. Of course, the prescribed authority, being a person of some judicial standing, certainly would be well equipped to gauge whether a matter is imminent or urgent, and that would be one of the assessments made by the prescribed authority. It just stands to reason that when you have questioning of this sort the very nature of the threat would entail asking whether this is something which will happen next year or something which will happen at some sports stadium tomorrow. That is part and parcel of the situation. That would be in the surrounding circumstances for the obtaining of the warrant.

Senator BROWN (Tasmania) (6.00 p.m.)—The minister has not answered Senator Nettle’s question and he has certainly made no satisfactory contribution to the debate. The minister is saying that every matter is urgent—that it is an imminent terrorist threat that we are dealing with here—and he knows that is not true. He knows that this is about a long process of surveilling people who are under suspicion and includes allowing friends, associates, people who might innocently have come into some piece of knowledge about the people under suspicion, to be hauled in for questioning. In the main, that is not going to be an urgent situation. The minister is quite wrong to use the urgency as a matter for refusing Senator Greig’s amendment to allow people to get legal aid which is appropriate for the circumstances.

If indeed a terrorist event is imminent, I think we would agree that the situation differs. Under those circumstances, it may be that you have to obviate some of the usual processes, ensuring that the person’s own legal assistance is there. I hear the minister say, ‘If you are going to make sure that people get the legal assistance they want, that
could be used to take up time.’ But we are talking here about the majority of cases, where there is time. We are talking about the ongoing watch and vigilance and gathering of information against potential terrorists in Australia. The urgent situation is the exception.

If that is not the case then, as Senator Nettle says, point out in the legislation where it says that this is only to be used in matters of urgency. Of course it is not there. Our whole worry in this situation is that it is not the citizens involved in urgent situations of terrorism that are going to be caught up by this legislation—quite the reverse. This is giving powers to the secret surveillance authorities to haul in citizens when they want to get information to find out if there is anything doing—not on the basis that they know what is doing, but on the basis that they do not know what is doing and they want to get information. The government’s argument here fails and this is the problem. We are going to see legislation supported by the opposition which deprives people, on a spurious argument, of proper access to legal assistance. That is why the Greens will be supporting the amendment that Senator Greig has brought forward.

Senator GREIG (Western Australia) (6.03 p.m.)—I think it is important that we are very clear about this. Democrat amendment (19) in particular makes it very clear that it cannot and does not prevent questioning commencing in the absence of a lawyer if there is believed to be an imminent threat or danger. It expressly allows for that, so the minister’s argument is a nonsense. It could not be the case that somebody that had been brought before a prescribed authority could try and obfuscate or delay questioning by demanding the right to a lawyer in the scenario where a terrorist threat was believed to be imminent. That is not the case.

We need to be very clear about the fact that the legislation before us allows for two different types of warrants. One allows for people to be brought before a prescribed authority. They are not taken into custody but they are required to appear before a prescribed authority for questioning. Those people do not have the right to legal representation. The minister made the point of saying that those people who are being detained and questioned by ASIO have a right to a lawyer and, yes, we now understand that clearly to be the case. But it is not the case for those people who have not been taken into custody. The amendment before us does not do what the minister says it does. The minister’s logic does not flow. There is no logic. If a terrorist threat were imminent, somebody could not argue before a prescribed authority, demanding the right to a lawyer. The amendment that we have moved is designed to expressly allow for that scenario.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.05 p.m.)—I want to make it absolutely clear that, where you put into place a regulation and you have a situation of this sort, which could be quite fluid, then by having that regulation you really restrict unduly the carrying out of what are very important duties. Imposing a requirement to satisfy the prescribed authority of the imminent threat of a terrorist act is really putting the cart before the horse, because you are then allowing that question to be debated. That was the very issue I was talking about leading to delay that could be brought about mischievously. Delay to questioning could be brought about where there is an imminent threat, because you would be arguing as to whether or not the threat is imminent. You would be arguing the toss whilst plans were being put into place to carry out a public terrorist attack down the road.
I can see what Senator Greig is saying—’We think that where there is an imminent threat you can have your questioning without the lawyer’—but the trouble is that, once you regulate for that, you then raise the debate as to whether it is an imminent threat. The prescribed authority then enters into a debate with all concerned as to whether there is an imminent threat. We prefer to say that the only way to avoid any delaying tactic that could be employed is to leave it to the discretion of the prescribed authority. Of course, the Democrats and the Greens would say that that is leaving an open discretion to a prescribed authority in what is a serious situation. We say: yes, it is, because you have to have that discretion. If you regulate it, you will end up with an argument over the definition of what is an imminent threat and what constitutes that. We believe that the prescribed authority is a person of such judicial standing that you can bestow that discretion upon them with safety, especially when you look at all the safeguards that we have in the bill. That is why we oppose the amendment.

Senator NETTLE (New South Wales) (6.07 p.m.)—It is worth making sure that the Senate is clear about what the minister is saying on this issue. I understand that to be that we are allowing the prescribed authority discretion in making a determination as to whether there is an imminent terrorist threat. We are asking them to do that on the basis of what information? We are asking them to do that on the basis of information provided to them by ASIO.

I take the minister’s point that we cannot have a long and extensive debate about whether there is an imminent terrorist threat. I recognise that point. We are saying to the minister that we recognise that the prescribed authority has to be able to make that determination. The answer to the question about what they will base that decision on is quite clear: they will base that decision on the information of ASIO. There is no other body or any other argument they can listen to in this context on which to base that decision. The prescribed authority will have ASIO putting an argument to them about the nature of the threat and whether it is an imminent threat, and the prescribed authority will be asked to make a determination.

We are not asking the minister to define what is an imminent threat. I agree with the minister that it would be inappropriate to put those kinds of prescriptions and regulations into the legislation. We are simply saying that, if the legislation says that the prescribed authority is to make a determination on whether we have an imminent threat or an issue of national security, there be some guidelines and some basis for that prescribed authority to make that determination. I am not asking the minister to go out and stipulate the basis on which they would do that—what is an imminent threat, define it and put it all in the legislation. I am seeking to give some guidelines to the prescribed authority on how they will make that determination, because the minister is saying to us that, if ASIO puts a case to the prescribed authority that there is an imminent threat, there is an issue of national security, the prescribed authority can make that determination to begin questioning without a lawyer being present.

We are back where we started, before the ALP decided to negotiate with the government about whether you could have a lawyer present. If we are at a point where there is an argument put to the prescribed authority, they make the determination on the basis of no guidelines, purely on the basis of the information given to them by ASIO, and they can begin questioning without a lawyer, then, clearly we are going to see a vast number of instances where questioning begins without a lawyer. That takes us right back to where we were before the opposition went to the government to discuss the issue of whether one
has a lawyer present for this determination. So just to be clear on what the minister is saying: the minister is saying, ‘It is okay to go ahead and question without a lawyer being present.’

The TEMPORARY CHAIRMAN (Senator Lightfoot)—I put the question that Democrats amendments (15), (16), (17) and (19) to the government amendments (15), (25) and (45) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that government amendments (3), (4), (15), (16), (23) to (26), (38), (40), (41), (45) as amended, (46) and (48) on sheet RA231 be agreed to.

Senator NETTLE (New South Wales) (6.11 p.m.)—The minister made a commitment to the Senate prior to question time to find out an answer to my question on government amendment (24) which relates to whether the name of the lawyer needs to appear on the warrant. My question related to note 3 that is a part of that amendment. Given the minister’s undertaking that he would get back to us, I would like to give him the opportunity to add to the record any further information he may have as to whether the name of the lawyer will appear on the warrant and the nature of the clause at the end of note 3 in government amendment (24).

The TEMPORARY CHAIRMAN—Thank you, Senator Nettle. I put the question again that government amendments (3), (4), (15), (16), (23) to (26), (38), (40), (41)—

Senator Brown—Mr Temporary Chairman, does the minister have a response to Senator Nettle on that matter?

The TEMPORARY CHAIRMAN—Not at all—I cannot compel the minister to speak.
cluding the circumstances under which an innocent citizen is interrogated by the unqualified ASIO person before the faceless judge. It is logical that we should be looking at this legislation with at least the draft of those protocols in hand, but we are not. I am not prepared to accept that they are going to sort everything out. It is very important that those protocols be available to this committee. I ask the minister: do they exist? Have they been drafted? What is the status of those protocols? Why don’t we have them?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.15 p.m.)—We are drafting protocols. As I have said earlier, they will be presented in finalised form to both houses of parliament and will be outlined in a briefing to the parliamentary Joint Parliamentary Committee on ASIO, ASIS and the DSD.

Senator Faulkner—You said ‘tabled in both houses’.

Senator ELLISON—If I said ‘tabled’ I meant they will be presented.

Senator Faulkner—You said ‘presented’.

Senator ELLISON—Yes, I said ‘presented’ just then, and I think I might have said ‘tabled’ earlier.

Senator Faulkner—I just want to be precise.

Senator ELLISON—They will be presented to each house; they will not be tabled as such.

Senator Faulkner—It is the same thing, isn’t it?

Senator ELLISON—No, you could read them and not table them. It depends on how the Attorney-General decides to present them. It could be by way of ministerial statement or he could choose to table the set of protocols. I do not think there has been any thought given to how that would be done, but suffice it to say that they will be a matter of record in both houses of parliament—here and in the other place.

The issue that Senator Brown addresses is that we should have these protocols here and now and that we should be debating them with the legislation. We often have regulations which are not yet drafted where we have legislation which says that regulations will be drawn up at a subsequent time. A warrant cannot be issued under this act without the protocols having been settled. It is a starting point, as I understand it. I have double-checked that a warrant cannot be issued under these proposed provisions unless the protocols have been finalised. Often we have legislation where regulations are left to a later date to be drafted and we also do that with other instruments. We do not believe that at this point in time it is appropriate to involve debate on the protocols with the legislation. The protocols are guidelines which will be used for the carrying out of questioning. We believe the bill has enough particulars in it to cover the question and we believe that it would not be appropriate to put the protocols forward at this stage.

Senator BROWN (Tasmania) (6.18 p.m.)—It is not about what the government believes is appropriate; it is about what the committee needs to know. The protocols should be here. There have been months in which the protocols should have been drawn up and adjusted. In fact, I do not believe that the protocols are not available, but I do believe that we are being snowed by this process. This is a part of the process—that is, to have the parliament consider the legislation without the protocols and then bring them in later and argue that they have to be passed to suit the legislation which the Senate has already passed at a time when it did not have knowledge of them. It is a very clever political process. It duds the Senate and it duds the committee. This is not usual legislation; this is very serious legislation. The minister said
that on other occasions regulations are sometimes drawn up afterwards. Is the minister telling the committee that these protocols are disallowable instruments?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.20 p.m.)—I have two quick points. It strikes me that there is no alternative but to interpret the words ‘presentation of the statement to each house of parliament’ as meaning tabling the statement. There is no other acceptable or reasonable way to do this. It is perhaps only a fine point, but that is how I interpret those words. I think it is how any reasonable person would interpret them and I am quite confident it is the way the government will act in relation to this particular matter.

On the other point, which is raised by Senator Brown, it seems to me that the option is of course available to the government to table draft protocols if they wish. It would be more reasonable for Senator Brown, if he were to make this request of the government, to put it in those terms. I am not suggesting he is being unreasonable in the way he has presented it—

Senator Brown—We were not talking about draft protocols.

Senator FAULKNER—No, but I think you will appreciate that is a question of where the process in relation to the protocols has reached. In his response, it might be worth the minister canvassing that issue of the tabling of draft protocols. That might be of some benefit to the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.22 p.m.)—I have outlined previously—and I will do it again—the process for the development of these protocols. The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] requires the Attorney-General to be satisfied that written procedures for the custody, detention and interview of persons under a warrant are in place before consent can be given to the Director-General of Security to seek a warrant. That is the point I have made: he cannot issue a warrant until these are in place.

The written statement must be developed by the Director-General of Security in consultation with the Inspector-General of Intelligence and Security and the Commissioner of the Australian Federal Police. I said that earlier. The statement must be approved by the Attorney-General, presented to each house of parliament and outlined in a briefing to the Joint Parliamentary Committee on ASIO, ASIS and DSD. As I understand it, recommendations 22 and 23 of the Senate Legal and Constitutional References Committee report on this bill touched on this. The government has agreed to detail the matters that are to be included in the written statements—that is, the areas that this protocol is to cover.

We do not believe that providing either house with a draft copy of the protocol is appropriate. We believe that these procedures have to be gone through first and that it then be put to the parliament on the basis that I have stated—by the Attorney-General and in a briefing to the Joint Parliamentary Committee on ASIO, ASIS and DSD. The parliamentary joint committee—or indeed any senator or member of parliament—can raise issues at that time.

Senator BROWN (Tasmania) (6.24 p.m.)—Being a person who has a reasonableness of the order of Senator Faulkner’s which I have always admired, yes, I do think that the presentation of the draft protocols is in order. If they are not finished, let us have what there is of them. My understanding, from what the minister said earlier in the day, is that the protocols here are going to deal
with a whole range of matters, including the treatment of the innocent victims of this legislation who are interrogated in secret before the judge of the day whose name we shall never know.

We as a mature representation of the Australian people have a right to know what those guidelines are. And we should be discussing them as a whole, not serially. I do not believe that the government does not have draft protocols now, and I believe that they should be presented. But, as I said, I think this is part of a deliberate process to serially—with advantage to the government—present this draconian legislation and the attendant rules to the parliament, the Senate and the people of Australia in a way that maximises the chance of the worst aspects of the legislation getting through.

That is why, for example, the government refused last weekend to give the Greens and the Democrats the amendments we are dealing with now. It did not want us to be able to deal with those; it did not want there to be community input and it did not want the experts in the legal and security fields to have input. It was a very deliberate effort by the government that is being compounded now by the minister saying, ‘It’s a draft and we’re not sure that the parliamentarians should see it anyway.’ I do not accept that line of thinking at all—of course parliamentarians have a right to see these protocols when they are produced. There is not much we can do to insist that the protocols be brought forward, because the opposition would not support us, but I want to note here that the process is wrong. It does not lead to the quality of outcome that we should be getting on a matter as important as this.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the government amendments that I have alluded to on several previous occasions on sheet RA231 be agreed to.

Question agreed to.

Senator Brown—I circulated an amendment earlier in the day and I was wondering, Chairman, if you could tell me where that will come up for consideration.

The TEMPORARY CHAIRMAN—It is on page 4 of the running sheet but it has been put in by hand. It is straight after schedule 1, item 24 and before clause 2 of schedule 1, item 24. It is immediately after Senator Nettle’s amendments. There will obviously be a new running sheet tomorrow, where it will be in printed form, Senator Brown. The question is that section 34AA stand as printed.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.28 p.m.)—by leave—I move government amendments (47) and (62) on sheet RA231:

(47) Schedule 1, item 24, page 32 (after line 5), after subsection (2), insert:

Legal adviser to be given copy of the warrant

(2A) A person exercising authority under the warrant must give the legal adviser a copy of the warrant. This subsection does not:

(a) require more than one person to give the legal adviser a copy of the warrant; or

(b) entitle the legal adviser to be given a copy of, or see, a document other than the warrant.

(62) Schedule 1, item 24, page 36 (after line 20), after section 34V, insert:

34VA Lawyers’ access to information for proceedings relating to warrant

The regulations may prohibit or regulate access to information, access to which is otherwise controlled or limited on security grounds, by lawyers
acting for a person in connection with proceedings for a remedy relating to:

(a) a warrant issued under section 34D in relation to the person; or

(b) the treatment of the person in connection with such a warrant.

These amendments still relate to the issue of lawyer of choice but perhaps more indirectly. The current regime would be replaced with a scheme that allows for the provision of a lawyer of choice, with a range of safeguards to protect the disclosure of sensitive information. Under these proposals, the lawyer would not have to hold a security clearance. The bill, however, provides for the making of regulations which may prohibit or regulate access to information that is controlled on security grounds. It is against policy and against the law for a person who has not undergone a security clearance process to receive access to national security classified material.

The bill will also now clarify that, while a person’s legal adviser is entitled to see a copy of the warrant under which the person is being questioned, the legal adviser is not entitled to see classified material. I think this speaks for itself. We have covered previously in the debate the fact that we need to achieve a balance between what the lawyer has access to, based on looking after the interests of the person concerned, and the protection of what is classified material. On that basis, I commend these amendments to the committee.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.30 p.m.)—by leave—I move government amendments (52), (57) and (61):

(52) Schedule 1, item 24, page 33 (line 13), omit “2”, substitute “5”.

(57) Schedule 1, item 24, page 35 (line 36), omit “2”, substitute “5”.

(61) Schedule 1, item 24, page 36 (line 20), omit “2”, substitute “5”.

These amendments relate to an increase in penalties for a breach of secrecy by lawyers who are involved in the questioning process. I alluded to this in the second reading speech, I think. The regime now permits people who have not undergone a security clearance process to play a much greater role in the proceedings. But with that comes an obligation that they do not divulge information which could jeopardise matters of security.

For this reason the government proposes to increase the penalties for the offences relating to the release of sensitive information by legal advisers, representatives or other people to whom information is being communicated during the execution of the warrant and who do not have a prescribed role during warrant proceedings. The proposed new penalty of five years, which is an increase from two years, will provide much stronger protection against the disclosure of sensitive information. Again, these are provisions which speak for themselves and I commend them to the committee.

Senator BROWN (Tasmania) (6.32 p.m.)—Why was it two years before and why is it five years now? I know the minister says that more people are involved, but that does not explain why the penalty is being increased by 150 per cent.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.32 p.m.)—The situation is of course that the government have, with their proposed amendments, increased the pool of lawyers that you can draw from. As a result of that we have opened up access, if you like, to this questioning. We are saying that you can have a lawyer of choice, subject to those matters that I mentioned previously, with an objection by ASIO being upheld by a prescribed
authority. But with that comes an obligation. We believe that in the absence of security clearance, if you are just bringing in any lawyer, it is fair to indicate to them the severity of divulging what is classified information, and an increased penalty is appropriate.

In any event, two years was not appropriate having regard to the damage that the disclosure of such information could have. I think everyone would agree that disclosing information of this sort could have serious ramifications if it were to, say, alert terrorists involved in a potential attack. You need to have a stiff penalty there in order to keep the integrity of the regime of questioning and investigation.

Senator BROWN (Tasmania) (6.34 p.m.)—There are two things here. Firstly, the minister is saying that he got it wrong when he drew up the legislation and he has had to change it. The argument for that is nonexistent. It is not just unconvincing; it is not there—how the assessment was done in the first place and why it has been changed. Secondly, he then gets back to front the rest of his argument, because he says, ‘When we had security cleared lawyers appearing—a bank of lawyers that we thought were okay—if they went out and revealed secrets, they should have got a two-year sentence. But now that people are coming in who are not security cleared and are not government approved, they should cop a five-year sentence.’

I would have thought that somebody who got security clearance and released secrets should be in for a bigger sentence than a person who has not sought listing on that particular august list that the government had before. There is a scramble of thinking involved here. I just think the minister has reached for another number. There is a vast difference between two and five years. He says this is a way of threatening the other lawyer coming in to represent a person and making sure they do not release secrets. I would have thought that you would have needed every bit as much of an assurance, given the history of spy agencies and the massive breaches there have been at times from the most trusted central figures in intelligence agencies. It is those people who need to know that, if they break the law and release secrets that are not in the interests of the nation, they will be severely dealt with. The government thinks the other way around. I cannot understand it. There is no logic to it.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.36 p.m.)—I move opposition amendment (6) on sheet 2953:

(6) Schedule 1, item 24, page 19 (after line 17), at the end of section 34G, add:

(10) A person who is or has been before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

(11) Subsection (10) does not apply to contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:

(a) sections 10 and 13 of the Inspector-General of Intelligence and Security Act 1986; or

(b) section 22 of the Complaints (Australian Federal Police) Act 1981;

as the case may be.

Opposition amendment (6) provides for enforceable secrecy provisions governing disclosure of attendance at interviews. Given
the nature and the possible context of information that is being dealt with, the opposition says, and has consistently said, that it is appropriate that the prescribed authority be the judge of what can be said and to whom it can be said. As such, it is the opposition’s view that it should be an offence to break any such order made by the prescribed authority. Let us be clear: these provisions apply to the person who is the subject of the warrant. I have been consistently surprised that the government actually has not picked up these provisions, but it has not. I think these provisions would strengthen the bill.

I want to acknowledge that the amendment to my amendment that stands in the name of Senator Greig on behalf of the Australian Democrats does, I think, strengthen the opposition’s amendment and does deal with an important technical issue. At this stage in the debate, I would like to acknowledge that and to thank Senator Greig for proposing such an amendment to deal with the matter. I think it is of assistance to the committee. I suspect that the fate of this amendment that I have moved on behalf of the opposition may be clear, but I think the arguments for this provision are strong and I commend it to the committee.

Senator GREIG (Western Australia) (6.39 p.m.)—I move Democrat amendment (14) on sheet 2923 revised, which would amend opposition amendment (6):

(14) Opposition amendment (6), omit subclause (11), substitute:
(11) Subsection (10) does not apply to:
(a) contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:
(i) sections 10 and 13 of the Inspector General of Intelligence and Security Act 1986; or
(ii) section 22 of the Complaints (Australian Federal Police) Act 1981;
as the case may be; or
(b) contact between the person or the person’s lawyer of choice and a court or another lawyer for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

This is a relatively minor amendment, but I think it has a major impact. It is designed to avoid any doubt about a person’s lawyer being able to communicate with a court or with another lawyer—for example, a barrister—for the express purpose of challenging the basis of a person’s detention. The right of a person detained under the act to seek a remedy from a court in relation to their detention is made very clear, I think, in other parts of the legislation, but in order to assist them in the exercise of this right effectively the person’s lawyer will need to divulge information concerning the person’s detention to a court and possibly to a barrister who has been engaged to act on behalf of that person. Given that legal practitioners face heavy penalties if they divulge information concerning a person’s detention, it is important, in order to avoid any doubt, to ensure that this exception is made abundantly clear, and that is the purpose of this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.40 p.m.)—I will address both of the amendments, to save time. If you were to support opposition amendment (6) I could see why you would support Democrat amendment (14). However, the government opposes opposition amendment (6) and therefore opposes Democrat amendment (14). I can understand the sentiment behind this. The gov-
ernment’s view, however, is that there is a lifetime secrecy obligation here and that to police it would be both legally and administratively unrealistic. The existing provisions in the bill already effectively subject a person being questioned to secrecy obligations while they are the subject of the warrant. We believe that when it does count is when that is in place. Of course, those provisions are there to stop people from alerting any accomplices, or potential accomplices, in relation to a terrorist act.

The type of obligation proposed here would prevent the subject of a warrant from advising their employer of the reason for their absence from work without first approaching a prescribed authority to ask permission to speak about their questioning. I can understand that the Democrat amendment does remedy certain situations which have been outlined by Senator Greig, but we believe that administratively the provision would be difficult to operate and monitor, and the prescribed authority may no longer be alive or performing that role at the time the person wants to seek consent to discuss any aspect of the questioning process.

As I say, I do understand the sentiment of the opposition in moving this. I can say that I initially was attracted to it. But the government, on balance, is of a view that it cannot agree to opposition amendment (6) and Democrat amendment (14), for these reasons.

Senator NETTLE (New South Wales) (6.43 p.m.)—I thank the minister for his comments, because I was interested to hear what the government’s position would be in relation to this opposition amendment. I go back to my earlier comments in the committee stage of this bill, which went to the media reports about this bill and this debate, in which the ALP would like us to believe that the government had caved in to their demands on a range of different issues. The first amendment the committee dealt with proposed to water down the sunset clause that applied to the whole act to relate to just one division. This was not necessarily the government caving in to the ALP’s demands but perhaps the other way around.

The amendment that we have before us now is an example of the opposition proposing to add another offence to the ASIO legislation. We have already heard from Senator Faulkner, and we well know what the fate of this amendment will be, but it is worth noting that, rather than the government caving in to the opposition, this is the opposition putting forward a proposal to add additional offences to probably the most draconian piece of legislation that we have seen in not only this parliament but Western democracies around the world.

Senator BROWN (Tasmania) (6.45 p.m.)—Maybe the government is saying this, in its own way, but the other problem with this amendment, which the International Commission of Jurists has pointed out, is that a terrorist who is caught is not going to be concerned about this penalty, but it is going to be very repressive on people who are in no way involved in terrorism and who are going to be hauled in under this legislation—those innocent people who have information. If they can be shown at some later date to have spoken to their spouse or to somebody else and word got around about where they were being held then ‘bang!’ they are caught under this piece of legislation. That worries me quite a deal. It is one of those classic situations where the good people, if you like, get penalised and for the rest it does not count.

Question agreed to.

Original question, as amended, negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.47 p.m.)
—by leave—I move government amendments (10) to (12) on sheet RA231:

(10) Schedule 1, item 24, page 8 (lines 32 and 33), omit subsection (5).

(11) Schedule 1, item 24, page 9 (lines 1 to 7), omit subsections (6) to (8).

(12) Schedule 1, item 24, page 9 (lines 8 to 12), omit subsection (9).

These amendments deal with prescribed authorities. The government is proposing a number of amendments to the provisions, which set out the role of prescribed authorities. It is unnecessary to prescribe three-year terms for these authorities because the warrant provisions in the bill will cease to have effect three years from royal assent due to the sunset clause. Similarly, the provision which required that the minister keep a list of those persons who had consented to being appointed as a prescribed authority, and which outlined the procedure for removing a person’s name from that list, is also to be removed. This is because such an administratively complex scheme is inappropriate for legislation which will cease to have effect in three years time. The situation is that, because of the sunset clause applying in this area, you do not have to prescribe a three-year term for prescribed authorities.

Finally, the provision which set out how prescribed authorities are to be remunerated is unnecessary because the Remuneration Tribunal Act will provide a basis for ensuring that a person acting as either an issuing authority or a prescribed authority under the bill will be appropriately remunerated. It will be dealt with in that piece of legislation. It is really more of a mechanical amendment, if you like. I commend the amendments to the committee.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that government amendments (10) to (12) on sheet RA231, moved by Senator Ellison, be agreed to.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.49 p.m.)—I was on my feet to make some comments—

The TEMPORARY CHAIRMAN—I do apologise. I am wide of vision.

Senator FAULKNER—I would never accuse you, Mr Chairman, of having tunnel vision.

The TEMPORARY CHAIRMAN—Senator Faulkner, you are normally very conspicuous. On this occasion you were not.

Senator FAULKNER—It is true, of course, that the prescribed authority plays a crucial role in the questioning regime. (Time expired)

Progress reported.

DOCUMENTS

Health and Ageing: Gene Technology Regulator

Senator LUDWIG (Queensland) (6.51 p.m.)—I move:

That the Senate take note of the document.

I rise to take note of the quarterly report of the Gene Technology Regulator. May I say that it touches quite significantly on the health and ageing area. The report is for the period from 1 October 2002 to 31 December 2002. It is the first report to this parliament dealing with the Gene Technology Act 2000, which requires the Gene Technology Regulator to provide to the minister after each quarter a report of its operations during that quarter. It touches on genetically modified organisms, GMOs, licence issues during the quarter, any breaches of conditions of GMOs and, of course, auditing and monitoring of dealings with GMOs.
The report shows that the work that went into the original bill was well worth it. That bill became the act, which provides that that type of information be put on the public record so that people can understand and appreciate the work of the national regulatory system. In dealing with the national issue of health, Senator Santo Santoro today said in the matter of public interest debate that some issues in Queensland were not quite up to standard. It is worth while using this opportunity to also deal more expansively with the successes in Queensland health—the report by the Gene Technology Regulator touches on those issues. The current health budget in Queensland is of the order of $4.63 billion, up from $3.1 billion in 1998-99 when the Labor government came to office. Senator Santoro should appreciate that during the Labor period of government in Queensland there has been a significant improvement to the health industry and to the health of Queenslanders themselves. With winter coming on, it is worth providing at least some answers to the issues that Senator Santoro mentioned.

In Queensland, some $8.5 million is being spent on the mental health unit at the Princess Alexandra Hospital. This will contribute significantly to assisting special-needs patients. Of the order of $100 million has been spent on capital works to ensure that there are extra mental health beds across the state. The latest National Mental Health Report 2002 shows that in 1999-2000 spending was 63 per cent higher than in 1992-93, which is equivalent to a 42 per cent per capita increase and twice the national growth rate. Further health achievements in Queensland during the last 10 years include a $2.8 billion state-wide health building program. Health services have been rebuilt from the Torres Strait Islands to the Gold Coast and west out to Cunnamulla. There has been a redevelopment program of some $130 million at Cairns Base Hospital, a $182 million development for Townsville Hospital at Douglas and $18 million for the Maryborough Hospital redevelopment. There has been a significant improvement in the East Block of the Royal Brisbane Hospital as part of the $510 million investment in the flagship Herston hospital complex. Some $78 million was spent there.

The quarterly report of the Gene Technology Regulator helps to put this in context. When you look at the amount of money that has been spent by the state Labor government on improving health in Queensland, the report of the Gene Technology Regulator fits into the overall plan for the national health industry. But when you look at the approach that has been taken, you also have to be concerned about the area—(Time expired)

Question agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Health: Mental Illness

Senator TIERNEY (New South Wales) (6.57 p.m.)—I rise tonight to inform the Senate about recent findings by the Australian Institute of Health and Welfare and the Mental Health Council of Australia on the state of mental health care. Australians are flocking to their GPs with complaints of depression, anxiety, stress, sleep disorders and substance abuse. These aspects of mental illness represent an enormous waste of human talent and a huge loss to the community and the economy. One in five Australians has a diagnosable mental health problem, but unlike physical illness—the symptoms of which many people can understand—mental illness remains surrounded by stigma and
mystery. Depression is the fourth largest cause of disability in Australia and is projected to be the second largest cause by 2020. In fact, the World Health Organisation has likewise estimated that by 2020 depression will be as big a burden on world health as heart disease. It is already the fourth most common ailment that doctors encounter.

Recent reports have revealed that there were almost 11 million visits to general practitioners for mental health problems in 2000-01, with that category accounting for over seven per cent of all problems managed by general practitioners. The recent report by the Australian Institute of Health and Welfare found that depression was the most common problem handled by GPs. The extent of the crisis in mental health services was clearly outlined in the inquiry into mental health services in New South Wales by the Select Committee on Mental Health, the report of which was tabled in the New South Wales parliament last December. That report represented a comprehensive analysis of the state of mental health services and service delivery in New South Wales. I have spoken in this place previously about the report and the inquiry that was chaired by Dr Brian Pezzutti, and its focus on the need for revolutionary changes in the approach to mental health by the New South Wales government.

New South Wales is on the bottom rung of the national ladder in terms of mental health services and well down by international standards. Only 35 per cent of people with a mental illness in New South Wales receive treatment. Most treatment—for 75 per cent of those treated—is provided by general practitioners. Of those treated for anxiety and depression, 55 per cent do not receive effective treatment. Because the New South Wales government has cut after-hours mental health care, this is now being thrown back onto voluntary organisations in the community, like Lifeline, and also the police are often called out to act in the place of mental health workers. This is in the absence of proper servicing by New South Wales government units for mental health, and it is a major problem particularly in our rural and regional areas. Instead of doing what they are supposed to be doing in police work, these officers are becoming default mental health care workers.

This has happened because the ALP government in New South Wales is failing to provide adequate funding for this sector. Again, as in so many areas of government, the Carr government is coming sixth out of six compared with the other states. In recognition of the low proportion of total mental health care expenditure allocated to non-government organisations in New South Wales, the Pezzutti report proposed that New South Wales Health have increased and better budgets for funding non-government organisations.

The proportion of health expenditure devoted to mental health in New South Wales is a national disgrace. On the other hand, the Commonwealth government has increased its contribution significantly by 73 per cent per capita from 1998 to 2000. New South Wales recorded a very low increase of only 18 per cent per capita for the same period. I spoke recently of how the state’s streets and prisons have become home for many of the mentally ill after the Richmond reforms turned them out of institutions in a grossly underfunded attempt to integrate them into the community some 20 years ago.

The New South Wales government seems intent on snuffing out initiatives that might assist people who have a mental illness. For example, in July 1999 Bob Carr cautioned against the establishment of a national institute to tackle depression, which was suggested by the former Victorian Premier, Jeff Kennett. Despite Mr Carr’s unwillingness to
get behind such an initiative, a new national depression initiative has been established called beyondblue. With a brief to assist in the education, treatment and management of depression, beyondblue is a unique national response by the federal government and aims to remove the stigma associated with depression. Beyondblue also prioritises the prevention of depression and improved management by general practitioners. This is providing effective services, as a community survey in 2001 showed that almost 80 per cent of GPs recognise beyondblue.

Last year, after three years of arguing against the concept, Bob Carr announced the establishment of a scientific institute to tackle depression. The Black Dog Institute has since been set up on the campus of the Prince of Wales Hospital in Randwick. That term, of course, came from Winston Churchill, who talked about ‘the black dog of depression’ that used to follow him. In recognition of that famous man’s difficulties and his dealing with depression, that is the name of the institute. But it came after Bob Carr cautioned against the establishment of a national institute to tackle depression, saying that it would have too narrow a focus. That is rather surprising, given the extent of depression as a form of mental illness in this country. Despite Bob Carr’s scepticism, the Black Dog Institute has achieved enormous successes since it opened in February last year. It facilitates a range of programs into mental health care, it fosters research and it does a lot to educate and assist on mental illness issues.

While Bob Carr’s Labor government reluctantly engages in mental health care initiatives in New South Wales, the federal government has implemented a Better Outcomes in Mental Health Care initiative. The initiative has five major components. They include: firstly, education and training for general practitioners in mental health care; secondly, providing a framework for the management of mental health disorders in a primary care setting; thirdly, access to psychiatrist support to participate in case conferencing; fourthly, focusing psychological strategies; and, finally, access to allied health services to enable general practitioners to access focused psychological strategies from health care professionals. This component is rolling out through 16 pilot programs in 2002-03. A recent report by the Mental Health Council of Australia titled *Out of hospital, out of mind* has recognised the new pressures on the mental health system that will emerge, making the recent government initiatives that I have just described even more important.

The impact on families and young children of continued drought and ongoing threats of domestic and international terrorism are already having a negative effect on mental health in this country. To Bob Carr, I say that mental health issues are beginning to rate higher on people’s priorities when it comes to important election issues, particularly in the light of these recent studies. There is a growing awareness in this country of the need to tackle and put more resources into mental health care. With the amount of people who have indicated that they have suffered depression, it can no longer be treated as a secondary issue. It is important that the state government not only fund the basic mental health services but also support mental health promotion and disease prevention campaigns. A genuine commitment from state governments is needed to achieve the required level of quality for mental health care in Australia, particularly in the state that is really lagging—New South Wales.

**Immigration: Asylum Seekers**

*Senators CROSSIN (Northern Territory)* (7.06 p.m.)—I rise this evening to lay again before this chamber arguments in support of the East Timorese asylum seekers in our
country who are continuing their campaign for permanent residency.

Senator McGauran—It is resolved.

Senator CROSSIN—I do so on the basis that we need to recognise that a number of people, both in the Northern Territory and in Victoria, have actively supported the plight of these people and to respond to a number of false claims, Senator McGauran, that it has been resolved. People should not rest on their laurels until we are able to celebrate all of the East Timorese asylum seekers seeking permanent residency having that granted. Let us have a look at where we are at with this campaign. In the House of Representatives on 3 June, in response to a question from Mr Georgiou, the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, outlined the number of East Timorese applications and where they were at. Hansard tells us that the minister said:

As at 27 May, some 1,617 applications had been refused; another 203 applicants had been granted another type of visa, had departed from Australia or had withdrawn from the process; and 80 East Timorese were still awaiting a primary decision.

Mr Ruddock continued:

As at 27 May, 1,000 East Timorese have been before the Refugee Review Tribunal or are within the review application window. Some 590 have received decisions affirming the primary decision. He went on to say:

... generally on behalf of some 379 people I have stated a preparedness, subject to character and health issues being resolved satisfactorily, to intervene.

He has not said that he will intervene, he has not said that that will definitely be the outcome; he has simply stated a preparedness to do so. I might add that on that day in that answer to that question the minister also said that ‘the preponderance of representations have been by members of the opposition’. So he publicly acknowledged the work that those of us in opposition have been doing on behalf of these people.

This week in the Northern Territory News we have had the unfortunate episode of the federal member for Solomon, Mr David Tollner, and Senator Nigel Scullion using the letters to the editor section to try to defend the fact that they have been publicly silent on the plight of the East Timorese. Time and time again, they have not issued a word publicly—we have not heard a peep—through the media in support of the applications of these people. In fact, their letters are quite inaccurate. Let us take Senator Scullion’s letter. He says:

Right from the start the Federal Minister made it perfectly clear that the existing immigration policy and procedure was well-equipped to process these claims.

At this stage we have seen fewer than 300 granted permanent residency. In fact, this week the minister even acknowledged that the visa system was out of control and needed to be revised. We have called time and time again for this government to recognise that the system is not working for the 1,600 East Timorese applicants and that they should have been granted a special visa in order to bring some closure and give them some security for the future. Senator Scullion goes on—reluctantly, of course—to say:

Mr Snowdon may not have sought a meeting with the Minister, but I certainly sought a meeting with the Minister and had that meeting. Can I say that I am still waiting on the outcome on some of that information that was provided to me at that meeting and a guarantee that some particular categories of those people would be looked at favourably—that is, pensioners and children—and that numbers would be given to me as to how many pensioners and children are affected by this decision, information I am still waiting for.

David Tollner goes on to explain, quite incorrectly, the position in relation to the proposed amendment the Labor Party were
planning to the Migration Act—a bill which we have not seen here in the Senate. We said that we would seek to amend that bill when it came into the Senate to include the granting of a special visa for these people. The Labor Party have not had a chance to do that in the Senate because that bill has not been tabled in the Senate. Naturally, our amendment was not carried in the House of Representatives.

Mr Tollner knows so little about this process that he would not understand that is the way legislation works in the federal parliament. Knowing full well that we were going to do that—publicly champing at the bit that that was what we were going to do on behalf of these people—not once did Mr Tollner or Senator Scullion issue any sort of press release or make any statement in a house of this parliament saying that, despite what their government did or did not do, they would support our amendment. Never did they utter one word publicly in support of any amendment that we had proposed to put forward to grant these people a special humanitarian visa. Their silence on this—both in representing these people publicly at rallies, at forums and through the media, the NT newspapers and television—has been deafening. No wonder people are wondering exactly what stance these two people take to the plight of the East Timorese.

We know that at this point in time 56 of the 84 applicants in the Northern Territory have received letters from the minister. We know that those letters are only an indication that they still need to pass a further health and character check. This is not the final hurdle; this is one of many more hurdles that these people still have to undergo before they may—if the minister is prepared to—be granted permanent residency. The minister has said he is prepared to intervene, but there is a big difference between saying that you are prepared to do something and saying that you will do something. We know this process may take many more months—up till October—to finish. The biggest issue is that while all of this is going on—for all of the time the minister is saying that he is prepared to look at this rather than that he will look at it—we know that 50 of the East Timorese people in the Northern Territory have been stripped of their asylum seeker assistance support. This gives these people access to financial and medical assistance.

So, Senator McGauran, it is not all over; it has not been finalised. There are 50 East Timorese people in the Northern Territory still jumping hurdles and relying on the goodwill of the community and on charities to feed them, to ensure they have shelter and clothing and to provide for their medical assistance. This has been a disgusting and outrageous performance by this government in the way it has treated these 1,600 East Timorese people. The day they do get permanent residency, let us hope that this government does not beat its chest and say, ‘Look at all we have done for these people,’ because the way it has treated these people in the last couple of months, if not years, has been nothing less than shameful.

Let me turn to perhaps some positive news on the flip side of this. There have been many people working day in, day out to actually ensure that the plight of these people is brought to the attention of the Australian public. In the Northern Territory we have the Multicultural Council through Beryl Mulder. We have people like Anja Behlmer and Jonathan Kneebone who have worked incredibly hard to represent these people through Legal Aid. Kate Stockdale and all those people such as Markus Mannheim from Warren Snowdon’s office and Alison Boardman from my office have met week in, week out pursuing this cause.

In Victoria, Carol Harris, associated with St Brendan’s Church in Flemington, organ-
ised a variety concert in support of the East Timorese on 18 May 2002—a concert that I had the pleasure of attending. Steve Sabato was the MC for that day and gave up his time. A whole lot of entertainers from a wide variety of areas, particularly from Opera Australia, were prepared to give up their day and their time on that afternoon. Don Lucas, a lawyer with Victoria Legal Aid, like Jonathan Kneebone, has worked hard for these people. So when these people are finally granted permanent residency—and let us hope they are—some of us in the community can rest assured knowing that we have done as much as we possibly could to ensure that these people have a long, secure and safe future in this country.

Tasmania: Pulp Milling

Senator WATSON (Tasmania) (7.16 p.m.)—Back in 1995 Mr David Salt produced an article entitled ‘Solving problems with pulp’. In that article, he said:

Australia earns around $370 million a year from exporting woodchips. That sounds like a lot, but it’s insignificant next to the $1.3 billion we pay each year importing pulp, paper and paper products, which are largely produced by woodchips. The Australian Paper Industry Council reports that domestic consumption of pulp and paper products for the 2001-02 financial year was 3,639,000 tonnes. However, during that same financial year, Australia imported 315,000 tonnes of wood pulp, which is nearly 30 per cent of the amount of Australian virgin fibre pulp produced for the same year. The question is: why are we not utilising our local industry and resources to produce that 315,000 tonnes of pulp here in Australia?

Hopefully, an article in Tasmania’s Mercury newspaper this morning will answer that question. It was reported in the Mercury today that a future pulp mill in Tasmania, proposed by Australia’s largest forest company, Gunns, would possibly be on the state’s agenda as a result of a meeting between Mr John Gay and Deputy Premier Lennon. This would be a fantastic prospect for my home state, especially as Gunns chairman, Mr John Gay, is committed to the non-chlorine process. There are two proposed sites: the back of Hampshire on the north-west coast and Bell Bay on the banks of the Tamar River. I sincerely hope that, if this is in the pipeline, the incentive gets the necessary support from all levels of government to see the project fulfilled.

You may recall that, in 1989, a world-scale bleached hardwood kraft mill was proposed for Wesley Vale in the north west of Tasmania. This proposed mill would have been Australia’s first world-scale mill, with a 440,000 tonne per year capacity, and would have utilised cleaner production techniques. However, there was enormous community concern about the environmental impact that such a mill would have and eventually the project was suspended. Some people were of the opinion that Australia, and Tasmania in particular, had lost a golden opportunity. More recently, a Taiwanese company proposed a similar initiative, but that too was abandoned. Irrespective of what might develop in Tasmania or elsewhere, further increases are highly desirable in our plantation establishment rate, especially for eucalypts.

The aim of pulping is to separate the wood fibres into a form suitable for their reassembly in a structured way in the paper sheet. Much pulp is used in its unbleached form, particularly for packaging, industrial papers, tissues and newsprint. A significant quantity of the pulp requires bleaching to meet these requirements. Bleaching is primarily undertaken for two reasons: to increase brightness and to remove the residual lignin. Chemical pulping with chlorine bleaching is used when a durable, high-brightness product with a more permanent application is required.
The Wesley Vale mill in Tasmania would have used the chlorine bleaching process, but the community became increasingly concerned about the discharge of man-made organochlorines into the environment and therefore the impact on the surroundings. The government actually contributed $7.7 million over a five-year period, on a dollar-for-dollar basis with the state governments, to industry research into chlorine bleaching and its effects. Following the suspension of the Wesley Vale project, the federal government introduced environmental guidelines, based on an intensive study of mills in the Northern Hemisphere, for all future bleached eucalypt kraft mills in Australia. These guidelines were amongst the strictest in the world.

Fortunately, times have changed, and environmental protection usually goes hand-in-hand with economic development. Greater environmental awareness has encouraged a fundamental change in attitudes in the community, government and industry, which has led to new technologies being introduced with much cleaner production methods. Thanks to the Commonwealth government’s initiation of the National Pulp Mills Research Program, which came to a close in 1995, we discovered that kraft pulping could use eucalypt woodchip and produce high-quality pulp without harmful effluent effects.

In more recent exciting developments, CSIRO research has demonstrated that kraft pulps from eucalypt wood can now be bleached to a high level of brightness using ozone instead of chlorine gas or chlorine dioxide. The results suggest that ozone bleaching, now utilised extensively in Scandinavian pulp mills, may be an available option in any new mills established in Australia, such as the one that may be proposed for Tasmania in the near future. This is certainly good news for Tasmania. So I believe that the specific obstacles that prevented the development of a world-scale mill in the past, such as at Wesley Vale in 1989, have now been cleared.

However, community groups have some concerns about the use of Australia’s forest resource. I think this can be overcome as a result of what is happening in the forestry industry. The New South Wales Premier, Bob Carr, unfortunately continues to lock up massive areas of forest from harvesting as a result of pressure from the environmental lobby. But the best protection for forests is to harvest and encourage new growth in the remaining areas to avoid the increasing fuels for lethal fires. In young forests there is greater humidity and more moisture while the trees are still growing. Young forest growth can check and slow down wildfires.

Studies of films by Bunnings in Western Australia show a bushfire racing across grasslands and once inside the forest boundary the moist growth of the trees checking the rapid spread of the fire.

Mr Jim Gould of the CSIRO tells of a study on plantations which demonstrated that a fire that raged through native vegetation and grasslands in Western Australia on a day of severe risk in 2000 became much less intense when it entered a three-year-old blue gum plantation. As the CSIRO will testify, the older a forest gets the more the fuel load increases for a possible bushfire to ravage. Up to four years after planting, the fuel load of a forest equates to up to four tonnes per hectare; seven years or more after planting, the figure increases to eight tonnes per hectare.

If the mooted pulp mill in Tasmania becomes a tangible reality, it is vital that the Tasmanian community at all levels accepts the golden opportunity that arrives before them. We need to ensure woodchip processing occurs in Tasmania to help recover from the closure of the Burnie pulp mill and the...
abandonment of the Wesley Vale project on two separate occasions. Tasmania’s economy would certainly be thankful for the growth, and the unemployment figure would also appreciate the trimming. I urge all Tasmanians to support this new pulp mill initiative. With new environmentally friendly processing techniques and the utilisation of plantation timbers to ensure sustainability, it is a project that clears all the previous hurdles and would be a wonderful addition to Tasmanian industry.

Military Detention: Australian Citizens

Senator MARSHALL (Victoria) (7.25 p.m.)—I rise this evening to speak about an issue I have raised previously in the Senate. In fact it was an issue central to the first adjournment speech I made in this chamber back in September last year. It is certainly a concerning situation to me, and I am sure to many other Australians, that I need even raise this issue again in the Senate, 10 months after I first did. The issue I have risen to speak about this evening concerns two Australians, Mr David Hicks and Mr Mamdouh Habib, who both have been for some time, and remain, in detention in the US military base Camp Delta, in Guantanamo Bay, Cuba. The men, without charge or trial, have been held in arbitrary detention, for 19 months in the case of Mr Hicks and for 13 months in the case of Mr Habib. Still to this date neither has been charged with any offence under international, Australian or US law.

There have been numerous actions taken by members of this house and the other place over this issue, including numerous speeches given, many questions placed on notice, petitions lodged and even a motion passed in this house calling on the government, as a matter of urgency, to take whatever steps are required to return both Mr Hicks and Mr Habib to Australia to determine whether they should be freed or face trial, as is their right under both international and Australian law. However, this government still refuses to act and instead stands back whilst it watches the United States military hold our citizens in indefinite detention. The Australian government is content to see a fundamental right afforded to all Australian citizens, the right to the presumption of innocence until proven guilty, flouted. As I have argued in the Senate previously, it is not my intention to prove the guilt, innocence or otherwise of the two men. It is merely that I and all fair-minded Australians demand that the men be treated as human beings and be afforded the same fundamental rights granted to all other Australians.

A United States district court ruled last year that no US court had the jurisdiction to hear an appeal against the detention of the detainees held in Guantanamo Bay. Judge Colleen Kollar-Kotelly said in her ruling that the Australian government could pursue the rights Mr Hicks would have under international law if it chose to. As we know, the Australian government is far from willing to do this and, as such, the two men remain stripped of all rights and dignity and remain held in their two-metre wide by just over two-metre long cages with no access to lawyers, family or Australian consular officials, other than those conducting investigations against them.

It is a disgusting human rights situation and one that sets an awful precedent in what is an acceptable practice in holding prisoners of war. The term ‘prisoner of war’ itself is one that is not even afforded to the detainees held in Guantanamo Bay, let alone the rights that go along with such a categorisation. They have been classed as unlawful combatants. Countless international humanitarian organisations, including Amnesty International, have argued that the US has violated many international laws by the way in which
it has treated these people captured during the war in Afghanistan.

While international organisations around the world have raised significant concerns, Australia’s Minister for Foreign Affairs, Mr Downer, has demonstrated a total lack of responsibility in undertaking to provide the two Australian citizens incarcerated overseas adequate diplomatic assistance and he has shown a total lack of regard as to their fate. As I have previously noted in the Senate, the minister stated:

... people who muck about with organisations like al-Qaeda are bound to get themselves into a great deal of trouble.

Trouble or not, Minister, their arbitrary detention is one of the most defined and outlawed practices under international law. If Mr Hicks and Mr Habib are so known by the minister for having committed terrorist crimes, then why will he not bring them back to Australia and have them face charges and possible jail here and now? In fact, a recent article in the New York Times reported that Australian officials were approached by the Bush administration and asked to take custody of Mr Hicks and prosecute him. Why, if this is the case, has this not been done?

Mr Hicks and Mr Habib are both Australian citizens and should both face charges under Australian law or be released, as is their right. Any fair-minded Australian would agree with this point. This being said, it seems highly unlikely that the federal government will commit to bringing these men home. The question then is: how long is it suspected the men will be held in detention for? Will it be until the war on terror is declared over? If so, when is that likely to be? There has been no talk of its end so far, so it is possible that these two Australian men could remain in detention, having never been charged with or tried for any offence, until they die. These questions need to be addressed as a matter of important principle.

It is worth noting the conditions Mr Habib and Mr Hicks have been subject to for the past 13 and 19 months respectively, and continue to be subject to whilst detained in Guantanamo Bay among the other more than 650 confirmed men and boys being held there by the US military. In response to the question on notice I asked Senator Hill, representing the Minister for Foreign Affairs, about specifically under what conditions Mr Hicks and Mr Habib are being imprisoned, the minister provided the following answer:

The Government is satisfied that both Mr Hicks and Mr Habib are being held in safe and humane conditions, and are being treated appropriately by US authorities. They are detained in an individual, air-conditioned cell with clean and appropriate bedding and washing facilities. They have access to medical examinations and treatment, culturally appropriate meals, and are permitted to observe religious practices. They are given fresh towels and uniforms on request and permitted exercise and reading material. They are able to send and receive mail through the International Committee of the Red Cross (ICRC). There is an ICRC representative at the military base who has access to the facility and the detainees, to independently assess their condition.

ABC reporter Jill Colgan filed a story from and about Guantanamo Bay for the ABC’s Foreign Correspondent program which was aired on 13 May this year. It was a very interesting piece. Colgan gained access, albeit very limited access, to the confines of Camp Delta and she reported on what she actually saw there and what she had been advised about the facility by the military personnel employed there.

She reported that inmates, as I mentioned before, are contained in wire cells—hardly airconditioned, as the minister suggested, except for the open airflow inevitable where there are no walls between cells. She reported that inmates are allowed 20 minutes
of exercise twice a week and that floodlights are used throughout the facility on a 24-hours-a-day basis. Colgan reported that 17 people are confirmed to have attempted suicide during their detention in Camp Delta and that some of these people had attempted to do so on more than one occasion. She noted that when this occurs the families of those concerned are not advised of this happening.

As I have just mentioned, the minister in his answer to my question on notice stated that the International Committee of the Red Cross is the agency used to administer mail in and out of the facility. In an interview conducted by Colgan with Mr Hicks’s parents back in Australia, it was noted that no mail had reached Mr Hicks since December last year, as all of the mail that his family had sent was returned to them unopened. Mail is the only means of contact Mr Hicks has with his parents. Colgan reported that, in a deal struck with the Red Cross guaranteeing it ongoing access to prisoners around the world, it would agree to report only what it finds to the authorities running the facility. Colgan argues the Red Cross is ‘effectively gagged’.

If the assertions made by the report on *Foreign Correspondent* are true, then they raise some serious questions that need to be addressed by the minister and the Australian government, among others. The Australian government has a responsibility to Australians overseas. For a government that argues so strongly about following the rule of law when it comes to domestic issues such as workplace relations, it is a disgrace that it shirks its obligation to do so on the international stage and in its diplomatic responsibilities to fellow Australians.

I again remind the government of the motion passed in the Senate on 6 March this year regarding this issue and I urge it to act as demanded by the Senate. Mr Hicks and Mr Habib ought to be brought home, charged with an offence if there is evidence to do so, and they must be tried in front of a court of law, as is their right.

**Senate adjourned at 7.34 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 October to 31 December 2002.
- Gene Technology Regulator—Quarterly report for the period 1 October to 31 December 2002.

**Tabling**

The following documents were tabled by the Clerk:

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Taxation: Goods and Services
(Question No. 829)

Senator Sherry asked the Minister for Revenue and Assistant Treasurer, upon notice, on 30 October 2002:

(1) Can the Minister confirm that electricity is classified as a good or service for the purposes of the goods and services tax.

(2) Can the Minister also confirm that, for the purposes of determining liability for damage to a consumer’s electrical goods due to load shedding by an electricity supplier’s power, there is a dispute over whether the supply of electricity is a good or service (see Electricity Supply Association of Australia Ltd v ACCC [2001] FCA1296, 12 September 2001) and that this dispute has hitherto allowed suppliers to avoid liability for damage.

(3) Can the Minister explain how these two positions are consistent; if not, what step is the Government taking to address this apparent inconsistency.

Senator Coonan—the answer to the honourable senator’s question is as follows:

(1) The A New Tax System (Goods and Services Tax) Act 1999 has a very broad definition of supply. Section 9-10 of the Act states that ‘a supply is any form of supply whatsoever’. Accordingly, it is not necessary to classify the supply of electricity as a supply of a good or service, for the purposes of the GST.

(2) Section 4 of the Trade Practices Act 1974 defines ‘goods’ to include ‘gas and electricity’ for the Act’s purposes ‘unless contrary intention appears’. Part V of the Act in effect provides for consumers to seek compensation if a ‘good’ is not of ‘merchantable quality’ and ‘fit for purpose’. Whether a person is liable for damage to electrical equipment can only be determined on the facts of each specific case.

(3) There is no apparent inconsistency between the two positions.

Defence: Fisheries Management
(Question No. 1237)

Senator O’Brien asked the Minister for Defence, upon notice, on 27 February 2003:

Can details of the department’s expenditure on fisheries management and/or enforcement be provided, for each of the following financial years: (a) 2000-01; (b) 2001-02; and (c) 2002-03 to date.

Senator Hill—the answer to the honourable senator’s question is as follows:

Routine fisheries management is not accounted for separately within the Civil Surveillance Program. In addition to routine Australian Defence Force (ADF) support to the Civil Surveillance Program, specific operations were undertaken during financial years 2000-01 and 2001-02 in response to particular incidents. The net additional costs of those operations are shown below:

(a) $417,553.
(b) $1,226,430
(c) Nil.

(Previous responses to Senate Questions on Notice No. 491 and No. 732 stated that activities conducted to date had been accommodated within the ADF’s overall programmed rate of effort and so expenditure was not recorded separately. However, subsequent investigations have identified the net additional costs for these operations which were absorbed within the Defence budget without supplementation).
Education: School Bus Services
(Question No. 1413)

Senator Allison asked the Minister representing the Prime Minister, upon notice, on 28 April 2003:

With reference to families living in Picola, Victoria, who wish to send their children to school in Echuca but who, because the most direct bus route to Echuca traverses New South Wales, are not entitled to the discounted fares available to students in Victoria through the Victorian State Government’s school bus services:

(1) Has the Government considered making provision for the Country Areas Program funding to be used by schools to replace subsidies not paid to families to help them transport their children to school because of state border issues like the case of families living in Picola.

(2) Has this matter, or any matter like this, been referred to the Cross Borders Anomalies Committee: if so, what transpired; if not, why not.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) The Commonwealth contributes significant support for educational achievements, opportunities and choice available to students disadvantaged by geographic isolation so that their learning outcomes match those of other students.

I am advised that in 2001-04, the Commonwealth’s Country Areas Programme (CAP) will provide an additional $21.08 million annually to government and non-government education authorities. These funds will assist schools to provide quality education to students in rural and geographically isolated areas and fund activities that support and enrich the curriculum and learning experiences. For example, CAP funds are used to supplement the cost of travel in relation to school excursions or to enable students go to career shows or participate in vocational education work placements.

I am also advised that State and Northern Territory education authorities decide the priority areas and how CAP funds are allocated in their jurisdictions in accordance with the Commonwealth CAP Guidelines. CAP funds are paid to schools not individuals and cannot be used to pay for ongoing bus travel costs for individual students to attend school on a daily basis.

(2) I am advised that the Commonwealth has not referred this matter, or any matter like this, to the New South Wales – Victorian Cross Borders Anomalies Committee.

The Committee is, however, aware of this issue following receipt of correspondence from the honourable senator dated 5 February 2003.

I understand that the Picola families involved have chosen to attend Echuca Secondary College instead of their nearest high school at Nathalia and therefore do not qualify for the free school bus travel through the Victorian State Government’s School Bus Services.

Defence: USAF Global Hawk Program
(Question No. 1432)

Senator Chris Evans asked the Minister for Defence, upon notice, on 7 May 2003:

In relation to the United States of America (US) Air Force Global Hawk Program, the US Department of Defense Selected Acquisition Report for the December 2002 quarter notes that the cost of the program has decreased by $US1,031.7 million (-15.1%) from $US6,846.6 million to $US5,814.9 million: Given that the cost of the US Global Hawk Program has decreased by such a significant amount, why did the answer to parts 10 and 11 of question on notice no. 1183 make the following claim, ‘The “cost blowouts” referred to in the article in the Australian relate to cost increases associated with the United States Air Force Global Hawk Program’.

QUESTIONS ON NOTICE
**Senator Hill**—The answer to the honourable senator’s question is as follows:
At the time the question was answered, the information available indicated that the USAF Global Hawk program costs had increased.
The Selected Acquisition Report from the previous year (December 2001 quarter) indicates that the Global Hawk program costs had increased to $US6,846.6 million due to additional requirements being approved and an extension to the development program.
Additionally, the report indicates that the USAF Acquisition Program had reduced the 2001 cost increase by a reduction in the planned number of aircraft to be purchased from 63 to 51.
Since this time considerable work has been undertaken by the US to reduce costs. This has included both a reduction in the specified capability sought as well as a greater understanding within the US of the costs involved.
Since this report, Defence has been working with both Northrop Grumman and the US to clarify the anticipated costs to Australia of this program. This work is not complete, and we are still determining the affordability of Global Hawk and its relative priority as part of the existing Defence Capability review.

**ComLand: Properties**
*(Question No. 1434)*

**Senator Chris Evans** asked the Special Minister of State, upon notice, on 13 May 2003:

(1) What former Defence property, including ex-ADI sites, does ComLand currently own; can a list be provided indicating the location (town/suburb, state/territory, postcode), size of the property, and nature of the property (vacant land, facilities).

(2) Is it intended that any of these properties will be sold; if so: (a) which properties are to be sold; and (b) on what dates are the sales expected to occur.

**Senator Abetz**—The answer to the honourable senator’s question is as follows:

(1) ComLand currently owns two properties, both of which are former ADI sites:
   (a) a 95 hectare site (known as Edgewater) at Maribyrnong in Melbourne, Victoria (postcode 3032); and
   (b) a 1,545 hectare site at St Marys in western Sydney, New South Wales (postcode 2760).

(2) Yes. Both sites are the subject of joint venture development agreements with Lend Lease Development Pty Limited. ComLand will dispose of the properties progressively as the developments are completed.

Development of Edgewater is well advanced and sales of land from the first stages of the project have commenced. Edgewater is expected to be completed by 2006.
The St Marys site has received overall planning approval. However, development has not yet commenced as the individual stages of the project are yet to be designed and/or approved. The project is expected to be completed by 2019.

Consistent with Commonwealth undertakings to protect heritage values at the St Marys site, approximately 950 hectares will be preserved as parkland. Most of this land has been placed on the Register of the National Estate and will be transferred to the NSW National Parks and Wildlife Service for management as a Regional Park.