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.

CANBERRA  1440 AM
SYDNEY   630 AM
NEWCASTLE 1458 AM
BRISBANE  936 AM
MELBOURNE 1026 AM
ADELAIDE  972 AM
PERTH     585 AM
HOBART    729 AM
DARWIN    102.5 FM
CONTENTS

WEDNESDAY, 25 JUNE

Parliamentary Zone—
Approval of Works ....................................................................................................... 12429
Approval of Works ....................................................................................................... 12429

Business—
Consideration of Legislation ........................................................................................ 12429
Rearrangement.............................................................................................................. 12429

Broadcasting Services Amendment (Media Ownership) Bill 2002—
In Committee ................................................................................................................ 12430

Matters of Public Interest—
Greenfields Mineral Exploration .................................................................................. 12472
Queensland Government .............................................................................................. 12476
Environment: Renewable Energy ................................................................................. 12479
Health: Suicide Prevention ........................................................................................... 12482
Telstra: Privatisation..................................................................................................... 12482
Environment: Murray-Darling River System ............................................................... 12486

Questions Without Notice—
Medicare: Bulk-billing ................................................................................................. 12489

Distinguished Visitors .................................................................................................... 12491

Questions Without Notice—
Telecommunications: Services .................................................................................. 12491
Medicare: Bulk-Billing ................................................................................................. 12492
Telstra: Privatisation ..................................................................................................... 12494
Therapeutic Goods Administration .............................................................................. 12495
Telstra: Privatisation ..................................................................................................... 12496
Therapeutic Goods Administration .............................................................................. 12497
Tasmania: Foxes ........................................................................................................... 12498
Defence: JSF Project ..................................................................................................... 12499
Political Parties: Donations ......................................................................................... 12500
Defence: Gan Gan Army Camp .................................................................................... 12501
Health and Ageing: Mental Illness ............................................................................... 12502
Defence: Australian Army ............................................................................................ 12503

Questions Without Notice: Additional Answers—
Indigenous Affairs: Domestic Violence and Child Abuse ............................................ 12504
Defence: Depleted Uranium ......................................................................................... 12506

Questions Without Notice: Take Note of Answers—
Answers to Questions ................................................................................................... 12506
Health and Ageing: Mental Illness ............................................................................... 12512

Temporary Chairmen of Committees ........................................................................... 12514

Notices—
Presentation .................................................................................................................. 12514

Committees—
Selection of Bills Committee—Report ......................................................................... 12520

Notices—
Postponement .............................................................................................................. 12522

Business—
Rearrangement.............................................................................................................. 12523

Committees—
Economics References Committee—Reference ................................................................ 12523
Rural and Regional Affairs and Transport Legislation Committee—Extension of Time ......................................................................................................................... 12524
CONTENTS—continued

Turnbull Porter Novelli ........................................................................................................ 12524
Defence: Portsea Site ......................................................................................................... 12524
Freedom of Information Amendment (Open Government) Bill 2003—
  First Reading ................................................................................................................ 12525
  Second Reading ............................................................................................................ 12525
Freedom of Information Amendment (Open Government) Bill 2000 [2002]—
  Discharge from Notice Paper ...................................................................................... 12529
Committees—
  Public Accounts and Audit Committee—Meeting ...................................................... 12529
  Foreign Affairs, Defence and Trade References Committee—Extension of Time .... 12529
  Privileges Committee—Report ..................................................................................... 12529
Business—
  Rearrangement ............................................................................................................ 12531
Committees—
  Scrutiny of Bills Committee—Report .......................................................................... 12531
  Public Works Committee—Report ............................................................................... 12532
  Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee—
    Report ........................................................................................................................ 12534
Ministerial Statements—
  Australian Fisheries .................................................................................................... 12537
Documents—
  Auditor-General’s Reports—Report Nos 56 and 57 of 2002-03 ................................ 12548
Committees—
  Reports: Government Responses ................................................................................ 12548
Workplace Relations Amendment (Termination of Employment) Bill 2002............... 12552
Parliamentary Zone—
  Proposal for Works ..................................................................................................... 12552
Committees—
  Membership .................................................................................................................. 12553
Governor-General Amendment Bill 2003...................................................................... 12553
Migration Legislation Amendment (Sponsorship Measures) Bill 2003—
  First Reading ................................................................................................................ 12553
  Second Reading ............................................................................................................ 12553
Trade Practices Amendment (Personal Injuries and Death) Bill 2003—
  First Reading ................................................................................................................ 12556
  Second Reading ............................................................................................................ 12556
Bills Returned from the House of Representatives ....................................................... 12557
Broadcasting Services Amendment (Media Ownership) Bill 2002—
  In Committee ............................................................................................................... 12557
  In Committee ............................................................................................................... 12557
Australian Security Intelligence Organisation Legislation Amendment (Terrorism)
  Bill 2002 [No. 2]—
    In Committee ............................................................................................................ 12586
  Third Reading .............................................................................................................. 12618
Adjournment—
  Tasmania: Meander River Dam .................................................................................. 12620
  Taxation: Friendly Societies ...................................................................................... 12622
  Indigenous People: Wages ......................................................................................... 12624
  Queensland Department of Families ........................................................................... 12627
  Hamilton Senior Citizens Centre ............................................................................... 12627
Documents—
  Tabling .......................................................................................................................... 12629
CONTENTS—continued

Tabling........................................................................................................................................12630
Questions on Notice—
  Fuel: Ethanol Excise—(Question No. 1278).........................................................................12632
  Manildra Group of Companies—(Question No. 1282).........................................................12632
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m., and read prayers.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design for the Commonwealth Place Forecourt.

Senator BROWN (Tasmania) (9.32 a.m.)—Once again, just on the Aboriginal tent embassy, which is also in the parliamentary precinct, I thank the Manager of Government Business in the Senate for telling me that he will get a response from the minister within the week. I think it is very important that that matter be cleared up. The minister, who appears to be wanting to take legal action against members of the ACT assembly, should be very careful that he does not find legal action resulting from an intemperate move on structures at the Aboriginal tent embassy, which have heritage listing, without first getting the permission of the Senate and the parliament to authorise him to do so. He should look very carefully at the legislation.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Governor-General Amendment Bill 2003

Question agreed to.

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:

That government business order of the day No. 1, the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill
2002 [No. 2], be postponed till a later hour of the day.

Senator BROWN (Tasmania) (9.34 a.m.)—Could the Manager of Government Business in the Senate give some indication of when later in the day this bill might be brought before the Senate? It is quite important. I indicated to the Minister for Justice and Customs yesterday that the Greens—and I am sure the Democrats and other members of the crossbench feel the same—want to see amendments that may have been agreed to by the opposition and the government in advance of the bill being brought back on for debate. We, too, have to be able to get advice on amendments that may be being worked out between the government and the opposition. As I said to Senator Ellison yesterday, it will expedite matters if we are given an advance copy of the proposed amendments and have the opportunity to get advice on those amendments. Otherwise, we are going to be in the position where we are debating them on our feet, and that is not the best way to go.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.35 a.m.)—We will try to progress the consideration of the bill in the Senate in a way that is best for the whole Senate. We on the government side understand that, having matters brought on that end up chewing up time in the chamber is not appropriate, so obviously it is in the government’s interest to ensure that other senators with an interest are given an opportunity to consider the issues. We will endeavour to do that to the best of our ability. I will seek to make sure that happens.

Question agreed to.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002
In Committee

Consideration resumed from 24 June.

Senator LEES (South Australia) (9.36 a.m.)—When we finished at 11 o’clock last night I was in the process of explaining what the amendment I moved does, and I will go over again why I am moving it. It follows directly on from the minister’s previous amendment to guarantee that local news services are available across rural and regional Australia. Indeed, as we heard from Senator McLucas, in some places that will mean restoring news services. This amendment extends that requirement into the smaller capital cities, which seem to have fallen through the gap. Obviously Melbourne and Sydney are very well served by all the commercial stations, but already in Perth and Adelaide—in my home state of South Australia—the news stories are being collected in their home states and sent over to Melbourne, where they are packaged. The presenters now live there; they and their furniture have been packed up and sent to Melbourne. They then put the news together and send it back to Adelaide, where it is broadcast.

The problem is basically that if costs become an issue we could well see the plug pulled, literally, and all that would remain in Adelaide would be perhaps an outside broadcast van, a couple of news people and a couple of camera people. That would effectively be the end of our local news service. So the reason for moving this amendment is to make sure that the smaller capitals—and here I am highlighting Perth, Adelaide and Brisbane—have local news services; services that are generated locally and that have local camera crews and local reporters. I do not think it really matters where they are put together, given the cost now of the new tech-
nology and a digital desk—very many millions of dollars—but the fact that they are collected locally is essential. I recommend this amendment to the Senate.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.39 a.m.)—I will respond briefly to Senator Lees’s comments. Let me say to you, Senator Lees, that the government is prepared to accept an amendment requiring metropolitan television broadcasters to broadcast a minimum amount of material of local significance as a means of ensuring that broadcasters in these markets also satisfy their audience’s need for local news and information. The requirement for the ABA to impose a relevant licence condition will enable a proper investigation to be undertaken into the appropriate level of local content for those markets. The government would expect the ABA—and would express this view to the ABA—to take particular care in considering appropriate arrangements in capital city markets to ensure that local news obligations cannot be met simply by the broadcasting of sporting events involving teams representing those cities.

Senator HARRIS (Queensland) (9.40 a.m.)—I would like to raise an issue about local content and the government’s obvious willingness to support that with the amendments they have brought forward with the bill. My question to Senator Kemp, who is representing the minister at the moment, is: would the government consider using the amount of money that is spent by the TV groups in providing local news in a local area to give a direct rebate off the licensing fee that that station pays to the government? I will expand on that a little further and give an example. We have Channel 10 operating out of Perth, and at present they pay an affiliation fee to Channel 10 for a 24-hour, seven days a week stream. In other words, they take the signal totally from Channel 10, stream it to Perth and run it through that area. However, to comply with the government’s local content rules they then have to spend money generating local news stories within that area.

I know full well that we cannot legislate to alter a contractual arrangement between two corporate entities, but I ask the minister: if the government wants to support local content and wants that content to be derived and produced in the local area, would the government be willing to allow the cost of producing that local content to be rebated back to that company out of the licensing fees that they pay directly to the government? That obviously is a budgetary issue, and I realise that the Senate cannot move an amendment that requires a budgetary consideration, and so it would have to come from this chamber by way of a request. I am just verbally putting that on the table to the minister. It would be an enormous show of faith by the government if it were even to commit to looking at the issue. Nobody is asking the minister to make a decision on the run; I am asking whether the government, to show good faith, would consider looking at such a proposal and bringing it back to the chamber.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.44 a.m.)—There is no doubt that the government’s approach is to encourage local content, and this has been the subject of considerable debate already in this chamber. I think Senator Harris wants to go an extra bridge—that is essentially what you are saying. I think you are sympathetic to what the government is trying to achieve and you are trying to see whether we can take some further steps, along the lines that you suggested. Senator Harris, as always, we listen very carefully to you and we note your comments, but the position of the government—I think you alluded to this in your remarks—is that regional broadcasters are
commercial operators who operate knowing the regulatory environment.

The fees that regional broadcasters pay their metropolitan affiliates are really a commercial matter for them and it is something the government would not wish to intrude into. The government sets the regulatory environment. The regulatory environment includes local content rules and obligations; so, Senator Harris, whereas we listen to you carefully, the government has already made commitments in this line and I think that is a bridge too far.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—I now propose to deal with the amendment moved by Senator Brown, copies of which I understand honourable senators have before them. It is the handwritten amendment relating to definitions, 61B.

Senator BROWN (Tasmania) (9.46 a.m.)—I move amendment (1) on sheet 3002:

(1) Schedule 2, item 4, page 9 (after line 28), after the definition of emergency service agency, insert:

local means generated in that locality.

This comes out of Senator McLachlan's contribution last night where she was jousting with Senator Alston about the meaning of ‘local’ in ‘material of local significance’. She pointed out that it is not good enough to have ‘local’ counted in terms of local news on television in Cairns, if that story has originated in Toowoomba—that was the example she gave. Senator Alston was saying, ‘It might have something to do with Toowoomba.’ There is a points system being flagged here to judge whether local content is actually going into the news or television programs, for the purpose of ensuring that the regions do have a local component in the coverage that people get. Senator McLachlan made a very cogent argument that this can all be fudged unless you determine what ‘local’ is. Her argument—

Senator Murphy—Mr Temporary Chairman, I rise on a point of order. We have not got Senator Brown’s amendment, which I understand is handwritten.

The TEMPORARY CHAIRMAN—There are copies available, Senator Murphy. I will ensure that you get one as quickly as possible.

Senator Murphy—When I get it, we will have a look at it. I would like to ask whether we will consider this now or revisit it a little later.

The TEMPORARY CHAIRMAN—You could either move to postpone, Senator Murphy, or hear Senator Brown in continuum.

Senator Brown—If Senator Murphy indicates to me that he would like it postponed, I will move the same. I can explain the matter of the term ‘material of local significance’ to Senator Murphy. If you look at the definitions in 61B of the bill, you will find that there is no definition of ‘local’. In the debate last night, Senator McLucas nailed Senator Alston on this and she is absolutely right. It is a fudge word and it means almost anything you want it to mean. It could mean, for example, that news items that were generated anywhere in Australia could turn up and be counted as ‘local’ in Cairns.

Senator Murphy—Mr Temporary Chairman, I rise on a point of order. I would like to ask if Senator Brown might consider postponing this for the moment.

The TEMPORARY CHAIRMAN—That is not a point of order, Senator Murphy. I am sure Senator Brown has taken on board what you have said and I rely on him to move appropriately, if that is the case.

Senator Brown—I move:
That further consideration of this amendment be postponed.

Question agreed to.

Senator HARRIS (Queensland) (9.50 a.m.)—I move amendment (1) on QS207:

(1) Schedule 2, item 4, page 11 (after line 7), after section 61B, insert:

61BA Extended meaning of unacceptable 3-way control situation

(1) The definition of unacceptable 3-way control situation in section 61B has effect, in relation to a regional licence area, as if:

(a) each reference in the following provisions (the modified provisions) to a newspaper included a reference to a local paper:

(i) that definition;
(ii) the definition of associate in subsection 6(1);
(iii) section 7;
(iv) section 60;
(v) section 61;
(vi) the definition of set of media operations in section 61B;
(vii) Schedule 1; and

(b) for the purposes of the modified provisions and paragraph (c), a local paper were associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence if, and only if, at least 50% of the circulation of the local paper is within the licence area of the licence; and

(c) for the purposes of the modified provisions, if a person is (apart from this paragraph) in a position to exercise control of a local paper (the first local paper) associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence—the first local paper were ignored unless:

(i) the circulation of the first local paper within that licence area is at least 25% of the licence area population; or

(ii) the person is (apart from this paragraph) in a position to exercise control of one or more other local papers associated with the licence area of the licence, and the combined circulation of the first local paper and those other local papers within that licence area is at least 25% of the licence area population.

Definition

(2) In this section:

local paper means a newspaper (within the ordinary meaning of that expression) that:

(a) is in the English language; and

(b) is published at least once a week; and

(c) is not entered in the Associated Newspaper Register;

but does not include a publication if less than 50% of its circulation is by way of sale.

Again, this generally speaks to the topic that we have been considering in the debate. This amendment brings in a definition, particularly in relation to newspapers. When we look at the definition of ‘newspapers’ in the act, it has a rather innocuous definition. The concern that I had in relation to the bill was that the government’s legislation, if passed, would place a great weight on what was a newspaper, in relation to the issues of not only the minimum number of voices but also other considerations in the bill. This inserts into page 11 of the bill under line 7 a definition of an ‘unacceptable 3-way control situation’. This is mainly in relation to rural areas.
The purpose of putting in the modified provisions is where a local paper is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence if, and only if, at least 50 per cent of the circulation of the local paper is within the area of the licence. The amendment then sets out under (1)(c)(i):

... the circulation of the first local paper within that licence area is at least 25% of the licence area population ... 

So if the circulation of that paper were below 25 per cent then that paper would not be caught in the definition. The amendment goes on in paragraph (2):

... local paper means a newspaper (within the ordinary meaning of that expression) that:

(a) is in the English language; and

(b) is published at least once a week; and

(c) is not entered in the Associated Newspaper Register...

So the amendment clearly removes any ambiguity in the present definition in the bill. I believe this is very important, as I said earlier, when we actually take into consideration how the assessment of the voices in particular is made, because they have equally as much impact in rural areas, non-metropolitan areas, as they do in metropolitan areas. I commend the amendment to the chamber.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.54 a.m.)—I think Senator Harris has identified an area where more work has needed to be done, and I think the proposal he has come up with will ensure that we are in a position to properly include those small local newspapers when they get to a point of significance.

Senator CHERRY (Queensland) (9.55 a.m.)—I am delighted to see that the Minister for Communications, Information Technology and the Arts has rejoined us after trying to sell his other difficult bill. I have a question to Senator Harris about his amendment. My question concerns the issue of suburban weekly newspapers and whether this definition would pick up the issue of free throwaways which I think are also very important in content in suburban areas.

Senator HARRIS (Queensland) (9.55 a.m.)—Yes, my understanding is that it would do that. The intention is not to encapsulate them but to make sure that it does not inhibit anybody who has that small circulation newspaper from developing and improving their actual present position.

Question agreed to.

Senator CHERRY (Queensland) (9.56 a.m.)—I move Democrat amendment (3) on sheet 2987:

(3) Schedule 2, item 4, page 14 (after line 6), at the end of subsection 61F(2), add:

; and (d) the entities, or parts of the entities, that run those media operations, where those media operations involve a television station and one or more daily newspapers in the same market, have established an editorial board for the news and current affairs operation of the television station which will:

(i) have complete editorial control over the news and current affairs output of the television station, subject only to a right of veto by the entity over any story which is likely to expose the entity to a successful legal action for damages; and

(ii) consist of three members, one appointed by the proprietor, one elected by the staff of the news and current affairs operation, and an independent chair appointed by the Authority; and

(iii) have the power to appoint or dismiss all staff of the news and current affairs operation within the budget set by the entity; and
(iv) abide by any commercial objectives set by the proprietor and approved by the Authority consistent with the objectives of this Act and this section.

This amendment deals with the government’s proposals on editorial separation. It seeks to ensure that editorial separation actually means something. The Democrats are not persuaded that editorial separation can be saved from itself, but I do think that it is worth having a go at trying to give editorial separation some meat. The concern which we have had right through this debate, and which we continue to have with this debate, is that a proprietor would in fact be able to influence more than one news outlet in respect of their opinions. Proprietors tell us on a regular basis that they do not do that—that as a matter of course they do not interfere or intervene in the editorial content of their newsrooms. Of course, there are plenty of stories from their employees who would disagree with that particular viewpoint. Much of what happens in newsrooms is in fact not so much direct censorship but more self-censorship—people choose not to write particular things or pursue stories which they know will upset their employer. That is a perfectly human approach, it is a cultural issue, and we cannot really fix these things through law, but certainly from a cultural point of view we should do what we can to try to encourage these sorts of issues.

It is worth noting that in the ABA survey on sources of news and current affairs there was a deep suspicion—and I will refer to these figures several times in this debate—about the influence of proprietors on their outlets. In fact, 67 per cent of the 1,100 ordinary people who were surveyed by Bond University said they felt that proprietors had an excessive influence on news coming out of their outlets and another 25-odd per cent said it was significant. When you look at those figures, the public are telling the Senate—and I hope my crossbench colleagues are listening to these comments—that they are suspicious of the impact of proprietors on the content coming out of their media outlets. For this chamber to ignore such very strong findings from an ABA survey I think would be very unfortunate.

This amendment seeks to hold the proprietors of media organisations accountable. It seeks to do something which I think is very important. If they say they do not interfere in the day-to-day editorial content of their newsrooms, then let us put that in law. I am not saying that we should say to proprietors, ‘No, if you have a newspaper, you cannot influence the content of your newspaper.’ I am trying to say to proprietors, ‘If you own a newspaper and a television station, then you essentially run the television station, but the news service of that television station is going to be separate in its editorial decision making.’

The amendment seeks to establish what I call an ‘editorial board’ interposed between the television station proprietor and the newsroom. It says that the editorial board—which will have three members: one appointed by the proprietor, one elected by the journalists or the staff and one appointed by the ABA—will make the day-to-day editorial decisions. Therefore, when decisions are made about which stories go into a news broadcast and which ones are pursued, it will not be the commercial interests of the proprietor that are considered but rather the news content of those items. I am told that this is what happens in newsrooms now. If that is what happens in newsrooms now this amendment should not make any difference to their operations.

But if that is not what is happening in newsrooms now, then this amendment is absolutely crucial for protecting the diversity of
viewpoints in the Australian media under a cross-media exemption certificate. It seeks to ensure that decisions about editorial content are made independently of a proprietor’s interests. It seeks to ensure that the editorial separation model actually means something. At the moment, the minister’s model proposes two silos of news collection but, at the end of the day, it is still the proprietor’s interests which determine which particular items go into the news broadcasts. Under this amendment, for the television station, at least—where news is not the dominant business of the operation, as it is with newspapers—for that part of the business an editorial board will determine editorial content.

I do not expect anyone else to support this amendment, but I do commend it to the chamber because it is really important. If we ever get to the horrible stage where we are looking at cross-media exemption certificates and I am not confident that some of my crossbench colleagues will not vote for that at some point—then I want to make sure, by moving this amendment, that it is on the record in this place that we want to encourage, improve and increase a diversity of viewpoints. It would mean that in newsrooms we would get some real independence in editorial content. It would improve the diversity of viewpoints, because for television, at least—which the ABA survey says is the single most important medium relied upon for news and current affairs in this country—the editorial decisions would be independent of the proprietor. It would be an improvement on what we have now. The investment decisions that Minister Alston talks about could still be made. Media companies would still be allowed to grow and to take over whatever they wanted to under the outrageous cross-media rules. But at least it would ensure in one fundamental area of our democracy—that is, the protection of the diversity of viewpoints—that we improve and increase the diversity of viewpoints at the same time as ownership is concentrated.

If we must have concentration of ownership—and I do not believe we need concentration of ownership to achieve these sorts of objectives—then at least let us make sure that the diversity of viewpoints is protected. In all other jurisdictions where they are looking at cross-media laws at the moment—in Britain and in the US—there is a fundamental emphasis on the importance of a diversity of viewpoints. That is missing in this debate; it has been missing in this debate from the very beginning. The editorial separation model has a go at it but fails to do it. The ‘five voices’ test has a go at it but fails to do it. This at least protects the diversity of viewpoints perspective if the government goes down a cross-media path. From that point of view, I would commend the amendment to the government because it finishes off the editorial separation model and makes it something meaningful, whereas, at the moment, it is simply a sham.

Senator MURRAY (Western Australia) (10.03 a.m.)—I rise to strongly support my colleague Senator Cherry’s remarks. Over the time of this debate on media ownership, lobbyists and journalists have tried to drag me into being involved in this matter, and I have kept myself apart. I have done so primarily because I think there are two fundamental points of view which I cannot see the government dealing with and paying attention to. One point of view I have is that you can never ever look at significant restructuring of the Australian media industry and other industries unless you have the power of divestiture. You cannot create monsters and not have anti-trust laws. That major mechanism, which is available in the American market—the dynamic American market—does enable you to knock down monsters once they reach a certain size. We do not have those protections in our competition...
law, and any move towards further concentration in key market areas—telecommunications, media, banks and others—you cannot address unless you deal with the Trade Practices Act.

The second issue, which was raised by my colleague, is the inability of the proprietors to separate their economic interests from opinion and from their desire to influence the political, economic and social market. The combination of money, power, knowledge and the means to communicate opinion is a heady mix. Frankly, we should be looking at every possible means by which to say to the proprietors: ‘If you want to make money, we will give you freedom; if you want to control opinion, we will restrict you heavily in how you manage those issues.’

I think the attention that Senator Cherry has sought to put on the independence issue is vital. I have a very strong opinion that journalists and editors need to be appointed and managed—and should operate—at very marked arm’s length from the proprietors. When I hear their intermediaries say that of course they do not exercise influence in the market, that is patent nonsense. I recall the republic debate, when 300 journalists from the Australian proudly said, ‘We support the model that is going before the people.’ What arrant nonsense it is that you would not find, in 300 journalists, a monarchist or two, a direct-electionist or two et cetera. That kind of ‘bloc thought’ process has to come from a direction somewhere, because the journalists concerned are bright, capable, independent-minded, well-trained, professional people.

There have been other instances around. Quite frankly, whether you are for or against the recent war, when I watched those dreadful people on the American Fox News I felt disgusted at their approach. If I did not smell the leery hand of a proprietor in all that I would have been astonished. I have no problem at all with the delightful and saintly proprietors that we have running the media in this country making the maximum amount of money; I do have a great deal of trouble with them determining opinion.

I hold a strong view that the media market does need freeing up. I hold a strong view that it does need improvement. I congratulate the four Independents on breaking the log-jam and bringing this matter forward so it can be properly debated. I think it is a debate that has to be had. I think the government is right to want to make progress in this area but I also hold strongly to the view that the impediments which still face us to having media which are genuinely diverse and which are genuinely protect the freedom and the independence necessary for diverse political, social and economic opinion mean that we deserve still to be very, very cautious in this area. With those remarks of support for the intent and the approach taken by Senator Cherry, I leave my contribution at that.

Senator HARRIS (Queensland) (10.08 a.m.)—I rise to express support in some part for Senator Cherry’s amendment, but I have problems with the paragraphs of the amendments that Senator Cherry has not referred to. I refer to Democrats amendment (3), paragraph (i), which says:

... have complete editorial control over the news and current affairs output of the television station, subject only to a right of veto by the entity over any story which is likely to expose the entity to a successful legal action for damages...

I have real problems with that paragraph of the amendment, because if we pass the amendment we are saying that this board will have complete editorial control. As a parliament we are saying to a corporate entity that you cannot control what happens within your entity. Paragraph (iii), says:
... have the power to appoint or dismiss all staff of the news and current affairs operation within the budget set by the entity ...

So again we have total control of a commercial entity by a board that is purported to be totally autonomous. As I said earlier, I support the sentiment of what Senator Cherry is setting out to do in paragraph (ii), and that is to have a group of people that sets up some form of assessment, but I think that the tone of the amendment goes inherently too far. I do not believe it is the function of this chamber to order how a person is going to operate a commercial entity. It is the right and privilege of the person who owns that entity to run it.

In conclusion, if we look at the history of this type of formation of a board, in 1980 when Rupert Murdoch took over the London Times a similar board was appointed. The history of that shows that Murdoch as a foreign company at the time still went ahead and sacked Rees-Mogg within two years of taking over that paper. It did not provide the protection that Senator Cherry is setting out to achieve. My closing comment, indicating that One Nation will not support the amendment, is based on the fact that history shows that this type of board is not effective. I also reiterate that I do not believe that it is the duty of this parliament to set an independent body to have complete editorial control and the power to appoint or dismiss the staff of a corporation.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.12 a.m.)—Senator Harris is absolutely right. I have a great deal of respect for Senator Andrew Murray’s judgment, but I think it is important to go back and try and identify what his concerns are. As Senator Harris rightly points out, the cure is a lot worse than the disease. In America they would say that this is really scary stuff. What you are proposing here would not only be fundamentally in opposition to the first amendment, which guarantees freedom of the press, but is George Orwell stuff. Because who appoints the ABA? The government of the day. So the government of the day appoints the body which then has the deciding power. If there were a Labor government, we know for a start that the board would have a union rep, one elected by the staff of the news and current affairs operation, one appointed by the proprietor and a so-called independent chair appointed by the ABA. In other words, indirectly the government of the day would have the ability to decide how the television stations of this country are run. This is very, very dangerous stuff.

As Senator Harris quite rightly says, when you look at paragraph (iii)—‘the power to appoint or dismiss all staff’—what do people get concerned about? I remember Senator Murray being concerned that people might be wrongfully dismissed because of their political views. We take the view—that the current provisions of the Workplace Relations Act allow those people to have a remedy if that is the case. But this would allow you to dismiss all staff whose views a troika disagreed with. That is an outrageous exercise of power and a potentially draconian abuse of power. You have hire and fire responsibility vested in a body that does not have to have any regard for the commercial operations of the outfit and you have this silly nonsense that there is a right of veto over any story which is likely to expose the entity to a successful legal action. Well, you know what would happen there: you would have the so-called independent and the staff elected person saying, ‘Well, of course this isn’t likely to expose us to a legal action. This is fundamentally important to ensure that the public are aware of this major issue, this problem that we want to expose.’ They are not going to roll over to that.
Right now, the proprietor is the one who has to make those decisions and the editorial staff also have to ultimately make those decisions, because they are the ones who have to wear the consequences. You cannot go out there and just court defamation actions and think that somehow it is not going to affect your bottom line. You are running a commercial operation. That is what being a private sector commercial television station is all about—you are there to make a profit. If you cannot do that you cannot put on any news and current affairs.

I think Senator Murray is really saying that he thinks that media proprietors fundamentally distort the news. We all have concerns about what appears in the newspaper; we all think the priorities are wrong and we all think the spin is wrong. Would you seriously propose this sort of model for the ABC and SBS? Would you say that somehow they need outside direction? Or are they simply entitled to take money from the government—

Senator Mackay—That is what you said.

Senator ALSTON—No, it is not. We have said that the ABC itself ought to have arrangements in place that give the parliament confidence that it is accurate and impartial. Imagine what would happen if we said, ‘We are going to appoint a three-person board’—we will let you have one person on it; you put one on it and we will put two on it—‘and we will decide what is editorially acceptable. We will sack all the staff.’ I would have thought you would have a revolution on your hands—even the Labor Party would probably get a bit upset about that one.

All I am saying is that there are important issues at stake here about the way in which newspaper stories emerge. But to make that proposal because you might think the Fox network in America has a different slant to some of the other networks! That is what freedom of choice is all about. You are not compelled to watch the Fox network. You want diversity of opinion. Are you seriously saying you should not be allowed to get that view of the world? It ought to be there—if you do not like it do not watch it; it is as simple as that. Does that mean that you take off all opposing views? Of course it does not. You have half a dozen commercial networks in the United States, and those on the right would probably say that the rest of them are too far to the left, and that is probably a healthy balance, although it is probably weighted more in one direction than the other.

The whole idea of saying that somehow your not liking a particular world view, which you think emanates from an American network, justifies you intervening here and appointing a board with life-and-death powers to determine what it regards as acceptable editorial content seems to me to be about as much of a full frontal assault on freedom of the press in this country as I have ever heard in my life. It just shows how fundamentally out of touch Senator Cherry is. In the course of his contribution he actually said that he is informed that this is what happens now. Either he has tested the proposition or he has not. If he dismisses it out of hand then why even tell us that? If he takes it at face value he is saying there is no need for change. But, having said all that, I am not going to get into that silly argument.

We are confronted here with a proposal which is simply a fundamental intrusion on the freedom of commercial broadcasters to make legitimate decisions about editorial content and staffing. It is essentially a conspiracy theory. It is saying that proprietors pull all the strings and that news, content and opinion would be fundamentally different if we did not have a particular proprietor. But someone has to own the company and some-
one has to make a profit. Newspapers and television stations can go broke like anything else. You only have to look at what happened in the late eighties and early nineties, when you had a couple of parvenus come in and completely wreck the economics of running television stations, to know that you can suddenly find them falling over. Pay television is falling over around the world because of bad commercial decisions. The idea of a body that is not beholden to the proprietor simply deciding what it thinks ought to be on the news is to me very scary stuff.

 Senator MACKAY (Tasmania) (10.19 a.m.)—I rise to indicate the Labor Party’s position, putting aside some of the more outrageous sophistry of the Minister for Communication, Information Technology and the Arts. I remind the minister, though, that his own editorial separation proposal was roundly criticised by the media itself. I point to the Press Council, which appeared in front of the Senate inquiry. They said this represented an outrageous intrusion by government into the media. So let us have a bit less of the sophistry. It really is a bit rich for the minister to start talking about George Orwell, given his recent incursions into the ABC. I remind the minister that Orwell said that those who control the past control the future and those who control the present control the past. Putting all that aside, I do agree with a lot of the sentiments of Senator Harris; he actually made a very cogent argument to oppose the bill.

The Labor Party will not support the Democrat amendment. We appreciate that it is well-intentioned. We appreciate that it is an attempt to fix a situation, but we regard it as unfixable and so we will not support the Democrat amendment. We think that although it is well-intentioned it does complicate an already fundamentally discredited editorial regime, which has been roundly discredited—not simply by the Press Council; there has been huge public concern with respect to it. We maintain our view that this is essentially a fairly transparent fig leaf—if I can use that term—for the government to basically buy votes in respect of repealing the cross-media ownership laws. We agree with public interest groups. We will not support any amendments, because we think that the regime itself is fundamentally flawed—it nonsensically assumes that ownership has no influence over editorial decision making and editorial content, which is just rubbish. Whilst, as I said, we appreciate the sentiment of the Democrats and their attempts to fix the unfixable, our opposition is predicated on the proposition that we fundamentally oppose the proposal.

 Senator BROWN (Tasmania) (10.22 a.m.)—We do not know what the vote will be at the end of this process. Amendments that try to lessen the deleterious aspects of this legislation have to be entertained. I appreciate the opposition’s strategy, but it has its own worries. Where the Democrats bring forward amendments like this, they have to be seriously considered. If those amendments can improve the outcome, were the legislation to get through, they need to be looked at seriously. I see this in the light of what happened last night, which was absolutely extraordinary—quite epoch making. The opposition and One Nation joined the government to remove any restrictions on foreign ownership of the media in this country. That was a monumental vote in the Senate—quite extraordinary. I do not know whether it was more extraordinary in terms of the opposition or One Nation, but for One Nation to be supporting the removal of any restraint on overseas ownership of the Australian media was akin to me suddenly supporting ‘Gunns Woodchipping Corporation’ in Tasmania. Incomprehensible! Remarkable! Extraordinary! The one tenet of a belief
system that was at least trackable to the public was turned on its head with one vote.

Senator Alston—Apocalypse now!

Senator BROWN—For One Nation, I would think so. That said, the opposition voted with the government to remove all restraint on overseas ownership of the media in Australia. As I said last night, the media is absolutely pivotal to the development of Australian culture, to the protection of Australian culture, to the celebration of Australian culture and what gives us pride of place in the world and pride in the community that we are. It runs totally in the face of the promotion by the Prime Minister of what it is to be an Australian that he should be supporting the legal requirement—

Senator Alston—Are you going to get on to today’s amendment, Bob?

Senator BROWN—The minister may not like what I am saying, and may not want it to be said, but I am going to say it. That he should be supporting this opening of the Australian media to complete foreign overseas domination is the course that was set with that vote last night. The Greens totally opposed that; the Democrats voted against it as well. It was a monumentally important and pivotal vote that took place last night. It has ramifications outside this legislation, but it has extraordinary ramifications for the future of Australia. It helped open the flood-gates to the domination of Australian entertainment and news presentation by overseas interests, right down to the local level. At the moment the United States is the predominating culture and economic power but, further down the line, it will be other centres. It does not matter where it comes from, the fact is that we are not just talking about ownership of the media but the whole way a culture expresses itself to a nation of 20 million people—and it lost out last night. I find that very worrying indeed.

This amendment does have problems, but I congratulate the Democrats for bringing the amendment forward. They are having a go. It is better than not having the amendment. It is better than simply saying that whoever owns the media can dictate editorial content and can dictate the presentation of news and culture to the Australian people through the television outlets. If you are going to open ownership to people who are sitting in cities outside this country, I would have thought it incumbent on the government, the opposition and One Nation to look at having some check in there to ensure we do get coverage that is best for Australians. This amendment says there will be an editorial board of three: one appointed by the proprietor, one elected by the staff of the news and current affairs operation and an independent chair appointed by the Australian Broadcasting Authority. Senator Alston zeroed right in on the latter, but that appointment is a minority. I would be more concerned about the former. It is obvious that the proprietor is going to have a dominant say. I think it is very healthy indeed that there be somebody there who is elected by the staff of the news and current affairs operation—in particular, that would be the person most acquainted with the locality from which this news or entertainment was being generated.

Senator MURPHY (Tasmania) (10.29 a.m.)—I would like to run through proposed section 61F of the bill, entitled ‘Objective of editorial separation’. I have expressed my concern with this proposal before. It says:

(1) The objective of editorial separation for a particular set of media operations is that the entities, or the parts of entities, that run the media operations must maintain separate editorial decision-making responsibilities in relation to each of those media operations.

(2) That objective is met if, and only if:

(a) the entities, or the parts of entities, that run the media operations have separate
editorial policies in relation to each of those media operations, and those policies are:

(i) consistent with the existence of the separate editorial decision-making responsibilities mentioned in subsection (1)—

that is a repeat of the first part—

and

(ii) made available for inspection on the Internet ... 

I am sure that serves a great purpose for some of those people who actually get on the Internet. It gives them something to read and hopefully they will not send me so many emails. Then it says:

(b) the entities, or the parts of entities, that run the media operations have organisational charts in connection with editorial decision-making responsibilities in relation to each of those media operations, and those charts are:

(i) consistent with the existence of the separate editorial decision-making responsibilities mentioned in subsection (1)—

it sounds a bit like a poem—

and

(ii) made available for inspection on the Internet—

that is a repeat of the part before—

and

(c) the entities, or the parts of entities, that run the media operations have:

(i) separate editorial news management in relation to each of those media operations; and

(ii) separate news compilation processes in relation to each of those media operations; and

(iii) separate news gathering and news interpretation capabilities in relation to each of those media operations; and that management, and those processes and capabilities, are consistent with the existence of the separate editorial decision-making responsibilities mentioned in subsection (1). 

(3) To avoid doubt, this section does not preclude the sharing of resources, or other forms of co-operation, between the entities, or the parts of entities, that run the media operations, so long as the entities, or parts of entities, maintain:

(a) the separate editorial news management mentioned in subsection (2)—

that is a repeat of subsection (2)—

and

(b) the separate news compilation processes mentioned in subsection (2); and

(c) the separate news gathering and news interpretation capabilities mentioned in subsection (2). 

You certainly would avoid doubt after you had read that about three times! What it actually means, I am not sure. Coming to the Democrat amendment, I have some support for that, but I would like to ask Senator Cherry about a couple of points in his proposed amendment. If you were to have some form of separate editorial control—which I would like to see, frankly—you would do something more than that in proposed section 61F of the bill. I do have a concern with subsection (iii) of Senator Cherry’s amendment, which says:

... have the power to appoint or dismiss all staff of the news and current affairs operation within the budget set by the entity ... 

I would have thought that that power ought to exist with the editor. I understand that that power exists with most editors now, although one might debate that point in some operations.

I also have a concern with regard to the appointment of the independent chair by the authority. The only reason I raise that is that this person, sitting on a board which has
complete editorial control over the news and current affairs, is a person appointed by the authority. I suggest that potentially it might be possible to have a person from within the company. I agree that we probably do need to have a separate editorial board. I think that the government ought to take on board the view that its objective of editorial separation really is rather hollow. Putting in a more explicit obligation may well serve that purpose. I would ask Senator Cherry to consider further the issue in paragraph (ii) as well. I would probably then be quite happy to support his amendment.

Senator LEES (South Australia) (10.34 a.m.)—I also have great sympathy for what Senator Cherry’s amendment is attempting to do. I think that, in one form or another, the Minister for Communications, Information Technology and the Arts is going to have to come to terms with this issue. I do not believe that what the government has in its legislation is strong enough. I think that where we go on this will probably require some more debate. I would have liked to have had the opportunity a while ago to see the specific amendment that Senator Cherry moved, but we are dealing with it now and I am personally inclined to support it. But it possibly would need some further work. Perhaps Senator Cherry might like to think about moving it to one side, tidying up a few details and re-presenting it towards the end of the debate.

Senator CHERRY (Queensland) (10.35 a.m.)—I think that is a sensible point. I actually agree with the two points raised by Senator Murphy in respect of the way that this board was to be established. I thought the board would appoint the news editor and the news editor, in turn, would appoint the staff. I accept that the drafting should have been clearer. I think that change should be made and I am quite happy to make it. In respect of the chair, I did toy with that. The model I was thinking of at one point was that the chair should be agreed between the proprietor and the ABA. I think that might be a better way around it from the point of view of trying to get that bit of balance. The reason that you need to include the ABA is that, whilst its members are appointed by the government, it does have statutory responsibilities. Whilst some of us probably think that some members of the current ABA are probably not as robust as they probably could be—

Senator Mackay—Or too robust!

Senator CHERRY—I am not naming names! But I do believe that even the current ABA is certainly doing some very good work in respect of meeting the obligations of the act. What I always find with public service organisations is that, no matter who the government appoints, they have this strange habit in Australia—all Australians, I think, have a very deep respect for the process of law in Australia; more so than, say, in America—even with appointments to the ABC board made by the minister, of having a fierce independence in implementing their particular act.

I would certainly be happy to seek the leave of the committee to withdraw this amendment and recommit it at a later point. I want to make just one quick comment before I do that, and that is about where this came from. I refer briefly to what Senator Harris said. Where I started from with editorial separation was the Fairfax group—I can see Ms Kingston up in the gallery, and I have one of her articles in front of me—because of the importance in the Fairfax group at the moment of the code of editorial independence, and if we could enshrine that into this editorial separation model we really would achieve something.

Senator Harris made a very good point in his comments on what happened with the
Times in the UK where initially there was a code of editorial independence and it fell over after a couple of years. The frustration there is that, when you rely on undertakings by companies, they stick to them for a while until no-one is looking and then they change them. We found this time and time again with undertakings which were given even in this country. The Foreign Investment Review Board, one of my favourite targets when I was a young researcher, does most of its approvals of foreign investment subject to undertakings. Something like 4,000 applications for foreign investment are approved each year subject to undertakings, and none of them are checked over time. The board has only 14 staff. It is quite difficult for 14 staff to be expected to check 4,000 undertakings on an annual basis. That is why you need black letter law to deal with some of these issues. Undertakings work for a while and then they fall off when management moves on. That is the nature of commerce. It is important that we put these things into law, try to take some of the best practices that are in the media at the moment, such as the editorial code of independence at Fairfax, and give that some real strength. That is what this amendment is about.

I also point out that the Foxtel network has a clear statement of non-interference with the news content of the channels on that station. So that is a second example. The third example obviously is the ABC board itself where the owner, the minister over in the corner, probably to his great frustration, cannot interfere in the news content of that particular news organisation. I seek leave of the committee to withdraw the amendment and to recommit it at a later point.

Leave granted.

Senator BROWN (Tasmania) (10.40 a.m.)—I move amendment (1) on sheet 3002:

(1) Schedule 2, item 4, page 9 (after line 28), after the definition of emergency service agency, insert:

local means generated in that locality.

Madam Temporary Chair, I know you have a particular interest in this matter. Following the debate last night in which you took part, I drew up this amendment to help in the understanding of the Broadcasting Services Amendment (Media Ownership) Bill 2002. The term ‘local’ appears in quite a few places and the debate last night made it clear that there was no definition of what that word meant. You were saying that ‘local’ should be confined to news services and other services generated in the locality—it might be Cairns, it might be Launceston, it might be Kalgoorlie—whereas the Minister for Communications, Information Technology and the Arts was indicating that, no, a much wider definition was held by the government so that if a local member of parliament, for example, were visiting Kalgoorlie from Cairns then the coverage of what happened in Kalgoorlie might be classified as local news, and it opens the definition of ‘local’ to enormous elasticity. You could find that the local news service actually had a huge component of news gathered in adjacent regions, in other rural localities, for example, and under a number of pretexts judged by somebody to be of local interest when in fact it is very subsidiary in terms of the local regional interest and importance. So this is a simple definition: ‘local’ has the meaning of ‘generated in that locality’. It is very simple, very concise, everybody understands what it means, including the proprietors, and this fuzziness is taken out of the bill as it stands.
Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.42 a.m.)—The problem for Senator Brown is, firstly, he does not seek to define what is meant by ‘generated’. Secondly, the definition does not appear to be limited to local news and information provisions, so it would have unintended consequences across the cross-media division. Further, the local news and information provisions use the term ‘local’ in the context of phrases such as ‘matters of local significance’ and ‘local area’. We are not talking about matters of local interest, which Senator Brown just used as a throwaway term. They are matters of local significance. Locals might be interested in world affairs. Does that make them matters of local interest? Probably it does, but it does not make them matters of local significance. The definitional change would also be likely to render the ABA’s current local news and information licence conditions invalid, meaning there would be no obligations in regional aggregated markets and there would not be until the ABA could once again go through its statutory consultation requirements.

Beyond the severe drafting problems, the intent of the amendment is unnecessary. To meet the requirements of the ABA’s licence conditions, broadcasters must broadcast a minimum amount of material of local significance. The ABA has defined ‘local areas’ to reflect the local news breakout areas which were broadcast by most broadcasters before the recent withdrawal of such services. Material will count in a particular local area only if it relates directly to the defined local area or, subject to a total limit of 50 per cent of the points, is of direct relevance to more than one local area. Material of general interest to the wider community simply does not count.

Even if this amendment’s drafting problems could be fixed, it would appear to allow broadcasters to count any matter generated in the local area, regardless of its relevance to that area. In other words, Collingwood and Richmond could play a football match in Cairns and that would count as a matter of local significance because it was locally generated. There are test matches against Bangladesh being played in Cairns in a month or two. Will they be matters of local significance because they are generated there? The ABA, in its explanatory memorandum for its licence conditions, said:

The test of whether material is of local significance combines the subject and the way the material is presented.

Under this notice, material that interests people in a particular area is not automatically material of local significance. It continues:

For example a report about ‘drought in Australia’ can emphasise the effect of the drought on the Australian economy, or on a local area, or on both. The effect on the Australian economy is likely to be of interest to people in the local area, but the absence of a local emphasis means that it would not be ‘material of local significance’.

This is from the ABA template. It continues:

Most material of local significance is likely to be collected and prepared in the local area, using reporters and other resources located in the area. It is less likely that material prepared outside the local area and distributed in a similar generic form to several licensees will have an adequate local emphasis—

for this notice. It also indicates that examples of material that relates directly to a local area include material that relates to people or organisations in the area; material that relates to activities of people or organisations in the area; material that relates to issues that arise in the area; material that deals with the effects in the area of an event that occurs elsewhere; materials that deal with people, organisations, events or issues that are of particular interest to people in the area in a way that focuses on the interests of people in the
area; and material that relates to a political matter or current affairs that is in the form of discussion by or statement or commentary from people in the area. The ABA has identified the local areas for its licence condition. There is a list of them, which can be made available.

So, again, it comes down to the fundamental distinction between inputs and outputs. Matters of local significance should be judged by viewers, not by producers, and not by whether you can artificially come within what you might think is locally generated material even though it might be of no interest or relevance to people in the local area. So, quite clearly, Senator Brown needs to go away and have a big, hard think about all this. I would suggest that he get a briefing from the ABA. He will find that they understand what matters of local significance are and they will deal with them in accordance with the guidelines which they have already announced.

Senator BROWN (Tasmania) (10.47 a.m.)—This is the parliament. It sets the rules and we set the laws. With due deference to the ABA, that is our responsibility. We are elected to do it, and I am not about to give that responsibility to somebody else. As for the difficulty with the word ‘local’ appearing elsewhere in the legislation, I seek leave to amend my amendment (1).

Leave granted.

Senator BROWN—I move:
(1) Schedule 2, item 4, page 9 (after line 28),
after the definition of emergency service agency, insert:

local in the term material of local significance means generated in that locality.

That tightens it up because it means we are defining the term ‘local’ here only in terms of the production of the local news and weather, effectively, and it does prevent proprietors from simply saying, ‘Here’s a national story about the drought’—to use the example that the minister gave—‘That’s of significance right around the country, so it’s got to be of significance locally.’ That is not the case, and that is exactly the problem. You could have a whole local bulletin being transmitted in Cairns which was generated in Sydney or Brisbane. There will be fudging, because it is in proprietors’ economic interests, all across the place. Let’s tighten that up.

Here we are talking about news that is generated locally. If there is an interstate football match being played in Cairns—or, for that matter, at York Park in Launceston—that is of great local interest to the people in the area. They hold those football matches in those localities only because a big crowd turns up. I have no problem with that. It would fit within this definition. These are rare and one-off events. They are of high local significance, and they would qualify. I am quite happy with that. But this is a matter of looking after the regions, effectively, and that is why the amendment is important.

Senator MACKAY (Tasmania) (10.50 a.m.)—I wish to signal here the Labor Party’s position with respect to this amendment. I agree with many of Senator Brown’s sentiments. There is no doubt that the issue of local regional programming is a mess. We just do not believe it should be used as a bargaining tool with respect to this legislation. We genuinely believe that it should be dealt with separately, not used by the government to try and put in a fix with this legislation. It is quite capable of being dealt with separately. The government just does not have the will to do it.

Last night Senator McLucas highlighted the existing situation. But fixing it does not require a deal on this bill. It can be fixed in-
dependently of this bill. So, whilst I appreciate many things that Senator Brown said, we do not believe in this fairly shameless and transparent attempt to buy votes to get this bill through. We strongly believe this should be looked at and dealt with separately by the government. If the government were prepared to do that, we would wholeheartedly participate, and I am sure Senator Brown would as well. So for the sake of consistency, whilst we appreciate Senator Brown’s sentiments, we will not be supporting his amendment.

**Senator ALSTON** (Victoria—Minister for Communications, Information Technology and the Arts) (10.51 a.m.)—For Senator Brown’s benefit, I indicate that a locally generated advertisement about the local butcher would therefore count as an item of local significance. That is not the intention here. The intention is to have matters that are of particular relevance to local communities. A test match between Bangladesh and Australia is of equal relevance to the whole of the country. That is matters of interest, not matters of local significance. If that is the test—anything that people are interested in in the local area—then you are blowing this wide apart.

**Senator BROWN** (Tasmania) (10.51 a.m.)—What a strange submission that was.

**Senator Mackay**—It was a bit odd.

**Senator BROWN**—It was odd. Senator Alston is implying that, if there were a match between two football teams at York Park, Launceston, that was locally significant and played on the local television station down there, somehow or other that would be precluded from playing in Melbourne, Perth or Sydney. What hogwash! No, what we are saying is that the last AFL match at York Park drew 18,000 people; the place was crammed. It was of huge local significance and so of course it qualifies under the amendment. If the local butcher making an ad happens to attract the news editor’s attention and the news editor wants to run that as an item of news or entertainment, so be it.

**Senator Alston**—But it doesn’t have to be on the news.

**Senator BROWN**—It does not have to be on the news, and it will not be on the news. It was a silly presumption by the minister to say that it might be on the news. This is a very important amendment. This is about protecting the interests of rural and regional Australia, and it should not be left to the ABA in Sydney. It should be written into this legislation now. I know that the opposition are saying, ‘We’re going to support the government all the way through here.’ If I am wrong, and they are not going to support the amendments, they are ipso facto supporting the legislation up to the point at which we get the final vote and then they will vote against it. I think the opposition have to be careful about that.

**Senator Mackay interjecting**—

**Senator BROWN**—I would like to hear a clarification from Senator Mackay on that. I do hear that she is going to oppose this amendment on behalf of the opposition, and I think that is a mistake.

**Senator CHERRY** (Queensland) (10.53 a.m.)—The Democrats will support this amendment, because we support the intent of it, not necessarily the wording. Because the amendment is going to be lost, it is important from a symbolic point of view that we should support it.

The ABA has done some extensive work on the definition of the word ‘local’. Having read the report on local news provision and television I think it is worth noting that the ABA has quite a detailed definition of local. The ABA has come to the view that local is news generated within that licence area. I am not sure whether that approach will work in
radio broadcasting, because I am still waiting for the minister to answer my questions that I asked last night about Prime news coverage in country New South Wales.

That goes to the nub of whether the various broadcasters will be able to get around the ABA definition of local. The question Senator McLucas—and I am pleased she is in the chamber—asked last night about the Queensland aggregated market also creates questions about it. The ABA has done some good work on trying to define local, but I am not sure whether it will work. I think the jury is still out on that.

The House of Reps committee inquiry into regional radio broadcasting also did some extensive work on the definition of local. The committee pointed out that one of the problems is of course the deregulation of the act in 1991, when the requirement for localism was reduced. That might be something we need to revisit. I know there are amendments that the government has moved and that other senators have moved to try to beef that up, but I think the jury is still out on that.

The Democrats will support this amendment because we think it is an issue that needs to be kept alive and open. Although I do not necessarily believe that the wording Senator Brown has come up with is the best wording, I think the intent of the amendment is fine and, on that basis, we will support it.

Senator MACKAY (Tasmania) (10.56 a.m.)—I want to clarify things for Senator Brown. I think he is quite right to ask what we are doing, and I think he deserves an answer. The reason we are opposing Senator Brown’s amendment is that we are actually opposing the substantive amendment from the government. So we are not supporting the government’s amendment. It would seem somewhat idiosyncratic to support your amendment and then oppose the government’s amendment. As we proceed through this debate, we may support other amendments. We are considering that at this point. I am unsure as to quite what we are intending to do, but we will continue to oppose the bill, Senator Brown; you are correct.

Senator MURPHY (Tasmania) (10.56 a.m.)—I want to ask the minister—and I am doing this in response to a question that Senator McLucas raised yesterday—about the ABA’s definition of local. Minister, it might be useful if you would explain with regard to Queensland, for instance, the application of the ABA’s definition of local.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.57 a.m.)—The ABA has identified the following submarkets for regional Queensland: Far North Queensland, North Queensland, the Central Coast and Whitsundays, Capricornia, Wide Bay, the Sunshine Coast and the Darling Downs. The ABA has said:

Most material of local significance is likely to be collected and prepared in the local area, using reporters and other resources located in the area. It is less likely that material prepared outside the local area and distributed in a similar generic form to several licensees will have an adequate local emphasis ...

I would have thought this to be a classic area where you could not be prescriptive in the ultimate about whether a matter is local or not. There may be technological elements involved, there may be a brief mention within a larger item, there may be a story in which there is genuine argument as to whether it actually relates to a particular area or not. Therefore, the ABA allows itself some discretion, but it makes it overwhelmingly plain that it expects that material, re-
sources and reporters will be located in the area.

The same would apply in response to Senator Cherry’s inquiry about Prime and Southern Cross and WIN. In order for regional broadcasters to meet the expectations, they will inevitably have to have crews in those areas to provide stories of local significance for news and current affairs and to produce local advertising. It is a matter of commonsense that they simply could not run a story that would be of local significance without knowing what is going on locally. If you are going to get visual footage of that you need to be there to collect it. The ABA understands that. That is their stated approach and that is what would be expected of all news providers.

Senator MURPHY (Tasmania) (10.59 a.m.)—Minister, in a question that Senator McLucas put to you yesterday with regard to residents of Cairns receiving news coverage from Toowoomba—and I am not sure from where the news is broadcast for Cairns—she asked:

Then is it reasonable that residents of, say, Cairns can expect to receive news coverage from Toowoomba even though it is generic in nature? So that would receive the points score that you have earlier described?

Your response was:

A resident of Cairns will get Cairns content that is local to that area. They are not going to be forced—and I reiterate the word ‘forced’—

and I rely on material that comes from Townsville or anywhere else. Local material for Cairns is Cairns based material.

Why did you say, ‘They are not going to be forced’?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.00 a.m.)—The points system does not apply to all the content—in other words, there are minimum obligations. So you might broadcast something in from elsewhere, but it does not count under this regime. You are not telling people where the material has to come from. If they choose to send it in from somewhere else or if they think it has local significance, and it does not, then it does not count. The ABA’s job is to ensure that people get an adequate quantity of locally significant material.

Question put:

That the amendment (Senator Brown’s) be agreed to.

The committee divided. [11.06 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………… 9

Noes………… 40

Majority……… 31

AYES

Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Harris, L.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D.

NOES

Alston, R.K.R. Barnett, G.
Bishop, T.M. Bolkus, N.
Buckland, G. Campbell, G.
Carr, K.J. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Crossin, P.M. Denham, K.J.
Evans, C.V. Forshaw, M.G.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Lees, M.H.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J.J. * McLucas, J.E.
Moore, C. Murphy, S.M.
Ray, R.F. Santoro, S.
Sculion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Tierney, J.W. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller
Question negatived.

Senator LEES (South Australia)  (11.09 a.m.)—by leave—I move Australian Progressive Alliance amendments (1), (2), (3) and (4) on sheet PB206:

(1) Schedule 2, item 4, page 10 (before line 29), before the definition of set of media operations, insert:

separethly-controlled newspaper test has the meaning given by section 61FB.

(2) Schedule 2, item 4, page 11 (after line 16), after paragraph (b), insert:

(ba) the person satisfies the separately-controlled newspaper test for the first-mentioned set of media operations; and

(3) Schedule 2, item 4, page 11 (after line 24), at the end of section 61C, add:

Note: For the separately-controlled newspaper test, see section 61FB.

(4) Schedule 2, item 4, page 14 (before line 17), before section 61G insert:

61FC Separately-controlled newspaper test

(1) Use the table to work out whether a person satisfies the separately-controlled newspaper test for a set of media operations:

<table>
<thead>
<tr>
<th>Item</th>
<th>If the set of media operations is...</th>
<th>the separately-controlled newspaper test is satisfied if...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a commercial television broadcasting licence and a commercial radio broadcasting licence</td>
<td>the person is not in a position to exercise control of more than one newspaper associated with the licence area of the commercial radio broadcasting licence.</td>
</tr>
<tr>
<td>2</td>
<td>a commercial television broadcasting licence and a newspaper</td>
<td>for each commercial radio broadcasting licence area with which that newspaper is associated, the person is not in a position to exercise control of more than one newspaper associated with</td>
</tr>
</tbody>
</table>

(2) Section 51 does not apply to this section.

Note: Section 51 is about overlapping licence areas.

These amendments need to be taken together because they all relate to the specific issue of guaranteeing ownership of only one newspaper per metropolitan market. My concern is that, since the last round of changes in the late eighties to media legislation, we have actually seen a reduction in the number of newspapers in this country. There have been takeovers, rebadgings, closures and amalgamations. In some places now, such as in Adelaide, in my home state of South Australia, we have just one newspaper. One newspaper has 100 per cent of the coverage. These amendments are designed to ensure that, if this legislation passes—in particular, if the foreign ownership restrictions are lifted and we get a new newspaper—we do not have that round of amalgamations, rebadgings and closures that we had before. Basically, the intent of these amendments is to assist the guarantee of diversity by ensuring that, once they are established, there is no incentive for an existing proprietor to put pressure on a newcomer and work towards the amalgamation of the two papers.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts)  (11.11 a.m.)—The government accepts these amendments. We be-
lieve that they will assist diversity of opinion, they will allow new entrants to start up newspapers and they will not affect the ability of existing players to offer free daily or weekly newspapers.

Senator CHERRY (Queensland) (11.11 a.m.)—I have a question for Senator Lees about these amendments: does the definition of ‘newspapers’ include the weekly suburban newspapers?

Senator LEES (South Australia) (11.12 a.m.)—My understanding is no, it does not.

Senator CHERRY (Queensland) (11.12 a.m.)—Then, on that basis, the Democrats will have to oppose these amendments because they do not go far enough. The importance of the suburban newspapers is understated in this diversity debate. For example, looking at the advertising revenue figures for 2000 for newspapers, suburban newspapers constituted 7.39 per cent of the advertising spend in Australia, compared with 19.54 per cent for metropolitan dailies. That means that, on advertising alone, suburban newspapers are essentially one-third of the market. Whilst no studies have been done in this country, in the US about 19 per cent of people rely on weekly suburban newspapers as their primary source of news. Downplaying that stranglehold on the suburban newspapers is something I find difficult to behold. In my home town of Brisbane the same company owns the Courier-Mail and all the suburban papers. I would think that, if concentration of ownership is going to occur in other parts of this bill, it would be a real boost for diversity if we could at least create the opportunity to have a new owner for the suburban newspapers.

Senator MURPHY (Tasmania) (11.13 a.m.)—These amendments have been proposed to ensure that there is at least one separately owned, separately controlled newspaper in any metropolitan area. The suburban newspapers—certainly, from my point of view—would continue to exist. In fact these amendments, like other parts of the bill, also allow for further competition through the establishment of new newspapers. So I am not quite sure that the concerns that Senator Cherry raised are accurate. I believe that if you look at what is proposed here, the capacity to impact on suburban newspapers is not as Senator Cherry thinks. The benefits of making sure that there remains at least one separately owned metropolitan newspaper in any metropolitan area is very important. We are, as we go through this bill, ensuring that there is going to be more diversity, because it will allow other newspapers the opportunity to establish themselves, particularly in places like Adelaide, Perth and Brisbane.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.15 a.m.)—I agree with Senator Murphy. The principle here is to ensure that you do not discourage new entrants from entering into the marketplace. The most significant by far are the major metropolitan dailies. Senator Cherry’s approach would seem to involve a forced divestiture or, just as likely, a closing down. In other words, the economies of scale that are available to a metropolitan newspaper to at the same time operate suburban newspapers are very significant and should not be understated.

Once again, these are commercial operations. You might wish it were not so. You might wish that somehow there is a bucket of money that is inexhaustible and therefore they could run the lines you want them to run or the stories that your editorial board would tell them were more interesting than the ones that might be commercially attractive. But the fact remains that suburban newspapers have to be financially successful, just as metropolitan newspapers have to. Would you then force a new suburban newspaper pro-
prietor, or guarantee him access to newsprint facilities owned by metropolitan dailies?

Senator Mackay—Or her.

Senator ALSTON—Or her or both. It would be highly interventionist. It would be absolute control of the marketplace. I suppose the disappointing thing is that Senator Cherry just throws these things out as though they are of no particular consequence: ‘This is my world view—we will just do it.’ It does not work that way. You are intruding into areas of major commercial significance. If you have particular concerns about the way they run or if somehow you think that they are contrary to the national interest or that they do not meet community standards, those things can be dealt with separately. But the idea of saying ‘We’ll decide who owns suburban newspapers’ seems to me to be an extraordinary proposition.

If you have particular concerns about the way in which suburban newspapers are operating now, let us hear them. Let us get to the nature and extent of the problem and see if there is any logical or sensible government solution that might be available. But just to say ‘I don’t care what the content is. I don’t care how commercial or otherwise they might be, or how marginal. I’m going to say that they can’t be owned by the person who owns the metropolitan newspaper’ seems to me to be an extraordinary proposition. So I agree entirely with Senator Lees and Senator Murphy that what we are concerned about here is not any more solidification in metropolitan areas but indeed quite the opposite—the opportunity for others to come along without the fear that they might be gobbled up by an existing metropolitan proprietor.

Senator CHERRY (Queensland) (11.18 a.m.)—I want to respond to that very briefly. The key thing we are talking about is whether you grant a cross-media exemption. If a company feels it can get its best bang for its buck by continuing to own a metropolitan daily newspaper and a suburban newspaper, then let it do it. But if it wants to pick up the cross-media exemption which this act is providing—and the minister’s act is the act which actually says that the cross-media rules apply, unless you actually meet the criteria of the exemption—we can set the criteria for that. The company can make a commercial decision about whether it can make more money by maintaining a newspaper situation or moving into a cross-media situation. That is the whole approach you are adopting here.

This whole notion that we cannot interfere in the commercial operations of media organisations in the public interest is absolute twaddle. And the fact that it is absolute twaddle is shown by the act you have in front of us, where you are interfering all over the place with their structures, their editorial separation. The act interferes with what they can put on, through its broadcasting standards and its content. I have been asked by my colleagues to raise the fact that we also interfere through our defamation laws in this country and the refusal to amend them. So this notion is absolute twaddle. I am suggesting that, if you are going to grant a cross-media exemption certificate, you should try to get something good going at the same time.

My thoughts on this came from when I was meeting with the Centre for Independent Journalism in Sydney and they said the single most important thing to encourage independent journalism is having a multiplicity of employer potential. I look at my home town of Brisbane and, at the moment, there is one newspaper company which owns the daily and the suburbs. You let them take over the television station and suddenly that is one less employer in town, and that means that is one less dramatic reduction in the potential for journalists in Brisbane to be inde-
pendent, because they do not have an alternative place of employment. And that results in a whole culture of self-censorship coming in quite significantly.

That is why, if you are going to talk about cross-media exemption certificates, you should do whatever you can to ensure that if you want to get the investment going up into the silo you deal with the issues of diversity. My frustration with this whole debate in this country since this bill has come up—and in the Senate—has been that we have not dealt with the issues of diversity. If you want to encourage independent journalism, you must have a multiplicity of employer potentials. You could do some of that by at least ensuring there was some freeing up of suburban ownership.

As to the argument that they would not be profitable, I have just read out the advertising figures—they are enormously profitable. One of the frustrations is, in our cities, that they are limited in their potential because of the fact they are an adjunct to the daily newspapers. That is why I think that we have not really dealt with the issues of suburbs in this debate at all and why I am happy to raise it at this point in time.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.20 a.m.)—Just so that we get back to basics on this, the issue is diversity of opinion. You might not like to believe that. Maybe you are talking to the wrong union. It is not diversity of ownership per se; it is diversity of opinion. You might not like to believe that. Maybe you are talking to the wrong union. It is not diversity of ownership per se; it is diversity of opinion. Do Australians have access to a wide range of opinions on issues? Tell me they do not, and we will have that debate. Tell me where someone is suppressing a legitimate viewpoint that you cannot get access to.

You are saying that the price for buying a radio station is selling off newspapers. What is the logic in that? You might as well say, ‘Why don’t we break up the metropolitan newspapers into regions north, south, east and west of Melbourne, then we will have four different employers.’ Wonderful stuff! It completely ignores the whole idea of how you run a commercial enterprise.

Similarly with suburban newspapers, if they are able to provide a diversity of views, people can come in and operate those. There are no barriers to entry. No-one is stopping people starting up newspapers. But you want to artificially hand over one area of activity as the price for getting involved in another area of activity. What vice are you trying to solve here? Where is the problem of diversity of opinion? You have this pollyanna notion that somehow, if you can magically generate a few more proprietors in an area of the media, you might get a greater range of views.

We have had almost an explosion in the number of radio stations. Has that led to any greater diversity of views and opinions? Probably not, because they are all there now. They are all covered. You can get every legitimate—and maybe, as far as Senator Brown is concerned, some illegitimate—viewpoints being aired across the spectrum. If there is a shortage there, let us hear about it. I have not heard about that shortage. You ignore diversity of opinion. You simply want to try and manufacture more proprietors, when it does not make commercial sense to do it.

Senator BROWN (Tasmania) (11.23 a.m.)—I support that and I think that Senator Alston’s viewpoints are legitimate.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that amendments (1) to (4) on sheet PB206 moved by Senator Lees be agreed to.

Question agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technol-
ogy and the Arts) (11.24 a.m.)—I move government amendment (21) on sheet QS205:

(21) Schedule 2, page 36 (after line 13), after item 5, insert:

5A At the end of paragraph 67(4)(c)
Add “and”.

5B After paragraph 67(4)(c)
Insert:
(d) the breach would not result from the person or another person becoming the successful applicant for the allocation of a commercial radio broadcasting licence;

5C Subsection 67(4)
After “the applicant”, insert “for approval”.

5D After subsection 67(5)
Insert:
(5A) In deciding the duration of the period to be specified in the notice, the ABA:
(a) must have regard to the minimum period within which the person could take action (other than surrendering a licence or causing a licence to be surrendered) to ensure that the breach of the relevant provision ceases; and
(b) must not have regard to any other matters.

5E Subsection 67(7)
Omit “2 years”, substitute “one year”.

5F Application of amendments—section 67 of the Broadcasting Services Act 1992

(1) Paragraph 67(4)(d) and subsection 67(5A) of the Broadcasting Services Act 1992 apply in relation to applications made under subsection 67(1) of that Act after the commencement of this item.

(2) The amendment of subsection 67(7) of the Broadcasting Services Act 1992 made by this Schedule applies if the 45-day period referred to in that subsection ends after the commencement of this item.

The purpose of this amendment is to tighten the circumstances in which an approval of a temporary ownership or control breach could be granted, including ensuring that any approvals are granted only for the minimum necessary time. There is some concern that commercial radio broadcasters can manipulate the structure of regional markets by acquiring new licences and on-selling them either with a restricted format or to other players who are unlikely to compete for the same audience. The government previously introduced amendments to the bill to prevent the sale of radio licences from being the subject of conditions which would restrict future program formats.

Amendment (21) will further amend the bill to restrict the circumstances in which an approval of a temporary ownership or control breach could be granted under section 67 of the Broadcasting Services Act. This amendment will restrict the capacity of broadcasters to use the temporary approval mechanism to engage in conduct designed to manage or manipulate regional radio markets. Item 5B will prevent a temporary approval of a breach of the ownership and control provisions from being given where the breach would result from a person acquiring a new commercial radio broadcasting licence issued by the ABA. Item 5D requires the ABA to set the minimum approval period for a temporary breach considered necessary for the licence holder to rectify the breach. The surrendering of a licence is not considered an appropriate rectification measure as it may result in a substantial financial loss to the applicant. Item 5E provides that, where a decision on approval is not provided within the relevant time period, the automatic approval period granted under subsection 67(7) is now one year instead of two years. Items 5F(1) and 5F(2) ensure that these new ar-
rangements will apply to applications for approval made after this amendment takes effect.

Senator MACKAY (Tasmania) (11.26 a.m.)—I would like to briefly indicate the opposition’s position to this. This is a minor technical amendment to what we regard as a flawed ownership and control regime, and therefore we will be opposing this amendment as we oppose the government’s cross-media reforms.

Question agreed to.

Senator HARRIS (Queensland) (11.26 a.m.)—I move amendment (1) on sheet PW205:

(1) Schedule 2, page 36 (after line 13), after item 5, insert:

5A After section 77
Insert:

77A This Part does not authorise anti-competitive conduct

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the Trade Practices Act 1974.

Note 1: Section 50 of the Trade Practices Act 1974 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market. Subsection 51(1) of that Act provides that section 50 does not apply to anything authorised by an Act.

Note 2: The question of whether a cross-media acquisition contravenes section 50 of the Trade Practices Act 1974 involves identifying the relevant market or markets in which the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition.

Note 3: The question of what is a relevant market is worked out under the Trade Practices Act 1974, and there is nothing in that Act that limits it to a market regulated by this Part.

In moving this amendment, I would like to add some background to what brought the amendment on. For some time there has been considerable concern within the media entities about the position that has been taken by the ACCC in implementing sections of the Trade Practices Act. I refer to a section of a speech given by Ross Jones, the Commissioner of the Australian Competition and Consumer Commission, on 20 February 2003 in Sydney:

The Commission has generally considered that for the purposes of competition analysis, print, magazines, radio and television have constituted separate markets. In its recent analysis of the Foxtel/Optus content supply agreement the Commission took the view that subscription television was in a separate market to free to air TV.

A consequence of such market definition is that in the absence of cross media ownership rules, a number of possible mergers between firms in different media markets would not be in breach of Australian competition law.

It has sometimes been suggested that media markets should be defined more broadly. For example, given that all forms of media are a source of information, entertainment, and opinion perhaps there is a broader market that encompasses these attributes. While this may be the case, from the perspective of a competition agency, such a broad market definition may not address market power issues. It may also be inconsistent with general community objectives of diversity of information and opinion.

It is extremely difficult to define the market and boundaries of a market for ideas and information. For example, the UK Government considered defining media markets via the share of voice approach whereby the consumption of different forms of media was weighted according to perceived influence. The setting of the weights...
CHAMBER

would be a very contentious issue and one not
generally associated with a competition agency.
It is because of this position by the ACCC
that I have serious concerns about how the
ACCC will assess an acquisition or a merger
relating to one or more of the media entities.

The effect of the amendment is really two-
fold. It brings into the bill—after section
77A, under the heading, ‘This Part does not
authorise anti-competitive conduct’—the
following:
Nothing in this Part is to be taken as specifically
authorising any act or thing for the purposes
It then goes on to refer to section 50 of the
Trade Practices Act and acquisitions. Under
note 2, it refers to the question of whether a
cross-media acquisition contravenes section
50 of the Trade Practices Act. Note 3 reads:
... The question of what is a relevant market is
worked out under the Trade Practices Act 1974,
and there is nothing in that Act that limits it to a
market regulated by this Part.
The intention of the amendment—should the
ACCC be required to look at what we would
loosely term a national interest test or an ap-
plication to the ABA for a licence or a varia-
tion on a licence—is that the ACCC would
then be required to look not only at vertical
integration within that market but also at the
horizontal position of those entities within
the market and the overall impact on the
players within the market. The intention is
for the ACCC to assess whether there would
be a lessening of competition across that
market. That market is to include such things
as pay TV, the Internet—because the influ-
ence of the Internet is growing quite consid-
erably—magazines and outdoor advertising.

The intention of the amendment is to en-
sure that we have diversity, while allowing
members of the various sectors in the media
to reposition themselves within the media
industry. It will also allow smaller and me-
dium players within the industry to improve
their respective positions in their segment of
the media and also to move into alternative
areas. The thrust of the amendment is to en-
sure that the ACCC clearly understands the
function that it is to carry out in relation to
the trigger, which I mentioned earlier, of
whether it is or is not in the national interest
for a merger or acquisition to go forward. I
commend the amendment to the chamber.

Senator ALSTON (Victoria—Minister
for Communications, Information Technol-
ogy and the Arts) (11.35 a.m.)—I indicate
that the government accepts this amendment.
The ACCC has an important role to play in
considering the competition effects of merg-
ers, including cross-media acquisitions, and
in conducting an assessment the ACCC con-
siders the effect on all relevant markets. In
the case of cross-media mergers, this could
include markets that are not subject to the
cross-media limits such as pay television, the
Internet, magazines and outdoor advertising.
The amendment provides assurances that
nothing in the amendment or, in fact, in the
ownership and control provisions as a whole
prevents the Trade Practices Act from apply-
ning to cross-media acquisitions.

Senator CHERRY (Queensland) (11.35
a.m.)—The Democrats will support this
amendment, but we do not think it does any-
thing. I do not think it does any of the things
that Senator Harris has just outlined. They
are all worthy things to do—to look at the
competition side of media policy—but this
amendment does not do it. This amendment
simply states the bleeding obvious, which is
that the proposed act does not affect the op-
eration of the Trade Practices Act. I can sup-
port that, because that is the law at the mo-
ment. All the important things that Senator
Harris mentioned in his statement have not
been picked up, anywhere that I can see, in
the amendments that are being moved to this

CHAMBER
bill today. But we will support it because they are nice things to say.

Senator MURPHY (Tasmania) (11.36 a.m.)—Whilst I will support this amendment, I think it is important to point out that it deals with events from an anticompetitive conduct point of view, which is after the effect of a media merger or takeover occurring. Whilst there are three notes that would propose that section 50 has some role to play—which it does, by way of the Trade Practices Act and the normal processes that the ACCC would involve themselves in in respect of any merger or takeover in any business that is drawn to their attention—what concerns me is the before-effect.

Before we get to a process where anticompetitive conduct can actually occur we need to look at market assessment with regard to mergers and takeovers in respect of the removal of cross-media ownership rules. That is where there is a fundamental problem, and that problem still exists. I can say that I have not been able to reach agreement with the government with regard to an amendment dealing with that issue—at this point in time, anyway—but that is a very important matter that at some point in time will have to be addressed.

Senator Harris alluded to the fact that if you take the application of the law by the ACCC when it is considering media matters it applies a market test in a separate market approach. That is, it will look at market effect in newspapers as market effect in newspapers, it will look at it in radio as in radio and it will look at it in television. It is reasonable to argue that the Trade Practices Act does not preclude the ACCC from considering broader issues, but you have to come back to the point that the form and practice of the ACCC have been to look at those markets separately because of the issue of substitutable product or service. They have put it on the public record that when you are considering an issue that might relate to advertising in newspapers versus that in television you have to look at whether one is substitutable for the other. They have put it on the public record that in their view they are not. They are different products applying in different mediums and therefore there is not a consideration, which leads to the weakness in the process and the road that we are going down with regard to the role that the ACCC might have.

At the end of the day, what you are going to do by removing cross-media ownership rules is create a different market. For instance, if Shayne Murphy were able to own the Nine Network, Fairfax and Austereo—I know we have a two out of three rule—then I would be looking at the market for advertising as the market within a particular area. I might offer a whole set of arrangements to my potential customers that would have a range of options for them, so I am not dealing in separate markets. This is a very important point. As I said, this amendment does not deal with that. This amendment deals with an event after you get to that point—after you have allowed the issuing of an exemption certificate. These are important matters. I will support the amendment, because at least it brings into play at some point in time the role of the ACCC and section 51 in respect of anticompetitive conduct, but, unless the other issue is addressed, it will make this particular amendment and its application in the longer term weaker. At some point in time we will have to address the other issues that relate to the questions of the ACCC’s role and the application of the Trade Practices Act with respect to future media markets.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.41 a.m.)—On a couple of matters that Senator Murphy adverted to, I
thought I understood him to say that his concern was that any intervention or assessment by the ACCC in relation to anticompetitive conduct could only be after the event and therefore there should be a mechanism for dealing with these matters in advance as much as possible. The current practice is that companies will as a matter of course approach the ACCC for an informal indication. To the extent that the ACCC has fundamental concerns, it can injunct in advance. The reason they apply is that the ACCC in the absence of an injunction cannot stop a merger, but it can certainly unravel it. No-one wants to go through that process, so they normally go and get a quote. That seems to be an arrangement that works reasonably well.

I hear what Senator Murphy has to say about boundaries of markets, but I think what Senator Harris quoted from Ross Jones was also significant. The ACCC itself does not argue that you should redefine markets. It says it should be the ultimate arbiter of those things, because they do change. Three years ago people said, ‘Convergence is all the rage.’ You would have a very different world view then to the view you might have now. All of a sudden people do not think that the computer and the television set are going to be a single unit. That is why the ACCC quite rightly says: ‘Leave it to us. We’ll determine markets. At this point in time we might have one view, a little later we might have another. It is not a matter of you coming in and setting the boundary lines. If we thought that was necessary in the public interest, we would tell you.’ And the history of the ACCC has been just that. If it thinks there are deficiencies in legislation, I can assure you from personal experience that Professor Fels was not loath to come in and suggest how we might improve things. It normally involved giving him greater power.

In this case the ACCC are really highlighting the problems. The share of voice exercise that the UK went through a few years ago again highlights that it looks like a good idea at the time but it involves highly arbitrary and subjective weightings. They said, for example, that television is twice as important as radio. Well, is that right? If it is generally, is it always right? It depends on the quality. Do these things move over time? It all became too hard. That is why they moved away from the idea of being able to say what they thought the view at the time ought to be. They said that we ought to have general discretion. As Senator Harris rightly says, we ought to be able to take into account all of these markets. Do not tell us we cannot have regard to pay TV or the Internet. The Internet may well become a very significant market, more so than it is now, but do not tell us prematurely that it ought to be counted and do not tell us when it ought to cut in, because these things evolve and we are the ones who are best placed to make those judgments. What Senator Harris is doing is ensuring that there is no doubt about the ACCC’s ability to range far and wide, but ultimately you leave it to them to make judgments about what is in the national interest, not to us.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Before I call Senator Murphy, I need to clarify whether Senator Harris’s revised amendment is the one he wishes to move.

Senator HARRIS (Queensland) (11.45 a.m.)—Yes, Mr Temporary Chairman, it is the PW205 revised amendment that I wish to move. I seek leave to withdraw my previous amendment.

Leave granted.

Senator HARRIS—I move:

(1) Schedule 2, page 36 (after line 13), after item 5, insert:

5A After section 77
Insert:
77A This Part does not authorise anti-competitive conduct

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the Trade Practices Act 1974.

Note 1: Section 50 of the Trade Practices Act 1974 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market. Subsection 51(1) of that Act provides that section 50 does not apply to anything authorised by an Act.

Note 2: The question of whether a cross-media acquisition contravenes section 50 of the Trade Practices Act 1974 involves identifying the relevant market or markets in which the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market no smaller than a local government area.

Note 3: The question of what is a relevant market is worked out under the Trade Practices Act 1974, and there is nothing in that Act that limits it to a market regulated by this Part.

Senator MURPHY (Tasmania) (11.46 a.m.)—I thank the Minister for Communications, Information Technology and the Arts for his explanation. Firstly, I accept the view that the ACCC would injunct if it were obvious to them that there were anticompetitive aspects to the proposal. But that is not always obvious. Secondly, I note the minister’s reference to the ACCC making suggestions to the government, but I also note that the government is often quick to reject them. In relation to some more recent ones, I might suggest, Minister, that it took you a very short period of time to actually reject what the ACCC said. So I have to say that it is also the case that the government does not readily accept the advice of the ACCC.

In respect of the amendment, it takes the path in the right direction, but there are other aspects to this. I can also refer to an indication—and I am sorry I do not have the exact words with me here—where I think Professor Fels, before the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, indicated that on the basis of the existing trade practices law he could not see any obstacles to any of what might be the proposed mergers or takeovers that might pop up as a result of the removal of cross-media ownership rules. So it is a concern.

If you take that statement and overlay it with a view that the ACCC have expressed publicly on any number of occasions with regard to their interpretation of markets, I am concerned that the direction for them and the requirements for them to consider markets in the global sense, both horizontally and vertically, do not exist. I believe it is something that has to be addressed at some point in time if you are to really put integrity into the role that they will play in assessing media mergers and takeovers into the future. This is a much-changing industry and historically based views are not going to count. I am not saying they are not moving with the times—they will—but it is important, particularly from a public interest point of view, that there is further direction and indeed further regulation applied in that respect.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.49 a.m.)—I want to make sure we are not at cross-purposes here. My point was not whether we always accept the ACCC’s advice, because, as you would understand better than most, that is a sepa-
rate judgment call that the government makes—it can accept or reject advice it gets on a daily basis from a wide range of quarters. The issue is whether the ACCC itself, which is an independent body, thinks there is a need to change the law. We might reject that and you might properly say to me, ‘You are dead wrong. You’re just ignoring high-quality advice you’re getting.’ If we had a situation where the ACCC itself was saying, ‘Current arrangements aren’t good enough; you need boundary lines drawn,’ then I could understand your concern.

But when the ACCC itself does not say that and basically says: ‘Leave it to us to be the arbiters of the national interest. We will reflect whatever is occurring out there. We will look after the national interest and if we thought we did not have sufficient power we would tell you’—and they would. They have not done it, and that is my point. It is not whether we accept or reject it; it is that they have not come forward in the first instance and identified a problem. If there is not a problem then normally it is not a good idea to try and solve it. We did, of course, have a fair degree of informal awareness of what they were likely to come up with in respect of two of a number of recommendations the other day, so we were not quite as quick off the mark as reading it one minute and bagging it the next.

Do you want to clarify the situation, Senator Harris?

Senator HARRIS (Queensland) (11.51 a.m.)—For the benefit of the chamber I would like to clarify the wording of the revised PW205 amendment. At the end of note 2 it says:

... in any market no smaller than a local government area.

I apologise to the Temporary Chairman. This was circulated without my knowledge and that explains some of the confusion, even from me. I seek leave to withdraw revised amendment PW205 and go back to the original wording of amendment PW205.

Leave granted.

Senator HARRIS—I move:

(1) Schedule 2, page 36 (after line 13), after item 5, insert:

5A After section 77

Insert:

77A This Part does not authorise anti-competitive conduct

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the Trade Practices Act 1974.

Note 1: Section 50 of the Trade Practices Act 1974 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market. Subsection 51(1) of that Act provides that section 50 does not apply to anything authorised by an Act.

Note 2: The question of whether a cross-media acquisition contravenes section 50 of the Trade Practices Act 1974 involves identifying the relevant market or markets in which the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition.

Note 3: The question of what is a relevant market is worked out under the Trade Practices Act 1974, and there is nothing in that Act that limits it to a market regulated by this Part.

I think it is important to clarify succinctly the actual intention of moving this amendment. The amendment will protect the public interest in media mergers and acquisitions by ensuring that the ACCC’s critical role in ex-
examining the competitive effects of cross-media mergers is affirmed notwithstanding any exemption certificate issued by the Australian Broadcasting Authority. So it is clearly saying that the ACCC still has the ability to carry out the investigation irrespective of the ABA having granted an exemption certificate.

The second thing is that cross-media mergers or acquisitions should proceed where they benefit the public by establishing strong, viable and better resourced media players. Such transactions, however, should be consistent with a vigorous and competitive media market. Under the government’s bill, a cross-media merger will require the ABA to issue an exemption certificate subject to a number of conditions, relating mainly to diversity considerations. The One Nation amendment confirms that the ACCC has the jurisdiction to fully investigate all the competitive implications of a potential merger. The One Nation amendment ensures that, in exercising its powers of investigation, the ACCC will be able to consider all relative markets affected by the merger. The important inference there is ‘affected by the merger’. In many cases a merger or acquisition involving newspaper, television or radio companies could have implications for other markets, such as the Internet, pay TV, magazines or even non-media markets like advertising. This may be because the companies involved in the merger themselves also have an interest in those other markets. The amendment will ensure that the ACCC has the jurisdiction to consider those implications. Finally, One Nation considers this amendment to be an important measure to ensure that the public interest continues to be protected under the government’s proposed revised cross-media arrangements.

Question agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.55 a.m.)—I move government amendment (22) on sheet QS205:

(22) Schedule 2, page 36 (before line 14), before item 6, insert:

5G At the end of Part 5
Add:

78A Review of this Part
(1) Before 31 December 2006, the Minister must cause to be conducted a review of this Part.
(2) The Minister must cause a report to be prepared of the review under subsection (1).
(3) The Minister must cause copies of the report to be tabled before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

The purpose of this amendment is to require a statutory review to be conducted before 31 December 2006 into part 5 of the Broadcasting Services Act. Amendment (22) requires a statutory review to be undertaken of the broadcasting ownership and control provisions contained within part 5 of the act. The bill forms an integral part of the government’s commitment to respond to the rapidly changing communications sector with progressive communications policies which reflect today’s market conditions; hence, it is logical that the government includes a provision which will ensure that the bill retains its currency in the near future and beyond. Item 78A(1) requires this review to be undertaken by 31 December 2006. Item 78A(2) requires a report of this review to be prepared. Item 78A(3) requires the minister to table copies of the report before each house of parliament within 15 sitting days of the completion of the report.
Senator BROWN (Tasmania) (11.56 a.m.)—I move an amendment to government amendment (22):

Subsection 78A(3), omit “after the completion of the preparation of the report”, substitute “sitting in 2007”.

I move this amendment because, as the government’s amendment stands, the tabling of the report is under no time constraint. The review has to be completed by the end of 2006 and then the minister has to get the report. Once he or she has the report, the report has to be presented to parliament, but the government amendment does not say when the report has to be prepared; it could go on for years. I think it is important that we put a time constraint on that. That is why under this Greens’ amendment the report would have to be tabled in the parliament within the first 15 sitting days of 2007. This would ensure that the minister at the time does the job and the report is tabled in parliament so members and senators can see what the review says about the performance of the legislation.

Senator MACKAY (Tasmania) (11.57 a.m.)—The idea of reviewing legislation always has merit—and the Labor Party would always be involved in the reviewing of legislation—but we are opposing this legislation and therefore, axiomatically, we are opposing the review of the legislation. We are in a position to review the bill right now, and our review is that this is a bill that will lead to a massive reduction of media diversity in Australia. We do not support the bill and we do not support the amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.58 a.m.)—Having just seen this Greens’ amendment on the run, I am not sure whether it does not have the unintended effect of requiring that the report be tabled in 2007. If the report was concluded in 2005, for example, this amendment seems to me to be saying that it could not be tabled until 2007. I am not sure whether that is intended or not. I am not quite sure what the mischief is that Senator Brown is trying to address, because it is standard practice to require reports to be tabled within 15 sitting days. We know that, if the parliament is not sitting for a period, that can take a lot longer than 15 calendar days, but it is a generally accepted regime which I think works pretty well. I do not know why Senator Brown thinks there is a problem in this instance. Unless we identify a problem, I do not think we should be rushing off to find a solution.

Senator BROWN (Tasmania) (11.59 p.m.)—The Minister for Communications, Information Technology and the Arts does have a valid point there, but the problem is that, regardless of when the review has been completed, there is no time constraint on when the minister has to put that report in to the parliament. I think that needs fixing. If the review is finished in 2005, as the minister says, let the report appear in 2005. The problem here is that, under the government amendment, once the review is completed there is no time limit on when the report comes to parliament. The review may be completed, but the report on the review might not ever be completed by the minister. What I am looking for here is a constraint on that process. It is not hard to fix the problem from both points of view.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.00 p.m.)—Can I tell you how it is normally fixed. There is a problem if you try and put a date on it. Say it is actually finished on 31 December and you say that it has to be done in 2007. Does that give you 12 months to do it? That is not terribly helpful. If you wanted it done immediately, you would probably prescribe three
months. It just becomes very awkward. What in fact happens is that everyone knows that the review is being conducted and they will know formally or informally when it has been completed. If, as you say, the government is simply sitting on its hands and trying to pretend that it has not done the necessary completion of the preparation, then that will be a matter of public debate. Government is then on the defensive and forced to explain why it is unnecessarily withholding the report. It generally works pretty well, I think, in a number of other areas. People do not sit on reports indefinitely. If they do, there are political consequences.

Senator MURPHY (Tasmania) (12.02 p.m.)—I am not quite sure I agree with the view of the Minister for Communications, Information Technology and the Arts that governments do not sit on reports. I think I could actually find a few examples that would not necessarily support the view he has just expressed. Nevertheless, I have a question with regard to the amendment that we are dealing with at the moment. It says:

(1) Before 31 December 2006, the Minister must cause to be conducted a review of this Part.

Does that mean that the review must be completed by that date? I am trying to understand when the completion date is for the review. I guess I would share some of the concern that Senator Brown has expressed. This says, ‘Before 31 December 2006, the Minister must cause to be conducted a review of this Part.’ If that is the case, is the report of the review to be completed by 31 December 2006?

Senator BROWN (Tasmania) (12.03 p.m.)—I seek leave to withdraw the Greens amendment to government amendment (22).

Leave granted.

Senator BROWN—I move a new amendment:

Omit subsections 78A(1) and (2), substitute:

(1) Before 31 December 2006, the Minister must cause to be conducted a review of this Part and a report to be prepared of the review.

We would then have, under ‘Review of this Part’, the words: ‘Before 31 December 2006, the Minister must cause to be conducted a review of this Part and a report to be prepared of the review.’ The words under proposed subsection (1) would need to be deleted because they are superfluous. Then the minister would have to have both the review and the report before the parliament by the end of the year 2006.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.04 p.m.)—We do not have the amendment in writing, but I understand its purpose is to insist that the report be completed by that date. You do not know, when you embark on a review, precisely how long it is going to take. If you thought in good faith that it was going to take six months and it turns out that it takes nine and you are over time, what do you do? Do you then say, ‘Sorry, but Bob Brown is insisting that we present a report’? Do you come up with an interim report or seek leave of the parliament to extend it?

What is critical here is to ensure that the report process is well and truly under way before that date. If the government does not do that in sufficient time, then you and others would rightly be critical. Once the report process is under way, you will be able to track its progress. If it is completed but a report is not tabled after a reasonable period of time, then again you are in a position to be critical about that. My experience of the way the media operates is that you would probably get a better run out of complaining about the process than you would from dealing with the actual contents of it. So there would
be no shortage of opportunities to complain about the fact that it had not been made public immediately after or that the report had not been completed immediately after. But trying to impose artificial deadlines on when it ought to be completed probably would, if anything, force the review process to commence prematurely. That is not desirable either.

Senator BROWN (Tasmania) (12.06 p.m.)—A minute ago the Minister for Communications, Information Technology and the Arts was talking about getting his report in by 2005. Now, suddenly, he says that the review date at the end of 2006, which is his own, is setting an artificial date. That is nonsense. Then he says that, if he has not produced a report for the parliament, we can complain about it. We are a bit smarter than that. The fact is: you have put in here a date by which the minister must report to the parliament. If the minister thinks that the end of 2006 is too early, then he is caught in an enormous inconsistency. He set that as the date by which the review process was to have taken place. All we are saying is: put the report in to the parliament so that we can have a look at what has happened in that review. He is saying, ‘No, leave it to me to come back to parliament whenever I want to—it might be the year 2626—and you can complain in the meantime.’

Senator Alston—But you don’t do that!

Senator BROWN—That is quite right, you do not do that. You set a date at which the minister must report back to this Senate and to the House of Representatives. That is what the Greens amendment is doing.

Senator MURPHY (Tasmania) (12.07 p.m.)—Maybe I have missed something. Can the Minister for Communications, Information Technology and the Arts inform me as to who he envisages would conduct this review? Is it the ABA or some other body as appointed by the government?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.08 p.m.)—I think the terms of the amendment are such that it is left to the discretion of the government. Again, it is a standard review clause. To prescribe in advance that it should be the ABA or anyone else may not be appropriate when you get to 2006. So the key is that you have to have a review. It has to stand up to public scrutiny. If there is a need for it to be an independent assessment, then presumably that will be a matter for debate if it is not. But in the first instance you are looking to ensure that there is a proper review. Time and again that is what departments are for, to ensure that they are up to date on matters and to conduct reviews. But it certainly does not rule out the ability of the government to commission anyone else to conduct the review. It is just giving it the necessary flexibility to provide a proper review which can then be publicly debated.

Senator MURPHY (Tasmania) (12.09 p.m.)—I have some concern about that because the ABA in effect deals with issues such as licences et cetera. For the purposes of clarity and from a public interest point of view, the ABA ought be the body that would conduct such a review. That is what it is there for. I accept your point that sometimes governments might appoint somebody to do a review of something. The ABA is charged with the responsibility for doing all manner of things and it has a review process of its own, as I understand it. I would have thought this review would be added to the ABA's responsibilities. If that is not the case, I might have to consider an amendment at some point to ensure that that is the case.

Senator ALSTON (Victoria—Minister for Communications, Information Technol-
ogy and the Arts) (12.10 p.m.)—There are two points. One is that, given we have a discussion paper out there about a possible merger of the ABA and the ACA, the animal might not still be around in 2006. The other and more important point is that the ABA itself generally has responsibility for the administration of the act. So you really would not expect it to be independently capable of assessing its own performance. If it is the department that did it, for example, its report has to stand the scrutiny of the light of day. If the general view is that it is not capable of doing that, it seems to me to be a pretty big statement to make in the first instance. That is what they are there for. They are meant to give you fearless advice, and that includes critical assessments of other agencies. If they do not measure up to that task, that will become a matter of public debate no doubt. But you need that flexibility to ensure it. The real safeguard here is that the report is made public. This is a standard clause and, to my knowledge, it has worked well in a whole range of areas over many years. I do not know why Senator Brown suddenly wants to change the rule.

Senator Brown—Because you don’t have to make it public.

Senator ALSTON—That provision is one that is found very commonly in all manner of legislation and the result of it is that reports are made public.

Senator Brown—And some are not, and that’s the problem.

Senator ALSTON—I do not think it has been a problem here and I do not see why you would want to assume that it is likely to be a problem. This is an area where people are crawling all over the issues all the time. There is this idea that somehow you could commission a review—and you have to do it by law within a certain time—and then just blithely ignore questions about, ‘Where is it, what stage is it up to and why won’t you release it?’ Essentially, after a reasonable period, you would have to be pretending in effect that you still had not completed the preparation. I do not think that has ever occurred and, if it has, that is when you get a real belting. So there are public safeguards to ensure that these sorts of provisions do what they are meant to do, and that is why they have not been changed and why they have generally worked pretty well.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Murphy, I remind you that you are required under standing orders to actually sit in your seat rather than sit on the arm.

Senator MURPHY (Tasmania) (12.13 p.m.)—I thank you, Mr Temporary Chairman, for drawing that to my attention. I will endeavour to comply with the standing orders and sit in my chair.

The TEMPORARY CHAIRMAN—Thank you, Senator Murphy.

Senator MURPHY—Coming back to the amendment, I still share Senator Brown’s concern with regard to the timeliness of a report being delivered. It is important. This has been an issue between governments and oppositions from an historical point of view. I probably could find plenty of examples of where the current government, when in opposition, made many complaints with regard to the timeliness of the publication of reports and vice versa. So it is an issue. I understand the argument against it. But, because we are dealing with an issue of significant public interest and public importance, I would have thought it was at least achievable to put in some time frame for the completion of a report and its publication. If the time frame happened to blow out, I am quite sure the minister would be able to come into the parliament and explain in an admirable fashion the reasons why the report was taking longer.
to prepare. But, for the purposes of the public interest, it would be appropriate to lock in some form of time frame.

Going back to the question of who might conduct the report, again I can refer to a historical debate amongst governments and oppositions that goes to the appointment of would-be reviewers. There have been one or two would-be reviewers of other things, and one case which comes to mind in more recent times is to do with the services of Telstra. There has been the odd go or two at that. I have to say that the general public do not seem to agree too much with the reviewer, if we are to believe Channel 9’s Today program this morning. The number of emails they are getting in respect of Telstra’s services in the bush would suggest that Dick Estens has been a complete failure.

It is important in this respect that we at least set down some parameters for reviewing processes, particularly in areas where they are of such public importance. I know the minister raised the point that you would not want the ABA reviewing themselves. But I do not see that that is the case. This goes to the application and the aggregation of commercial broadcast licences. I would have thought they would have had sufficient public interest blood in their veins to have been able to look at this important issue and provide a report to the government as to whether or not legislative action was required to do certain things that may make the playing field more level and make the situation more equitable and/or more serviceable to the community. I still have that concern, and I share Senator Brown’s concern with the time frame and the timeliness of getting a report completed and into the parliament for consideration.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.17 p.m.)—Given that this is a matter of particular significance, I think we could live with an amendment to 78A(3) which adds at the conclusion of the words on the paper ‘and, in any case, no later than 30 June 2007’. That would give you certainty that the report is going to be tabled. To go beyond that to Senator Murphy’s point, which is essentially on the run, we would need to have a lot more reflection on that, because I do not see how you would quickly overcome the conflict of interest of the ABA assessing itself. I do not think we could offer anything on that at this point, but I am prepared to offer up a once-in-a-lifetime exception to the general rule, which I think does illustrate the importance that we all attach to it and does achieve what Senator Brown was wanting.

Senator BROWN (Tasmania) (12.18 p.m.)—I accept that change to my amendment. I seek leave to withdraw my amendment to government amendment (22) on sheet QS205.

Leave granted.

Senator BROWN—I move my amendment to government amendment (22) on sheet QS205 with the changes outlined by Senator Alston:

At the end of paragraph (3), add “and, in any case, no later than 30 June 2007”.

Question agreed to.

Original question, as amended, agreed to.

Senator CHERRY (Queensland) (12.20 p.m.)—I move Democrat amendment (1) on sheet 2987:

(1) Schedule 2, page 37 (after line 8), after item 8, insert:

8AA Before section 150

Insert:

150A Action by ABA in relation to a broadcasting service where complaint justified
(1) If, having investigated a complaint, the ABA is satisfied that:
   (a) the complaint was justified; and
   (b) the ABA should take action under this section to encourage a provider of a broadcasting service to comply with the relevant code of practice;
the ABA may, by notice in writing given to a provider of a broadcasting service, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.

(2) That other action may include broadcasting or otherwise publishing an apology or retraction or providing a right of reply.

(3) The ABA must notify the complainant of the results of such an investigation.

This amendment is to insert into the act a new section 150A. The wording which we are proposing for section 150A is identical to the wording that already exists in the act in section 152. Section 152 requires that, where the Broadcasting Authority has found a complaint against a public broadcaster is justified, it can then, by notice given to the ABC or SBS, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as specified in the notice. The other action may include broadcasting or otherwise publishing an apology or retraction. If they fail to do so, then, under section 153, the minister can cause a report to be made to the parliament.

This amendment seeks to replicate that for commercial broadcasters. I cannot particularly see why, given that the complaints processes of the ABC, SBS and the commercial broadcasters all end at the Australian Broadcasting Authority, they cannot result in a similar outcome—that is, once a finding has been made, the viewers or the listeners of that particular broadcaster are entitled to know the outcome of that finding.

In the 2001-02 financial year—which I think are the most recent figures I have—there were 34 breaches of the broadcasting code of conduct by television proprietors in this country. When you think about it, that seems an awful lot. The figures that I was looking at on this particular issue show that, over the last 2½ years, only about three of the breaches of the code of practice for television broadcasting were by the public broadcasters. The other 30-odd breaches were by the commercial broadcasters. About half of those were by a single network, which I will not name, and about half of those again were by a single program on that network that I will not name.

It is important to ensure that the ABA has a little more power to deal with the issue of breaches of the code of practice. Reading through the various investigation reports that come from the ABA, particularly dealing with *A Current Affair*, I was concerned to see that there has been a series of breaches over a long period of time. Each time the ABA has been able to make a breach finding, it has received an assurance from the network that it will look at the issue of including that particular breach finding in its training materials, but the viewers never discover that that particular program misled them, presented views unfairly or put improper facts into a broadcast. I think it is reasonable and appropriate that the ABA should be able to say to that broadcaster, ‘You should tell your viewers that you have breached the code of practice and that this is how you have done it.’ It might encourage some of those programs that are not changing their conduct, judging by the complaints still going to the ABA, to change their conduct over time.

I have not really gone for a significant strengthening of the act here, other than to
replicate what is already there for the ABC and SBS. Under the rules for the ABC and SBS, the broadcaster can refuse to issue an apology or a retraction, in which case that matter is then reported to the parliament. I do not particularly agree with that, but that is what the act says so that is what I am replicating. The only thing I am adding which is not in the current act is the provision of a right of reply, which is the extra wording in proposed subsection 150A(2), which I also propose to add to the ABC provision in Democrat amendment (2).

This issue is very important. The idea came from looking at the Canadian Broadcasting Authority’s treatment of cross-media certificates. In Canada they are making the provision of a right of reply a condition for obtaining a cross-media certificate. Given that every single television news program will end up in some sort of cross-media arrangement if this bill is ever passed in any form, I think it is reasonable that we should consider the Canadian approach of raising the bar by requiring a right of reply.

As I said, the amendment replicates what is in the act. The only addition to the act in respect of public broadcasters is the proposed addition of a right of reply. Again, it would be up to the ABA to decide whether a right of reply is appropriate. In my view, in most cases it would not be, because by the time the ABA has completed its investigation it is often six to 12 months after the particular broadcast occurred. At that point, all that broadcaster can do is simply apologise to their viewers for misleading them or for putting out an unfair broadcast. I commend this amendment to the Senate.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.26 p.m.)—I think we have had this amendment for a couple of days. It smacks of yet another attempt to solve on the run a problem that is very complex, if it is indeed a problem of anything like the magnitude that Senator Cherry would instinctively like to think it is. I have not looked at the so-called 34 breaches—the bulk of those might be technical, or they might be utterly trivial. If that is the case then even having 34, of itself, does not tell me that we are confronted here with a major problem.

We all have issues about the way in which media treat us, I would have thought—I do—and in some instances I think they are fundamentally wrong and refusing to be reasonable. But it is a far cry from that to argue, as Senator Cherry did at the end of his contribution, that it is reasonable to adopt the Canadian approach to force a right of reply as a licence condition. I can recall reading about these sorts of proposals in the US 20-odd years ago. They just went to the Supreme Court as a matter of course. This was a huge die in a ditch constitutional issue for newspapers in particular, because I think there were a few states that actually required the publication of apologies. You would get into interminable arguments about the size of the apology, the form of it, the heading of it and whether that constituted what someone objectively might regard as a fair and reasonable apology. This area is absolutely fraught. You can quite rightly say that those who operate these media outlets have a vested interest in absolutely minimising any level of responsibility, but the fact remains that you would be buying a huge fight.

Print, for example, is not the province of the federal government. It would only ever qualify under cross-media laws that in themselves are justified by the telecommunications power; unless you could apply the Corporations Law, but that has never been done to print media before, to my knowledge. Print is a state responsibility; that is why the last royal commission into the Australian
print media was conducted by Mr Justice Norris in Victoria 20 or 30 years back. I can tell you that this would go to the High Court, because it has such profound and far-reaching consequences. I think Senator Cherry letting the cat out of the bag and saying that it is really the first stop on the way to forcing a licence condition tells you what his real agenda is. That real agenda would be totally unacceptable, because it is in the eye of the beholder as to who decides what, where and how. Senator Cherry, if you have a problem with one particular program, which you seem to have, it is a bit coy to say: ‘Here’s a big problem. I want to solve it, but I’m not even prepared to name one program or even one network.’

Senator Brown—The program is A Current Affair.

Senator ALSTON—Why doesn’t he say it? All I am saying is that here is a guy who is so fearless and impartial, who wants to rip into them, force apologies and everything else, and yet he cannot even bring himself to name a network or a program. If you have a problem with it—

Senator Cherry interjecting—

Senator ALSTON—Well, let us do a forensic analysis of it and see if there is a problem there that needs to be solved separately. But this is an across-the-board approach that requires apologies and rights of reply. Ultimately, rights of reply were held to be unconstitutional in the US because people used to say, for example, two days later, ‘I’m entitled to equal coverage because I was defamed on page 1 in a full-page spread; I’m entitled to equal treatment.’

Senator Cherry—I think you are.

Senator ALSTON—What? So the whole front page should be, ‘Cherry apologised to’? I am sure you would love it; it is about the only way you would ever get a run, I would have thought. But can you seriously imagine the media of this country accepting that sort of proposition—that, because you were the lead item one day, you should be given equal time the following day? It is a nonsense. You would have interminable wrangling and argument about what constituted an apology, what constituted a reply, what is the nature and extent of it and how often it should be run. It involves endless problems. Rather than doing this on the run and saying that you have concerns about A Current Affair, why don’t you tell us what is wrong with A Current Affair and we can all pursue that with the broadcaster involved? But you are not doing that at all; you are saying, ‘Because I’ve got concerns about one program, I’ve now got a solution that applies across all media outlets—radio, print and television.’

Senator Mackay—He didn’t say that.

Senator ALSTON—Senator Cherry said that he has 34 breaches. He does not tell us where the bulk of those are major or minor, but he says that half of them relate to one network and half of those relate to one program.

Senator Mackay—He didn’t say, ‘I’ve got problems with one program.’

Senator ALSTON—I have told you what Senator Cherry said. He said that there are 34 breaches and that half of those relate to one network and half of those relate to one program. That is all he has given us by way of level of concern. All I can take out of that is that he has a particular problem with A Current Affair. I have no idea what his other issues are, and yet he is coming up with a draconian solution that would apply to print, radio and television across the board. This is not the way to make good legislation. If you have a problem with A Current Affair, deal with it. Do some homework. Instead of just throwing off a few press releases, go away and do a bit of forensic analysis and make some representations.
The ABA can, and does, investigate complaints. It publishes those, and that does cause embarrassment and criticism. If it does not, then feel free on the adjournment, or wherever else, to bring up constructive solutions to the problem. But a one-off concern about a particular program does not seem to me to lend itself to a very heavy handed intervention of this sort. We simply say that the current co-regulatory approach is, by and large, effective. These things are never going to be perfect. I get as agitated as anyone when I feel, I think for good reason, that I have had a very bad run or that they have factually got it wrong and refused to correct it. But I think you need to be very careful. If you are the champions of freedom of the press, this may be a price you have to pay. There may be improvements, as I say, to codes of practice. There may be further ways in which you can highlight or focus on a particular problem area. That is perfectly legitimate. If a single program is effectively thumbing its nose at community standards or codes of practice, we may well need to take some action in respect of that matter. But you do not solve that problem by having an across-the-board approach that, in Senator Cherry’s dreams, would involve a licence condition forcing rights of reply. They do not come much heavier handed than that.

Senator Alston—I said, ‘He hasn’t done his homework.’

Senator MACKAY—Oh, right. Essentially, we support the Democrats’ proposal in respect of this. This is about ensuring a level playing field in Australia—that is the bottom line. Our view is why shouldn’t what is good for the ABC and the SBS be applied to the commercial broadcasters? Obviously, the minister here has instructions. We all know that he wants to protect the commercial broadcasters from scrutiny; that is his right if he wishes to do so. The Labor Party supports the Democrat amendment. We think it is good policy. It ensures that certain ABA complaint procedures which currently apply to the ABC and the SBS also apply to commercial television broadcasters. We believe the amendment is worthy of support. We think it would be worth while for the ABA to have greater powers to deal with complaints against commercial television broadcasters. We congratulate the Democrats on the amendment.

Senator LEES (South Australia) (12.36 p.m.)—I want to ask the minister a basic question about, in essence, what Senator Mackay was just describing, which was a level playing field. Do you believe that the playing field should be level, that we should have the same rules for the ABC and the commercials?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.36 p.m.)—From recollection, the ABC is treated much more favourably when it comes to some other areas of complaints. If you want to have an across-the-board approach—

Senator Brown interjecting—

Senator ALSTON—No; the ABC has always fought vigorously against having the
commercial complaints regime applied to it. If you want to go down that path, I think you will find that you get a lot of push back from the ABC. It regards itself as being in a special position on a lot of this stuff. I do not have a problem, in principle, with a lot of these things being applied across the board, but in this instance you ought to identify the problem you are trying to solve. If the problem is 34 breaches and you have one particular program in mind, let us have a look at how we deal with it. But just saying ‘I’ve found a figure of 34 somewhere—I haven’t bothered to analyse it, so I can’t tell you how serious any of those breaches were; but I now have a solution that is dramatically more interventionist than the current regime’ does not seem to me to be a good basis for policy making. If you want me to go away and compare the ABC and the commercial television stations in a range of areas, I would be happy to do it.

Senator BROWN (Tasmania) (12.37 p.m.)—Perhaps the minister should go away over the lunch break and read the ABA judgments on the matter. The problem here is that we have a minister who is not acquainted with what the authority does and the outcomes of its actions. You cannot have a sensible debate with an ignorant point of view like that. It is a very serious matter. The minister quite rightly talks about the freedom of the press or the media, but it is also a matter of defending the public’s rights here. It is not just that people are misrepresented in what goes out to the masses through, in particular, television programs; it is also that it sometimes transgresses people’s rights so much that it can affect the rest of their lives. Every good editor is aware of that. For the sake of the whole broadcasting industry it is important that there not be cavalier or irresponsible breaches of those standards—and that is why the ABA is there.

This amendment has a stronger action component for people who have grievances. Remember, if somebody felt that in this debate today they had been grievously misrepresented, they would be able to approach the Senate and have their reply incorporated into the Hansard through a very important check that this house of parliament has. Why should that not apply to the commercial media? It is very reasonable. It is not as if anybody can simply say, ‘I want the front page because it was about me yesterday and I want it today.’ That is nonsense. The ABA is an adjudicator in this matter. It is very important that, if the minister says, ‘What Senator Cherry is coming up with is not good enough,’ the minister provide a better alternative for debate. In the absence of the minister (a) being informed of what this amendment is about, (b) knowing what the ABA’s rulings are and how important they are and (c) putting an alternative forward that is better than the amendment Senator Cherry has moved, that amendment should be supported.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.40 p.m.)—It is very easy for Senator Brown to pretend that somehow he knows everything but is not prepared to tell us and then expect the government to come up with solutions to problems that have not been elaborated. I would have thought, if you were seriously expecting us to deal with issues, you would want to put them on the table in spades. If you know so much about all these ABA rulings, you have trawled through all their findings and you have examined all these programs you find offensive, I would have thought you might want to tell us a bit about them so that we would have a basis for understanding your concerns. At the moment all we have from Senator Cherry is that he read somewhere that there were 34 breaches last year and some of them seem to relate to a particu-
lar program. I do not think that is a sufficient basis for policy making and I have not heard anything else, apart from gratuitous assertions that the minister is profoundly ignorant on a range of fronts—which is not the first time it has been said—to enable us to take the debate any further.

Senator MURPHY (Tasmania) (12.41 p.m.)—Under part 11 of the Broadcasting Services Act, ‘Complaints to the ABA’, section 147 deals with the grounds for a person to lodge a complaint against a commercial broadcast licence holder, but you then have to refer to section 150 for complaints relating to national broadcasting services or datacasting services provided by the ABC and SBS. I also draw the minister’s attention to sections 151, 152 and even 153, but most importantly section 152, which says:

(1) If, having investigated a complaint, the ABA is satisfied that:

(a) the complaint was justified; and

(b) the ABA should take action under this section to encourage the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation to comply with the relevant code of practice;

the ABA may, by notice in writing given to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.

(2) That other action may include broadcasting or otherwise publishing an apology or retraction.

(3) The ABA must notify the complainant of the results of such an investigation.

I go back to Senator Lees’s question: shouldn’t the rules that apply to the public broadcasters in this respect also apply to the commercial broadcasters?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.43 p.m.)—It also works the other way around. I think we do need to make a comparison and understand why there might be a differential regime. I seem to recall that the ABC was criticised by the ABA in respect of that McCartney-Snape program about three or four years ago now and that the ABC always resolutely refused to accept responsibility. I think I read recently that they have. I do not know if it resulted in a defamation payout or not, but certainly there was a lot of push back from the ABC in respect of the ABA recommendations. I take Senator Murphy’s point in principle—I think it is important, in a public policy debate, to understand why different rules might apply to the commercial and the national broadcasters, and I am more than happy to undertake that exercise.

Senator MURPHY (Tasmania) (12.44 p.m.)—I draw the minister’s attention to section 153 of the act, which ultimately allows for the parliament to take a course of action.

Progress reported.

MATTERS OF PUBLIC INTEREST

Senator Hogg—Order! It being 12.45 p.m., I call on matters of public interest.

Greenfields Mineral Exploration

Senator JOHNSTON (Western Australia) (12.45 p.m.)—The issue that I seek to discuss this afternoon is the decline in minerals exploration in Australia over the past decade, particularly since 1997. In the next 20 years, my state of Western Australia will lose $9 billion in investment, $42.1 billion in export earnings and $29.8 billion in gross state product, in large part as a result of an inadequate understanding of and response to the decline in minerals exploration by both state and federal governments. I am pleased to say, however, that this situation from a federal perspective is fully understood and on the improve.
In November 2002, a state ministerial inquiry into greenfields exploration in Western Australia was completed. The inquiry was chaired by a very able and respected member of my state's parliament, Mr John Bowler, the Labor member for the state assembly seat of Eyre—a seat which contains approximately 60 per cent of Australia's gold production. The Bowler report provides a timely snapshot of the current situation of minerals exploration in Western Australia, and the inquiry's findings and recommendations are clearly relevant to the whole of Australia.

The inquiry confirmed that exploration activity in Western Australia declined by $80 million between 1997 and 2001 and that investing in mining, consequent exports and gross state product will consequently be substantially reduced over the next 20-year period. A number of commentators talk currently very positively of mineral exploration and production outlook. This perception is very coloured by the developments in the oil and gas sector and the recent firmer gold price. In terms of actual drilling dollars into the ground, however, the picture is cause for grave concern and alarm.

I pause to observe that many of the current projects in Western Australia had their genesis in the foresight and hard work of previous state administrations and the diligence of trailblazing miners, such as Western Mining and Hamersley Iron back in the 1960s and the 1970s. This reality underlines the axiom that today's exploration investment will yield benefits decades into the future.

The Commonwealth's perception has been greatly advanced on this subject through the very thorough work that is currently being undertaken by the House of Representatives Standing Committee on Industry and Resources under the chairmanship of my colleague Mr Geoff Prosser MP, the member for Forrest, through that committee's inquiry into any impediments to increasing investment in mineral and petroleum exploration in Australia. I would like to support the efforts of this committee by indicating that the issue of minerals exploration—and specifically greenfields mineral exploration—investment is so crucial that there is a potential for dire consequences in Australia in relation to the Australian economy if the concerns and warnings being voiced in that committee are ignored.

Of Australia's exports of approximately $120 billion per annum, $55 billion worth emanate from mining. In short, an active healthy exploration industry converts to a healthy growing national economy into the future. The statistics indicate a fall in total Australian minerals exploration expenditure from $1,149 million in 1997 to $640 million in 2002—a 44 per cent decline. This decline has been most evident in the gold sector, by far the largest, where exploration expenditure fell from $728 million in 1997 to $331 million in 2002—a fall of 54 per cent. In terms of national expenditure in 2001-02, Western Australia remained the dominant state with 59 per cent of the total, although expenditure declined by 10 per cent from the previous year. New South Wales, being eight per cent of the total, had a spending decline of almost 16 per cent; and Tasmania, only being one per cent, nevertheless had a 57 per cent decline in exploration expenditure.

Gold remained the most explored-for commodity and accounted for 52 per cent of total expenditure on exploration. Mineral sands exploration was at a record level of $33.2 million, reflecting the continued high levels of activity in the Murray Basin. Other commodities showing significant changes in expenditure levels on the previous year were copper, up 27 per cent; coal, up 20 per cent; silver, lead and zinc, down 37 per cent; and nickel, down 26 per cent. A number of commentators have suggested that the most re-
cent decline from 1997 is more related to a deep structural change rather than just any cyclical ebb and flow of economic activity related to prices and to demand. If this is correct—and I believe it is—such a development must be acknowledged by governments and urgently addressed by sound policy initiatives.

What has caused such a rapid decline in minerals exploration in Australia over such a short period? The major reasons are best exemplified by the Western Australian experience and include, firstly, increasing difficulty with obtaining land access due to bureaucracy and green tape; secondly, the observance of native title procedure and legislation; thirdly, the disruption and expense associated with the process of mining company mergers and acquisitions; fourthly, the ease and viability of access for exploration on quality prospects overseas; fifthly, the demise of the junior mining sector and associated difficulty in capital raising onshore in Australia; and, lastly, the continuing decline in world metal prices. Whilst some of these reasons have had differing impacts, suffice it to say that it is governments’, and particularly state governments’, attitude to industry that lies at the base of the problem.

Western Australia, the former ‘can do’ state, has become the ‘no can do’ state. Currently massive inertia and green tape exist in the time taken for environmental licensing, the escalating cost of such licensing, the time to process tenement applications and the continued contrary land access policy climate, which sees vast areas locked up in reserves, parks and estates all in the name of political/enviro correctness.

All of this indicates a dangerous lack of perception as to the importance of mining and minerals exploration. But what is worse is that there is apparently no will to arrest this malaise and the paralysis of the minister, who is currently seeking a quick fix where there is none. Exploration and mining is a prohibited activity on many of these locked-up areas, with a flow-on on prohibition on adjacent land seen to be at risk. The WA government currently discloses no real will to tackle these pressing matters, whilst continuing to increase royalties imposed by a revenue driven administration that unfortunately has no regard for or understanding of the commercial sensitivities or the fundamental importance of the mineral exploration industry, which is the engine room of our future prosperity.

I turn now to native title. Notwithstanding that the High Court has labelled this legislative framework ‘unworkable’, miners and explorers have continued to endeavour to work through the system, seeking negotiated outcomes—and often with quite surprising success. Unfortunately, the most problematic aspect of this regime is access to land for exploration. As is to be expected, the incorporation of an additional complex land tenure management framework has slowed exploration tenement processing. Whilst the Native Title Act is now a decade on, the impact is only gradually lessening as companies and native title representative bodies slowly come to terms with a group of very complex and evolving legal concepts. One of the highest priority recommendations of the Bowler inquiry in Western Australia relates to expedited processes, including legislative changes to the mining act relevant to issues surrounding native title.

A December 2002 ABARE report identified the fact that, in the first three quarters of 2000-01, exploration title applications in Australia comprised 5,809 pending and 1,003 granted, and mining title applications comprised 7,488 pending and 329 granted. Most of these tenements are in my state of Western Australia. Native title considerations and complexities are major factors in the
decline of minerals exploration in Australia, and in particular in Western Australia.

The recent trend of rationalisation of corporate players in the mining sector through mergers and takeovers, both in Australia and overseas, has been both expensive and disruptive in terms of strategic planning and has led to a greater awareness of the prospectivity and viability of mineral resources in Africa, South America, Asia and eastern Europe. Companies now have considerable options in determining where they will explore, and accordingly choose the most favourable options following the addressing of criteria such as geological prospectivity, ease of land access, taxation arrangements, state royalties and sovereign risk. Australia no longer has a captive audience of an onshore group of successful mineral exploring companies. There are far fewer companies within the industry at the moment as a result of the biotech and dotcom market bubbles and those remaining mining companies now spend considerable proportions of their exploration budgets overseas. Another major adversity within this climate is the inability of the junior mining sector, comprising some dozens of small companies, to adequately raise funds and conduct meaningful, successful exploration.

What does this systemic downturn mean to the Australian economy and what do we need to do to reinvigorate the minerals exploration industry? That is the important question. The minerals sector is Australia’s largest single export earner, accounting for $55.5 billion in earnings in 2001-02, which is 46.1 per cent of merchandise exports and 36.1 per cent of total exports. It also contributed nearly $2 billion in the same year in exports of high technology equipment in mining, including some 60 per cent of the world’s IT software used in mineral exploration and mining. Whilst the sector is not a major employer because of its capital intensive nature, employing only some 78,000 employees, there is an indirect flow-on factor of around three to four to other sectors of our economy. Furthermore, the sector was responsible for capital expenditure in 2001-02 of some $5.5 billion.

Whilst it is very difficult to quantify the impact of declining exploration expenditure on the overall economy, it is fairly obvious that if the in-ground stock of commodities such as gold and base metals is not replaced by successful exploration then earnings from these products will gradually decline as reserves become depleted. However, much of Australian export income comes from the so-called bulk commodities such as iron ore, coal, bauxite and alumina. Australia has substantial in-ground reserves of all of these.

The Bowler inquiry in Western Australia has highlighted seven key recommendations and a further 26 recommendations for the state government to arrest the decline in mineral exploration activity. I support the thrust of those recommendations. The key recommendations include an expedited process to reduce the backlog of mineral tenement applications, provide further precompetitive geoscience information, issue greenfields exploration titles, improve heritage protection protocols, provide support to deal with native title, introduce a flow-through share scheme and review the heritage act.

The federal, state and territory administrations provide a lot of prediscovery geoscientific data to encourage private sector mineral exploration and development activity. The role of Geoscience Australia—which is, of course, a federally funded organisation—is to provide province-wide precompetitive geoscientific data. I know that this data is very well received by industry. State governments, through state mines departments and development departments, also provide
extensive packages of precompetitive geo-
scientific information to encourage resource
exploration and development within their
own particular state. They need to preserve
this investment through the ongoing support
of the exploration and mining industry.

At a constant rate of production, de-
creased exploration will lead to known min-
eral stocks becoming depleted within a rela-
tively short period of time. The often quoted
figure of seven years from initial mineral
discovery to start-up of production is particu-
larly relevant. The bottom line is that, with
less mineral reserves available, future mining
production and the broader economy will be
adversely affected.

The out-of-touch Premier of Western Aus-
tralia has his head well and truly buried in
the sand and has put the problem in his ever
increasing too-hard basket. He knows that
Western Australia has a serious problem in
this area but does not have any real solutions.
He does not want to spend any of Western
Australia’s money on finding a solution. His
response is simply to buck-pass the issue to
the Commonwealth.

Currently Mr Bowler’s recommenda-
tions—and I reiterate he is a Labor member
of parliament in Western Australia—are sit-
ting in the lap of the current mines minister,
and have been there since November of last
year without any action. Like his Premier,
this minister is struggling to get any traction
in addressing his government’s inertia. It
seems that the work of the state committee
was just so much window-dressing in an en-
deavour to look interested. It is crucial for
the future aspirations of the industry that
these recommendations are acted upon.

In contrast to the state government in
Western Australia, the Commonwealth does
have some answers and some initiatives, de-
spite the fact that the primary responsibility
continues to reside with the states. In 2002
the Howard government announced the de-
velopment of a mineral exploration action
agenda which is an industry driven response
mapping the mining sector’s exploration fu-
ture. The Prosser inquiry is reviewing what
effective incentives and initiatives can be
employed to increase investment into explo-
ration. One such consideration is an incen-
tive flow-through share scheme, the underly-
ing premise of which is to enable taxation
advantages to flow to shareholders who in-
vest directly into exploration. The foundation
principle of any such incentive scheme,
however, must be expenditure in bona fide
minerals exploration activity, as opposed to
an emphasis on taxation minimisation.

In conclusion, I would like to say that the
warning signs are ominous. Encouragement
and some form of incentive must be provided
to greenfields mineral explorers, not just in
Western Australia but also in the whole of
Australia. The detailed study and analysis
being undertaken by the House of Represen-
tatives Standing Committee on Industry and
Resources, under the chairmanship of the
member for Forrest, is clearly a step in the
right direction and will illuminate the path-
way to increasing and encouraging
greenfields mineral exploration in Australia.

Queensland Government

Senator LUDWIG (Queensland) (12.58
p.m.)—I rise today to assist—correct is per-
haps not the right word—the understanding
of one of my fellow Queensland senators,
Senator Santoro, in the criticisms that he lev-
elled at the 2003-04 Beattie government
budget. I might also take this opportunity to
assist Senator Johnston. He seems, in one
part, to be praising the Western Australian
state government but at the same time criti-
cising the state government. I think in truth
he is perhaps sending a mixed message. He
does congratulate the government for par-
ticularly the Bowler inquiry into the mining
industry. Having a mining industry background from a union perspective, I would encourage any assistance and help that the mining industry can be given, of course, particularly where it might be discouraged from using contracts and the like and, rather, encouraged to focus on job creation and the more important aspects of the industry.

In addition, Senator Johnston, as I understood it, also tried to bolster the stocks of the opposition in the state of Western Australia—and perhaps this is the nub of the speech he was attempting to convey today. It also appears that Senator Santoro was effectively trying to do the same in assisting the parlous state of the opposition in Queensland. From my perspective, it was a good try by Senator Santoro to help out his Queensland coalition colleagues, who are clearly having trouble trying to find some traction in attacking a good state government such as that in Queensland. Sadly, it appears that, given their electoral stocks, the opposition in Queensland have fallen on tough times and there seems to be a trend where they are now using their federal counterparts to assist them and bolster their stocks. I certainly do not discourage them from doing that, but it helps me to understand some of the problems that they might be facing. More so, it might also give me an opportunity to correct the record on certain occasions and to point out that their attempts, although valiant, are doomed to fail and that it would be far better for the opposition in those states to try a little harder.

Another example could be that Senator Santoro feels obliged to give the opposition a bit of help, given their current circumstances in Queensland. After all, it is well known that Senator Santoro was a senior minister in the failed Borbidge government. He probably feels at least partly responsible for their current plight, but my intent is not to level criticism at Senator Santoro at all. In the speech he gave last week at this time he tried valiantly to defend the opposition’s poor attempts at attacking the Beattie government’s budget. He did that well, but in truth the overwhelming desire on his behalf might have been to help his Queensland coalition parliamentarians. Be that as it may, I am not suggesting that Senator Santoro would have poor judgment, but in truth his comments were a little bit off the beaten track. Senator Santoro also managed to say—with a straight face, I might add—that the Beattie state government took them to task for allegedly raiding funds from Queensland government owned corporations. In fact, Senator Santoro stated:

This is a level of financial engineering on a par with that previously associated with Enron …

I will not take him to task for buffoonery, but let’s face it: this is an amazing statement from a member of the Howard government, a government which, in order to prop up its budget bottom line, raided Australia Post of its entire 2001-02 profit and then refused to answer questions about the 2002-03 profit raiding. Then there was the onerous Ansett ticket tax which, in the name of retrenched Ansett workers—falsely, in my view—raised an estimated $280 million. In the words of my parliamentary colleague Mr Martin Ferguson:

The Ansett ticket tax bonanza has been a sheer act of dishonesty by the Howard Government and it is … time they revealed the size of the surplus.

Given the importance of the tourism industry to Queensland and the extra burden that this unfair tax has placed on it, I find it difficult to understand why Senator Santoro did not support Labor’s call to have this tax removed many months ago. Rather than come into this house and complain about a Queensland state government’s budget, it would have been a lot clearer if he had come into this house and complained about the federal government’s budget and said what it could have
done to help Queensland, to assist tourism and to deal more fairly with companies such as HIH and Enron, if he wants to use that as an example.

I find that rather interesting. If Senator Santoro were to use any analogy at all, it would be unlike him to use Enron when you have the corporate collapses of Ansett and HIH that have occurred under this government’s watch and the government’s effort in the beginning to do very little to assist. Being somewhat closer to home, he could have used those examples, rather than that other analogy. Perhaps Senator Santoro did not use HIH as his analogy because it is in fact a little too close to home for the Howard government. The Howard government, as we have been saying, not only needs to lift its game in many ways but also needs to do more on the issue of corporate governance. As always, the Labor Party stands ready to assist in the development of good law that seeks to rein in the corporate excesses seen only too regularly at the big end of town.

On behalf of my colleagues, Senator Conroy has had a number of private member’s bills to assist this government to ensure that corporate collapses could be checked and corporate greed could be reined in. But Senator Santoro did not talk about that and now Senator Santoro has accused the Beattie government of poor service delivery and, in the Queensland state budget, of robbing Peter to pay Paul. This statement by the senator is a stunning masterpiece of hypocrisy, coming from a member of the highest-taxing government in Australian history. Each Australian household pays an average of $4,724 more in income tax today than when Mr Howard and Mr Costello were first elected. This is of course on top of the GST burden which, I am sure we all remember, was supposed to allow a reduction in personal income tax levels.

What is more, the Howard government is a government that does rob Peter but it pays no-one. Despite having this high tax regime, there has been little or no improvement in the delivery of services provided to the Australian people. Families are now paying far more for health than ever before. Bulk-billing has now dropped to a new low of 68 per cent—a fall of more than 12 per cent since the Howard government came to office. The cost of this attack on bulk-billing and Medicare by the Howard government on Australian families is a staggering $123 million a year. Families are now paying far more for higher education. The Howard government has massively increased HECS fees. This has resulted in Australian families paying $900 million more this year towards higher education than in 1996. These are the figures that Senator Santoro should have been talking about. The Howard government was not content with just raising the cost of higher education; they then went about slashing places at Australian universities. In Queensland, it has been estimated that there will be a loss of some 2,000 places by 2005. This is despite Australian Bureau of Statistics predictions that the Queensland population will rise by 6.1 per cent. The people of Queensland need more places made available for universities not fewer.

Disability services are another shameful area of neglect by the Howard government and its Minister for Family and Community Services, Senator Vanstone. All of us with electorate offices in the community know that there are rising levels of unmet need in the disability area in the community, yet the Howard government has done little to help these people and their families. The last Commonwealth, state and territory disability agreement offered a mean $125 million allocated over five years, with just $15 million being made available in the first year. However, this funding has not yet been released,
as Senator Vanstone appears to be content to hold a Mexican stand-off with the states and territories. Given the Howard government’s track record of funds raiding, high taxation and poor service delivery, I would have thought that the last thing any member of that government would do is pass comment on a state budget, let alone a budget that has been described as responsible and which has reduced its deficit by half—that is, the Queensland state government budget, not the Commonwealth budget.

However, as I said earlier, I think Senator Santoro is a little off his game due to problems with his state coalition colleagues. In stark contrast with the Howard government, the Beattie government has delivered a budget for Queensland that maintains its low tax status, making it the economic engine room of Australia while still delivering improved services. It was a budget that recognised the need for good universal health services—unlike the Howard government—and as such delivered a record $4.6 billion for Queensland Health. This massive injection of funds will see Queensland Disability Services gain $290.5 million to expand its operations. It will also provide 300 new mental health worker positions and open new services in Redcliffe, Maryborough, Redlands and Robina. Cancer treatment services are also being improved with $25 million being injected into the radiation oncology services plan and the establishment of a new $8 million radiotherapy unit at the Princess Alexandra Hospital.

The Beattie government budget, unlike the Howard and Costello budget, recognises the importance of high-quality education services for all people in our community. In doing so, it has provided funds for an extra 636 teachers and $12 million in new funding, specifically targeted to support Queensland students with disabilities. Another $16.7 million was provided for airconditioning at 99 of Queensland’s hottest schools and $67 million, an increase of $35.6 million in ongoing funds, to increase computers and Internet connections in Queensland schools. The budget also provided increased funding for infrastructure development and improved technologies and increased funding for family services—an area of Queensland service delivery sadly neglected by a series of coalition governments—while maintaining Queensland’s low tax and high growth status.

So my best advice to Senator Santoro, though needless to say it will not be taken, is to settle down in his criticism of the Queensland state government. The coalition for their part can be encouraged, perhaps on the quiet, to do the work rather than allow him to do the work. After all, Queensland is in good hands and I trust the Beattie Labor government will continue to deliver.

Environment: Renewable Energy

Senator HUMPHRIES (Australian Capital Territory) (1.11 p.m.)—I rise in this matter of public interest debate to contribute on a rather less ephemeral matter perhaps than that raised by Senator Ludwig. I want to address the issue of how Australia confronts the challenge of switching to a sustainable energy regime and adopting renewable energy sources for our needs as a community into the future. There has been, and continues to be, fierce debate about the danger that global warming and the greenhouse effect presents to our way of life. Just last week researchers at Bristol University in the United Kingdom compared the predicted rise in global temperatures for the next century with a similar rise in temperatures some 250 million years ago, which resulted—it is believed—in the extinction of 90 per cent of the world’s species. UN climate forecasters have predicted a rise of similar proportions in world temperatures over the next 100 years.
We can all choose how we might react to such apocalyptic forecasts. What we cannot afford to do is relegate the debate about environmental change from the national agenda.

Last month I met with the Canberra arm of Climate Action Network Australia, which is a group committed to tackling climate change by reducing greenhouse gas emissions in this and other communities around Australia. Their warnings on greenhouse pollution concur with that of many other environmental groups: that a failure to act will have long-term and disastrous impacts on our environment. A failure to act could see food and water supplies disrupted and many coastal areas flooded. They also predict that weather events such as cyclones will become more severe and that new health threats will emerge as a result. Although the rate of change in the atmosphere’s composition has been greater in the last 100 years than for tens of thousands of years previously, I am aware that the jury is, in some ways, still out on whether this is due to human impact. Nevertheless, I take the view that it is better to be safe than sorry on an issue of such magnitude.

However, we have options that could render this debate obsolete. Despite the heavy use of fossil fuels by Australians, especially in their cars, there are exciting possibilities in the field of renewable energy. Indeed, the coalition government is committed to assisting renewable energy projects through its five-year Renewable Energy Commercialisation Program. This has made over $50 million available to foster the renewable energy industry in this country. So far, 49 programs have been supported under this initiative, covering a range of renewable applications such as wind, solar thermal and solar photovoltaic, biomass, wave energy, hot dry rock and enabling technologies. There is an impressive array of energy options available to Australia. Additionally impressive is that these forms of energy produce little or negligible pollution. Whatever our stance on the global warming debate, there is no doubt that the health effects of pollution have been one of the major drawbacks of industrialisation. It would take a brave lobbyist to argue that there was no link between high levels of pollution and corresponding levels of respiratory illness.

The air quality in my electorate, the ACT, is relatively good because of the lack of heavy industry in or near the ACT. Obviously, then, one might expect low levels of carbon monoxide concentrations in the atmosphere. I am amazed, therefore, when the CSIRO releases studies showing that there are relatively high carbon monoxide particle concentrations in winter months in this city. Of course, this can be partly blamed on increased wood burning as a heating solution. But these studies have demonstrated that Canberra suffers from particle concentrations that can far exceed those found in larger industrial cities such as Sydney and Melbourne. This has been largely attributed to what are termed ‘overnight atmospheric temperature inversions’, which can trap emissions near the ground. Areas enclosed in valleys, such as the Tuggeranong district, are particularly susceptible to this. Canberra residents are very proud of their environment and, it is fair to say, this has been reflected in all administrations since the advent of self-government in 1989. For example, I was the environment minister in the mid-1990s when the ACT became the first state or territory to set its own greenhouse reduction targets. The ACT government committed to stabilising ACT emissions at 1990 levels by the year 2008, and it decided to reduce them by 20 per cent by 2018.

Setting targets, whether in reducing the use of certain fuels or in the take-up of alternatives, is a risky political strategy by those seeking to demonstrate their environmental
credentials. Cynically speaking, if you are going to have a target, I suppose you should fudge the measurement of whether you have achieved that target. That was the beauty of the promise made by former Prime Minister Bob Hawke in 1987 to plant a billion trees by the year 2000. No-one is really sure whether that objective was ever met. Nevertheless, this government has set a mandatory renewable energy target, or MRET, of 9½ thousand gigawatts from renewable sources by 2010. The crucial thing to remember here is that experts are closely monitoring Australia’s take-up of renewable energy and will accurately and impartially report on whether we have achieved that stated aim. I am confident that we can.

Alongside the Renewable Energy Commercialisation Program that I have already spoken about, the MRET target provides an excellent framework for industry development in the renewable energy sector. That is why I will be vocal in my opposition to the possible scrapping of the MRET scheme, as proposed by the Parer review into energy industries. Some criticism has been levelled at the federal government that the MRET target is too low and will result in less than one per cent of power coming from renewable energy generation by 2010. I acknowledge those concerns. I suppose it is inevitable that there will always be some who want more ambitious targets than the ones that have been set. I believe that in some circumstances we have the ability to go much closer to achieving the international standard of about 10 per cent by 2010. Furthermore, I am confident that we will one day exceed those standards, although perhaps not by 2010.

Australia has massive renewable energy resources such as wind, solar and biomass. The technology to harness such power is reliable and increasingly affordable. There is also a developing global market for renewable energy. For example, it has been estimated that the market for wind power doubles every two years. I think wind power is a very attractive form of alternative energy. It is quiet, it has a negligible effect on wildlife and it takes only six months to pay back the energy used to build it. Furthermore, wind power creates jobs. It takes the equivalent of 11 people two years to make and install a wind turbine. I am determined that renewable energy in Australia is given preferential treatment by governments. In putting aside the level playing field argument, why should governments not intervene when the national interest is so clearly at stake?

The debate over preferential treatment for certain energy products reminds me that the federal government announced in the budget that an effective excise will be imposed on alternative fuels from 2008. However, I emphasise that this will not apply to renewable energy, but rather to non-renewable petroleum substitutes, such as LPG, and progressively. The LPG industry is understandably concerned about this announcement, but I support the announcement for two reasons. Firstly, there is the cost in forgone revenue of keeping LPG excise free. The total value of excise exemptions for petroleum product substitutes over the period 1994-95 to 2004-05 is estimated at about $8.7 billion of forgone revenue. That is an annual cost of about $1.2 billion by 2004, which is a very large amount of money. Secondly, despite favourable taxation treatment, the take-up of non-petroleum alternatives has not been impressive and their environmental benefits have reduced relative to petroleum as a result of technology and government imposed standards. The Australian Trucking Association have expressed to me their concerns about the transition period leading to the new excise regime. I acknowledge those concerns and I have some sympathy for their position, but I believe that the ultimate objective of
reducing reliance on non-renewable energy is simply unarguable.

Australia’s economy is largely dependent on its abundant supply of natural resources, and, per head, we are more dependent on fossil fuels than many other countries. However, I am confident that we can meet our future energy needs in a sustainable way. We clearly have the technology and the brains to make sure Australia gets a foothold in the growing renewable energy industry. What we need now is a strengthening of the framework already put in place by this government. That would be a visionary step indeed. Naturally, some vested interests will resist this, but markets have long shown they can adapt and thrive when change is forced upon them. I am sure the energy sector in this country will be no different.

**Health: Suicide Prevention**

**Senator McGauran** (Victoria) (1.23 p.m.)—Some two weeks ago, Suicide Prevention Australia held its 10th annual conference in Brisbane. It was opened by the Minister for Health and Ageing, Senator Patterson. I attended the conference myself, and I would like to spend some time on this matter in regard to the rural sector.

We all know the heartbreak and trauma that a road fatality brings to the family and local community, particularly when it is the loss of a young life. So often a rural community will feel the effects more, because everyone will know the family involved. Yet exceeding this toll and bringing equal grief to families and communities is the suicide rate. The statistics are quite stark, and we need to know them so that we may never rest against this social tragedy.

The suicide totals in Australia for the last decade have far outstripped the total road fatalities. In 2001 alone, road fatalities in Victoria—my state—totalled 444, and the Victorian suicide total was 541. The sad fact is that, despite the many endowments this country has, Australia has one of the highest suicide levels. I bring the Senate’s attention to the good work of Suicide Prevention Australia and the annual conference held in Brisbane the week before last.

**Telstra: Privatisation**

**Senator Mackay** (Tasmania) (1.24 p.m.)—Seven months after Mr Estens handed down his report and after much wrangling in cabinet, the Minister for Communications, Information Technology and the Arts has finally come forward with his response to the Estens inquiry. The ever-opportunistic Minister Alston is using this response as a green light to bring forward his long-awaited legislation for the full privatisation of Telstra. We on this side of the chamber know that the Estens inquiry was a whitewash stacked with members of the National Party. The Estens inquiry did not hold any public hearings; it was too afraid of what it would hear.

After much talking up by Minister Alston of the need for ‘future-proofing’ of telecommunications services in regional areas to ensure that these services keep within reasonable levels of those in metropolitan areas in the future, I must say we were expecting something more substantial to come from the minister. Instead, all we are getting is a $181 million package to cover a whole list of improvements. That amount is just a drop in the ocean compared to what is needed to ensure that communications services are all that they could and should be and that the benefit of future developments in telecommunications technology is shared with regional Australia and not simply with the more profitable capital cities.

The National Party is staking its entire credibility and reputation as a voice in Canberra for the regions on this $181 million package. Just this morning in his press con-
ference, the Deputy Prime Minister, Mr Anderson, said that the test for the future-proofing would come in five, 10 or 15 years time. All I can say to Minister Anderson and the National Party members is: you will not have to wait that long to know if this so-called future-proofing will work. You know now that this $181 million package is not going to deliver that.

Compared to the $30 billion that the government anticipates reaping from the full privatisation, the $181 million future-proofing package is a joke. As someone who lives in regional Australia, in Tasmania, I know that it is going to cost a lot more than this to fix up services just so that, in terms of basic telephone reliability, services are up to scratch. As it stands at the moment, this is simply not the case. Those services are not up to scratch, and the paltry sum of $181 million is not going to do much to change that.

Members of the Senate committee inquiry into the Australian telecommunications network have heard first-hand about the many problems that currently exist in the network. These problems are the result of underinvestment by Telstra in network maintenance and repair and the savage job cuts that Telstra has been relentlessly pursuing in an attempt to generate revenue growth and to get the share price up. I will have more to say about that a bit later if I have time.

The existing problems in the network are not trivial. They are huge problems with the infrastructure that are going to cost hundreds of millions of dollars over many years to fix. These problems with the network are the first obstacle to one of the key requirements of all customers: a reliable telephone service. Despite all this government’s rhetoric, customers do not have this yet. Their telephone service is still the victim of heavy rainfall, lightning storms, inferior pair gains technology, faulty cables that need to be propped up with gas bottles, and cables badly corroded by Telstra’s failed ‘seal the CAN’ program.

The government allows Telstra to evade its customer service guarantee obligations through the huge loophole otherwise known as the mass service disruption notice regime. Not many people in Australia know much about the customer service guarantee, and they know even less about the mass service disruption notice regime. In the Senate telecommunications inquiry we know this is the case because we have seen the complaints that have come to the Telecommunications Industry Ombudsman about the flawed regulatory process. What happens is that when customers do not get their phones fixed or new services installed within the prescribed time lines, they eventually find out in the majority of cases that they are not entitled to compensation that they thought they would be under the customer service guarantee, because Telstra has declared a mass service disruption. This has happened, as far as I am aware, to 18,672 customers so far in this year alone.

The mass service disruption notice system gives Telstra a huge loophole to escape from the provisions of the customer service guarantee. There are very few checks on this. The Australian Communications Authority acknowledged as much to the Senate telecommunications network inquiry in November last year. Their embarrassment over this flawed regime has now led to them calling an audit of the system. We congratulate them for that, because it highlights the fact that the customer service guarantee is not what the minister for communications pretends it is; it is actually a joke.

Full privatisation of Telstra will be a disaster for telecommunications services in Australia. Telstra will be a huge private monopoly that the government will struggle to
regulate. It struggles now, even with 51 per cent ownership. With a fully privatised Telstra there will be no scrutiny by the Senate in any Senate inquiries or any Senate estimates hearings. I am sure Telstra and the government will be happy with that, but the people of Australia and the Senate will not be. The corporate veil will go up, and the Australian people will have no capacity to look into whether Telstra was delivering the social dividend that it would be if it were still accountable to the government.

At present, Telstra is engaged in savage job cuts in order to help get the Telstra share price up to a level that will give the green light for the Howard government to flog the rest of Telstra off. In 2002 Telstra employed 44,977 full-time staff or equivalents. In 2003 Telstra expects that figure to be around 42,000. This means that around 2,800 communications technicians have lost their jobs in the past year, with another 3,000 job cuts to come in the coming financial year. Given that each technician does about four fault repairs or new service installation jobs each working day, these job cuts will mean that there are 12,000 fewer faults and installations being attended to each day across Australia by Telstra customer field staff, 60,000 fewer each week, more than three million fewer each year and, by the end of June next year, six million fewer. Telstra and the government cannot claim to be able to provide decent telecommunications services to Australians while it massively slashes staff like this. It just does not add up.

Telstra continues to slash jobs despite the fact that Telstra workers can barely keep up with the regular day-to-day repair and installation work. Only the highest priority maintenance work is being done—not the run-of-the-mill maintenance work. Indeed, Telstra’s maintenance work, which is recorded in its customer network improvement database—somewhat Orwellianly titled, I believe—was completely glossed over in the Estens report. It was barely considered. This is the database that talks about faults that are reported by technicians. It was not even considered by the Estens inquiry. We are talking about more than 110,000 maintenance tasks, most of which will never be done and thousands of which are customer service affecting. I remind the Senate we are currently in the middle of the inquest into the death of Sam Boulding. Yet even this highly prioritised level of work could not be achieved without a heavy reliance on extraordinary amounts of overtime and, increasingly, the outsourced labour hire force. As these job cuts relentlessly continue, Telstra will soon become wholly dependent on contractors and subcontractors to operate.

Telstra is putting enormous pressure on its work force to increase performance, benchmarked against the productivity of contractors. At a Senate estimates hearing recently, Telstra said it is measuring employees against their quality of work, the amount of work they do each day, how often they are available and the tickets of work they perform. The evidence points to the quality of work being the lesser of these considerations. This is a factor that will eventually cause more problems in the future as repeat repairs become the order of the day. During recent questioning on three occasions at Senate estimates hearings and at the telecommunications inquiry, Telstra has been desperate to avoid putting exact figures on job cuts and capital expenditure cuts. As a result, Telstra has been coming under scrutiny in the media for its obfuscation and contradictions. They are clearly desperate to avoid the bad publicity that these job cuts generate because they know that customers are not happy with their service levels.

Where have the government been during all of this? They have been keeping an extraordinarily low profile. Government minis-
ters have been very low key, to say the least, in their responses to job cuts. This is not surprising given that their clear interest is in seeing Telstra share prices go up to a level that makes their ultimate goal of full privatisation of Telstra viable. Even the normally combative minister for communications, Senator Alston, was unusually reluctant to defend these new job cuts, with only a spokesperson commenting in the media on the need for Telstra to keep customers happy and meet the current standards set for phone repairs. Apart from that, it was hands off—not my problem; I’m just the minister. The federal Treasurer, Peter Costello, was surprisingly unable to make a connection between Telstra work force cuts and telephone service levels, which is a critical point. He has already forgotten that the government cannot get its hands on the bucket of money from the full privatisation of Telstra without improved services first. He was unable to even make that fairly obvious nexus.

According to media reports that followed the first announcement of these job cuts in the Senate inquiry, all Mr Costello could say was: ‘It is important to keep the economy going.’ I think he said something about feeling sorry for the workers or something—I do not really believe that. Even market analysts quoted in the Financial Review on 21 May who do not normally share Labor’s point of view on Telstra job cuts have questioned Telstra’s ability to make more mass job cuts, saying:

“Telstra is now at industry best practice—15 percent labour costs to sales—so you could argue the easy [labour cost] gains have already been made.”

These are the analysts saying this, not the Labor Party. In that same article, analysts also said that Telstra has to be wary of damaging its business by pursuing these job cuts because they will lead to problems down the track. This all accords with the alarming evidence we have heard in the course of the Senate telecommunications inquiry into the state of the network.

When challenged about these job cuts, Telstra have disingenuously said to Senators and have repeated in the media that they do not operate to a headcount. However, this does not stop them reaching their target redundancy figures. In the days following Senate estimates hearings, Telstra held meetings with the CPEU in all capital cities and announced cuts to their metropolitan customer field network. When Telstra were asked on 27 May during Senate estimates—prior to the meetings—about their rumoured plans to cut two to three people in each team leader group, which is what we had been advised was going to happen, Telstra denied this was the case. I quote:

Senator Mackay—So the allegation that the team leaders had been told that they are to try—these are not my words—to get to rid of two to three people in every work gang’ is not right.

Mr Rix—That is incorrect.

Okay, so we move on. That is fine. Yet this is exactly what took place in the weeks afterwards—after the Senate estimates so they could avoid scrutiny.

Telstra does not make ‘headcount announcements’ regarding job cuts because of the negative public reaction. The last one of these was in March 2000, when Dr Zwitkowski said 10,000 jobs were to go by June 2002—and didn’t that get a run! At Senate estimates, they said that there had been a reduction of 9,353 in the period from March 2000 to April 2003. It was a reduction of 11,423 excluding NDC. Telstra is very concerned about the negative publicity these job cuts generate, which is why it is critically important for senators and members of the House of Representatives to draw attention to these job cuts, particularly in rural and regional areas, where the political sensitivity is greatest. I ask anybody listening to get
onto their local member of parliament and express their concern directly about what is happening with the job cuts, which will be exacerbated if the government proceeds with the full privatisation of Telstra.

The critical point about these Telstra job cuts is that they are essentially all about preparing Telstra for full privatisation and not about delivering the best outcomes for customers. We, the Labor Party, remain absolutely committed to Telstra remaining in majority public ownership. We, the Labor Party, believe that there is no way that a fully privatised Telstra would be able to provide the services that currently exist, paltry as they are—and getting more paltry, might I say. A privately owned Telstra would be a giant private monopoly, too powerful for any government to effectively regulate. Telstra would focus on the more lucrative markets in the bigger cities and neglect the interests of lower income and regional Australians, just like the banks have done. And, just like the banks, there would be nothing that the Howard government would do or would want to do to stop them.

Environment: Murray-Darling River System

Senator LEES (1.39 p.m.)—I rise today to speak as a senator from South Australia on a matter of grave public importance. I do not overstate the case when I say that the state of the Murray-Darling Basin is a national emergency. We are the people with the capacity to act on this matter, and it is up to us in this federal parliament to act now. Yesterday I asked the minister why well over $1 billion of funds allocated to the National Action Plan for Salinity and Water Quality sit idle in the kitty. The plan has already identified and prioritised a raft of different, urgent actions up and down the river. In particular, I note a raft of infrastructure upgrades along the Murray. My question is this: why are we not starting to invest significant amounts of this money now? In the face of a national emergency, what could possibly prevent state and federal governments from getting on with the job? The federal parliament must insist on immediate action; we must insist that there are no more delays, no more excuses.

I read the government’s comments this morning regarding the sale of Telstra. My question is: why would we consider the sale of Telstra for an environmental outcome when we still have over $1 billion sitting there, year after year, in the kitty? I am a senator from South Australia and we South Australians, as you know, live at the end of the Murray. Water restrictions have been forced on us, at last, and it would be irresponsible of me not to weigh up Telstra versus the restoration of the Murray-Darling Basin without subjecting the issue to rigorous cross-examination. But, if the government thinks that it will secure the sale of Telstra and simply use the funds to retire debt, it needs to think again. If the government thinks that it will be able to leave billions of dollars swishing around in a drawer somewhere while Australia’s water supply dries up for want of action and expenditure, then it underestimates the Australian people.

Australians know that the real debt in this country is environmental, not fiscal. Australia has one of the lowest levels of public sector debt in the OECD. When I look at any issue, I consider the environmental, social and economic imperatives. Environmentally, the issue is clear, most particularly in my home state of South Australia. Socially, we have got the Estens report and we have got the government’s response to the Estens report; now let us see the action on the ground. Let us see all those recommendations result in improved services and then let us consult with the community as to what they think about the standard of service across rural and
regional Australia in an open, public and frank manner.

Economically, we are still waiting for an unbiased, nonpoliticised and rigorous analysis of what it would mean if we split Telstra, sold the retail arms and maintained the infrastructure in public ownership. In the face of this national emergency and the government’s declaration that it will introduce legislation this week to sell the remainder of Telstra, I call for this analysis to be done. But if you think that, as a South Australian senator, I am going to sit idly by and watch my state die of thirst on the basis of an ideological position about a telecommunications company without exploring every aspect of the debate, then you underestimate me. The issue of the sale of Telstra versus the restoration of Australia’s river systems and catchment areas is one all Australians need to consider. I therefore suggest that taking the issue to a federal election is the appropriate and honest way to approach the matter.

But, back to the river. We know that these problems have been caused by excessive land clearing and overuse of water. Simply put, the solutions lie in reversing both the land clearing and the excessive water use. The closure of the Murray mouth is a daily reminder of the extent of the problem. The rising salinity levels in the lower lakes are a daily reminder of the extent of the problem. Indeed, these lakes are now so saline they cannot be used, even for agricultural purposes, and the water level of the lakes is lower than the sea level on the other side of the barrages. It is now a case of using less water, doing more with every drop, and finding and spending billions of dollars to repair the damage we have already done. It is now time for a cultural change across the basin—indeed, across Australia.

The water reform process is difficult, complex and expensive. No-one suggests otherwise. Some of the issues have already been identified and publicly debated across the nation. These include: the impact on the economic viability of local communities, and on the social fabric of local communities, when water is restricted to irrigators; how to get the states and Commonwealth to agree, to act, to work together and to share power; the need for more time for consultation and negotiation on environmental flows while at the same time actually getting on with the process of finding the money and starting to spend what we need on the rivers; and the need to establish the capacity of each catchment and then establish property right regimes that give irrigators and communities secure access to water resources, at the same time leaving in the river and the basin as a whole sufficient water to ensure we have the flows we need to keep the river healthy. Finally, there is an urgent need to ensure that no new irrigation areas are opened up while the river system is in crisis. The expansion of irrigation in the Clare Valley, for instance, should not be allowed to continue.

I stress that water is needed for the smaller towns in the Clare Valley. Their groundwater supplies are either heavily polluted or indeed have dried up thanks to the extensive level of irrigation already happening. But there is no ‘spare’ water in the river, as SA Water likes to claim. There is no spare water to be sold into the Clare Valley for irrigation. On a slight tangent, the other issue about this water that they are going to be pumping into the Clare Valley is its salinity level. There is growing unease within the valley about salinity problems that are there already but particular unease across the valley about the rising levels and the impact of importing more salt.

As I have already discussed, the issue of salinity is one that must be considered for each and every application of irrigation water. I stress: water ‘saved’ must be left in the
rivers. It is funds such as the National Action Plan for Salinity and Water Quality that should be used to fund the upgrades. We need cultural change. A good example of the desperate need for cultural change is in South Australia where SA Water has control over the distribution of water from the Murray River. SA Water sees water as a resource for development for the generation of income. SA Water is a public corporation and this is what it is told it has to do:

... must perform its commercial operations in accordance with prudent commercial principles and use its best endeavours to achieve a level of profit consistent with its functions.

SA Water basically sees profit as its primary objective. It has contributed around $204 million this year to the SA government’s bottom line, thereby ensuring a healthy budget surplus—that was the way it was described by the Rann government. There is nothing in SA Water’s corporate objectives, vision or values to indicate that it has a brief to ensure the sustainable use of River Murray water in South Australia. Instead it strives to achieve a successful business performance through promoting the increased use of water by consumers at a time when South Australia should be finding ways to cut its dependence on the river long term and permanently.

Next year SA Water has set around $220 million as its profit target. No wonder SA Water is actively out in the Clare Valley knocking on doors, asking people to buy their so-called surplus water, suggesting where new vines can be planted and telling local communities that they cannot have their domestic supplies because it is uneconomic. Those local communities have been told that they have to go out and find other places to take the water, and encourage local irrigators and local vineyards to take more water so that their communities can get the basic supply that they need—in other words, it is getting the communities to help drive sales for it. The Clare Valley pipeline will be able to carry 7.3 gigalitres, not the two gigalitres needed for domestic supply. I watched the pipes being laid a couple of weeks ago. They are so large a child could run up and down in them—much larger than what is needed for domestic supply. This is all about profit at the expense of the future. We have to change this mind-set.

Just one other example of the problems with the culture within SA Water and with their charter is that they cannot make money from recycling stormwater so they do virtually nothing about it. They will not encourage and support people who do want to actively engage in recycling. But local councils such as Salisbury Council are collecting, recycling and reusing stormwater and I congratulate them and Mitchell, the wool producers, who through their joint project at Salisbury have reduced Adelaide’s daily water consumption by around 10 per cent. In the driest state in the driest continent on earth, why is SA Water not encouraging more of this? Why is it not enthusiastic and out promoting other projects such as this?

Why is this not happening? The SA government’s approach to water management seems to be confined to photo opportunities for the Premier and, at last, long-awaited restrictions. The impact of those will not be major but at least South Australia is doing what virtually everywhere else in the basin and the Eastern states has done, and that is put on water restrictions. We also have a levy that has been put in place. Unfortunately, instead of directing the water levy to water use and instead of collecting this levy through additional charges for excess water, it is a flat levy across all households. Everyone, regardless of whether they have rainwater tanks or whether they are trying to minimise use or not, will pay the same amount. This is again another example of
There is a need for cultural change in the way water authorities and governments at all levels respond. Old attitudes have not worked; they do not work now and they certainly will not work in the future. I believe the people of South Australia are changing their approach to water use much faster than governments. I believe many businesses in South Australia—here I include Mitchell and Coopers Brewery—are well ahead of state or federal governments in their attitude to water use. There is a need for tough decisions, urgent expenditure and leadership. It is decision time. Political leadership is about being able to make the big decisions for Australia’s long-term future—decisions that challenge the thinking and the ingrained habits of a lifetime. The time to act is now.

Sitting suspended from 1.51 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Medicare: Bulk-Billing

Senator CROSSIN (2.00 p.m.)—My question is to the Minister for Health and Ageing. Can the minister inform the Senate of the current national rate of bulk-billing by GPs? Is it true that the rate of GP bulk-billing has fallen significantly since the Howard government came to office but has dropped even more dramatically since this minister took over the health portfolio 18 months ago? Can the minister explain why the rate of bulk-billing by GPs has fallen so much since she became the minister?

Senator PATTERSON—As I said yesterday, and have said continually, the Labor Party are totally fixated on bulk-billing—absolutely and totally fixated. That is the only path they can think about. They do not talk about outcomes or access and equity; they are focused on bulk-billing. They are so focused on bulk-billing that they are prepared to treat people in different parts of Australia differently—as second-class citizens if they live in a rural area—because they think it is okay to have bulk-billing rates of 70 per cent in a rural area and 80 per cent in the city. That is how much they care about bulk-billing.

The Labor Party never mention access. When we came into government we inherited an absolute mal-distribution of general practitioners—far too many in the cities, far too few in the outer metropolitan areas and far too few in rural areas. Since we came into government we have seen a 4.7 per cent increase in doctors in rural areas in the last 12 months—4.7 per cent in estimated full-time doctors. This is the first time we have seen a turnaround. They did not care that people in rural areas did not have doctors, because they do not have anybody representing rural areas. They did not give tuppence that there were people in rural areas who could not get access to a doctor.

We have put $562 million—over half a billion dollars—into getting doctors into rural areas, increasing the number of doctors in rural areas by giving them retention payments, increasing the number of doctors in rural areas by giving them scholarships and increasing the number of doctors in rural areas by giving them an incentive if they do their GP training in rural areas. But all those opposite care about is bulk-billing rates. Behind those bulk-billing rates are hidden gross inequities of people on health care cards who have never seen a bulk-billing doctor, who are never likely, if those opposite were in government, to see a bulk-billing doctor. We have said that access is an important thing. People want to be able to see a doctor, and the more doctors you have in an area the more likely you are to have bulk-billing.

We inherited an appalling mal-distribution of general practitioners. As I have said be-
fore, you can go down to Hawthorn and within walking distance of my home you will most probably find 20 or 25 doctors. People in rural areas do not have that access to doctors. I can get bulk-billing anywhere within walking distance of my home. There are people who cannot get bulk-billing doctors within miles of their homes in country areas, because Labor left us with a mal-distribution of general practitioners. Nor do Labor care about the fact that in outer metropolitan areas we do not have enough general practitioners. We have put $80 million into getting doctors into outer metropolitan areas. Access is very important. People want access to a general practitioner. Whether they bulk-bill or not, people do not care. We have put $80 million into the outer metropolitan program. We now have 75 doctors who have committed to moving into outer metropolitan areas.

Senator Crossin—Mr President, I rise on a point of order. My question was specifically about the decline in bulk-billing by GPs, not about the number of doctors who are in remote Australia. I ask you to suggest that the minister answer the question that I have asked.

The PRESIDENT—I cannot direct the minister on how she should answer the question. She still has a minute to go and I am sure she is doing the best she can to answer the question.

Senator PATTERSON—Senator Crossin reinforces what I have just said: all they care about, on the other side, is bulk-billing and bulk-billing rates—headland rates—and also that you can have a 70 per cent bulk-billing rate in rural areas. That is their goal, but they will not achieve it, because there is no way they would guarantee it. There is nothing in place to leverage the doctors to have a bulk-billing rate of 70 per cent in the country and 80 per cent in the cities. So they would treat people in rural areas as second-class citizens. They are only focused on bulk-billing rates, not access, not on people being able to go to a general practitioner.

Senator Crossin says, ‘I am not talking about the number of doctors.’ Well, I am, because it is very important. The Labor Party did not care about it. They did not give a damn about the number of doctors, where they were located and whether people had access to them. The issue is that people, first and foremost, require access to a doctor. We are putting in place incentives to encourage doctors to bulk-bill—particularly those people on health care cards, particularly those people in rural areas who have never seen a bulk-billing doctor—and to ensure that those people who are the poorest and sickest in our community, particularly—(Time expired)

Senator CROSSIN—Mr President, I ask a supplementary question. Given that the minister has monumentally failed to answer my first question, I ask: given that the national rate of GP bulk-billing has dropped by 6.7 per cent in the short time that she has been the minister, does the minister accept any responsibility at all for this decline in bulk-billing and the withdrawal of access for many Australian families? Is the minister concerned that, after she has gone, she will only be remembered as the minister responsible for the disappearance of bulk-billing?

Senator PATTERSON—I would have thought that Senator Crossin might have had a more sensible question. Let me just say that the Labor Party had a monumental failure in addressing the issue of location of doctors and access to them, which is of absolutely vital importance. They will never talk about that; they will never admit that. Almost seven out of 10 visits to a GP are now bulk-billed. Almost eight out of 10 visits to a GP by people over 65-years old are bulk-billed. The issue is that there are many people on very low incomes who do not have access to
a bulk-billing doctor. We are hoping to put in place, if the other side agree, a package which has as one of its planks increasing the likelihood that people on a health care card are bulk-billed, particularly those in areas of particular need in rural and remote areas. This is a package that addresses equity and fairness. It is not about some headland figure of bulk-billing.

DISTINGUISHED VISITORS

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

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Telecommunications: Services

Senator McGauran (2.08 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. How does the government’s response to the regional telecommunications inquiry enhance its existing commitment to more competition and better telecommunications? Is the minister aware of any alternative policies in this important area?

Senator ALSTON—I am delighted to take a question from Senator McGauran, because he understands the challenges in regional Australia and he knows that they were totally neglected for 13 years. You couldn’t care less, Labor, could you? There are no trade union branches out there so you were not interested. There were no votes to be gained so you couldn’t care less—that was the attitude. What Senator McGauran is wanting me to draw attention to, and therefore I will, is the fact that we are responding positively to each of the 39 recommendations from the Estens report. That gives us the tick in terms of adequacy of services. More importantly, it gives the bush another $180 million over four years to address a number of very important issues, particularly in the area of future-proofing, so that we will be able to ensure that people wherever they are located have access to the latest in broadband technology.

Senator Carr interjecting—

Senator ALSTON—Oh, well. It looks as though the Victorian division is at war again over there. Senator Conroy has his head down. I can understand why. Don’t let him walk over you. I’ve told you.

The PRESIDENT—Minister, ignore the interjections and address your remarks through the chair.

Senator ALSTON—On the one hand you had all those problems of plain old telephone service in which Labor were not interested in the slightest. We brought in consumer guarantees; we brought in a network reliability framework. Labor opposed everything—the ‘just say no’ party. It is not a tenable position. You have had seven years to get it right. You cannot go on just saying no—but you seem to. You have opposed all these things for the bush: in excess of a billion dollars over five years for communications and IT services, overwhelmingly in regional and rural Australia. Labor have just said no every time. They are not interested. They bagged Networking the Nation and wanted to claw the money back in and spend it on other things.

So Estens gives you a comprehensive blueprint for upgrading, not just plain old telephone service—Besley dealt with mobiles, now we have the broadband response. It is a response to the Broadband Advisory
Group for which I know Senator Lundy has been hanging out for several months. So here it is: about $150 million-odd for broadband alone, Senator Lundy, a new higher bandwidth incentive scheme—just what the doctor ordered, just what the bush wants—and health and education infrastructure. It is all there. This is a very significant report and it clears the way for us to honour our election promises. Senator Minchin will be going through in some detail and with his usual skill all of the problems that Labor have caused by keeping us in the untenable position of being in a situation of absolute conflict of interest.

The fact is, of course, that Labor has more form on privatisation than Phar Lap ever had. At every opportunity these people have wanted to privatise Telstra, they just have not had the political will. Do you remember the 2001 election when Mr Beazley got caught out during the campaign? He had to come clean about how Mr Prescott and Mr Keating had discussed hiving off Telstra. Do you remember the discussion paper that Lindsay Tanner put out about selling off parts of it? Do you remember Mr Keating was always keen to get rid of Yellow Pages, mobiles and almost everything else? Anything that moved under Labor was privatised. There was hardly anything left when we got here. And of course they still go on with this fiction that they would not do it. What did Cheryl Kernot say? ‘I am not worried about Labor in opposition on the privatisation of Telstra. I am much more worried about Labor in government.’ She was dead right, because all they are doing is just saying no in the lead-up to the next election. Then who knows what might happen? We might have a Damascus conversion. Well, Mr President, we will not stand for it and the Australian public will not stand for it. What the Australian public do want is good public policy, and they are getting it in spades with our response to Estens. *(Time expired)*

**Medicare: Bulk-Billing**

**Senator JACINTA COLLINS** *(2.12 p.m.)*—My question is to Senator Patterson, the Minister for Health and Ageing. Is the minister aware that, in her own state of Victoria, Australians who cannot afford to see a GP are instead going to public hospitals for treatment? In relation to a recent case which received publicity in her home state, what does the minister say to the mother of three children in Shepparton, a rural area, who cannot afford the $160 it costs to see a GP when they all have the flu? Instead she waited until the problem was bad enough for her to attend the emergency department of a public hospital. Will the minister at least accept ministerial responsibility for these outcomes for her own constituents in rural areas flowing from the dramatic drop in GP bulk-billing rates on her watch as minister?

**Senator PATTERSON**—First of all, under the Labor Party, that person—and I will not ever take a story that anybody tells me from the other side as gospel, because you find out that it is not true—

**Senator Vanstone**—Beazley’s daughter!

**Senator PATTERSON**—Yes, like Beazley’s daughter—we have a story that, when you look into it, you find is not true. Anyway, for a family with three children—and we cannot ever tell doctors not to charge a gap, as Labor cannot—under the system we are proposing, if a doctor chooses to charge a gap, that parent would not have to pay the up-front fee for three children. Let me just say that most doctors do not charge an up-front fee. If the doctor charges a gap and the family comes in and they have three children who are sick, many doctors tell me that they might charge a gap for the first child but they would bulk-bill the second and third child. As I said yesterday, there are al-
most as many billing practices in GP land as there are GPs. Different doctors bill differently depending on the way they run their practice.

Under Labor, it would have been lucky if people in Shepparton had been able to see a doctor, because they had too few doctors in rural areas. We have spent $562 million—over half a million dollars—getting doctors into rural areas. We now have being developed in Shepparton a university based rural school of health. One of the great tributes to this government is the roll-out of the clinical schools of rural health and the university departments of rural health. We now have young medicos and allied health professionals in training in these facilities in rural areas, and Shepparton is one of those areas.

You are more likely to have doctors in Shepparton under us than you were ever likely to have under the Labor Party, because we have thought creatively, thought into the future and developed and built facilities in rural areas to encourage young people from rural areas to study and train. We have now got 25 per cent of the young people in medical schools from rural areas. When we came into government it was eight per cent. Those young people are more likely to go back to rural areas as GPs or as specialists. They are more likely to stay in rural areas if they do their training in rural areas and in Shepparton, which Senator Collins has just mentioned, we now have the University of Melbourne developing a facility to train medical professionals in rural areas. We are redressing the neglect of 13 years of Labor and encouraging doctors to go back into rural areas. They will have access to doctors in rural areas, unlike what existed when Labor was in government.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. How does the minister respond to another case, again involving constituents of hers, which is to do with the Melbourne parents of a child with a severe mental illness needing a GP in the middle of the night but not being able to afford the $140 that a locum asks, who have no alternative but to visit the emergency department? Will the minister finally take responsibility for these disastrous effects of her policy failures on bulk-billing and on her own constituents before she succumbs to the forthcoming reshuffle?

Senator Knowles—What a dill brain!
The PRESIDENT—I think you should withdraw that statement.

Senator Knowles—Really? Is that unparliamentary?
The PRESIDENT—Yes. Will you withdraw?

Senator Knowles—I will.

Senator PATTERTON—I hope Senator Collins wins the health portfolio, because I will enjoy having an argy-bargy across the chamber on health; it should be outstanding, because she obviously does not know anything about it.

Honourable senators interjecting—

Senator PATTERTON—I am hoping she gets health. I hope you get health, Jacinta, I really hope you do, because we will have some fun.

Honourable senators interjecting—
The PRESIDENT—Order! There is too much noise in the chamber on both sides of the house. I ask you to come to order. Senator Patterson, would you return to the question?

Senator PATTERTON—I will answer Senator Collins’s question when she can come into this chamber and demonstrate to me that there was not one person who did not pay a significant amount to see a locum when Labor was in government.
Telstra: Privatisation

Senator CHAPMAN (2.18 p.m.)—My question is directed to the Minister for Finance and Administration. Will the minister outline to the Senate the benefits of the government’s remaining share in Telstra being made available for all Australians to purchase and own directly?

Senator MINCHIN—I thank Senator Chapman for the question. Senator Alston and I announced today the government’s intention to introduce legislation this week to give effect to our long-standing policy to sell our remaining shares in Telstra. We are seeking the legislative authority to sell the rest of our shares at a time that will produce the best outcome for taxpayers. This is a long-standing policy and we have been very honest about it at elections, unlike the Labor Party, of course, which said one thing to the electors and then did another—to wit, its position on Qantas and the Commonwealth Bank. We have been very up-front with the Australian people about our position on Telstra.

Of course, the two Telstra sales that have occurred have been very beneficial. They have generated around $30 billion in proceeds. Twenty-seven and a half billion dollars has gone to debt reduction and about two and a half billion dollars has been invested in things like the Natural Heritage Trust. The important point about our decision to sell is that it is really now indefensible for the government to remain a 50.1 per cent shareholder in what is an otherwise privately owned company which is publicly listed in a global and highly competitive industry. This creates an enormous conflict of interest, with the government acting as both umpire and player in the very complex and sophisticated telecommunications industry.

It leaves taxpayers exposed to a very unnecessary risk. They have got their capital tied up in a publicly listed company in a very competitive worldwide industry. These taxpayers are conscripted; they have absolutely no say in the risk they are required to adopt as a result of the government owning half of the shares. It puts a very significant brake on Telstra’s ability to attract equity and compete in this global marketplace. Really, it is an embarrassment in this 21st century, free market, capitalist economy of ours—one of the most successful in the world—that the government still owns half of the biggest company in this country. All the Eastern bloc countries are privatising; we are still stuck with half of the biggest company in this country. The government is in the silly position of effectively having borrowed some $30 billion in order to own half of Australia’s biggest company.

I was asked whether there are any alternative policies. The regrettable answer is: who would know? You can say that about the alternative government on many issues. The Labor Party have said, up until now, that they are opposed to any further sale, in a sense ignoring the fact that half of the company has been sold and that it is a publicly listed company with 1.8 million independent shareholders. What does the Labor Party’s apparent position actually mean? Does it mean that their policy is to go on forever supporting half-ownership of this telecom company? Or is it that they support full government ownership and that in government they would actually renationalise this company, because that seems to be the gist of all their remarks about Telstra? Or does it mean that they are going to buy other telecommunications companies? There are a whole lot of other companies out there now. If they do want a government monopoly, then they have a lot of buying to do and a lot of borrowing to do it. They obviously do think that ownership is a necessary precondition for regulating telecommunications, and that is
simply and utterly untrue. You have all the requisite powers to regulate this industry; ownership is irrelevant to the point of regulation, and we should get out of this business.

This raises alarm bells about what sort of pressure a Labor government—committed to half-ownership, apparently—are going to put on the Telstra board to do all the things that they say it should do. What does that mean for the 1.8 million shareholders out there who have privately held shares? We have a longstanding policy that this company should be fully privatised. I think the test now is for the Labor Party to say whether it is their policy to continue to have this major Australian company, our biggest company, half-owned by the government and half-owned by shareholders. (Time expired)

Therapeutic Goods Administration

Senator FORSHAW (2.23 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. How does the minister respond to allegations made by a former employee of the Therapeutic Goods Administration on the ABC program Background Briefing last Sunday, 22 June? Is the minister concerned with the revelations made that auditors were moved from particular manufacturers after a phone call from the company to a senior TGA official, that after being notified of a proposed audit some companies would conduct a spring clean to ensure they passed, that some auditors were ‘incredibly soft, incredibly weak’; and that it was a standing joke within the TGA that auditors were allergic to fresh paint because they came across so much of its during audits? Given the minister’s clear responsibility for the operations of the TGA, what has she done to ensure that these allegations are properly investigated?

 Senator PATTERSON—These are allegations of a former employee of the TGA, and I think the fact that this person said the auditors are allergic to paint says something about the level of the allegations. I have seen the work that the TGA have undertaken in what has to be one of their most difficult situations, Pan Pharmaceuticals. Of course there will be some people who have left the employ of an organisation like the Therapeutic Goods Administration who may have grudges to bear, and some may have legitimate concerns. I will take the allegations as they are—merely allegations.

Although Trish Worth has the responsibility for the TGA and works with them very closely—I was in constant contact with her during that—I do not think we could have expected any more from those officers. They made an incredibly difficult call. As I have said, had they got it wrong, the world would have come down around their ears because of the millions of dollars that were involved. They actually had to be very sure that the decisions they were making were based on evidence. I think the fact that the company did not appeal that decision demonstrates that it knew it was not performing up to scratch. Pan Pharmaceuticals had been audited a significant number of times. There is a cost involved in auditing. We have risk assessment in terms of the TGA assessing various therapeutic goods. The highest risk products are audited more frequently. If I were to put my money on whom I would believe, I would most probably listen to an employee who had stuck with the TGA through thick and thin, through one of the most difficult times, more carefully than a former employee.

But, of course, we will investigate any allegations and we will follow them through. I want to say here that I have been very grateful for the enormous work that the Therapeutic Goods Administration and its employees have put in in dealing with what was a very difficult situation. I am sure that some people on the other side would not have had the gall
or the guts to actually make that call. It was a very difficult call. I find it a little disturbing and unfair that the opposition would besmirch the TGA in this way when they do not necessarily have absolute proof of those allegations—proof that those allegations are sustainable.

Senator FORSHAW—Mr President, I ask a supplementary question, and I note that the minister’s answer was a classic case of blaming the messenger and ignoring the message. How does the minister respond to a further claim made on that Background Briefing program by the former TGA employee who said:

If you took no action, you couldn’t make a mistake ... So sometimes it was better to do nothing and sign the papers.

As these allegations raise serious questions about the failure of the TGA with respect to Pan Pharmaceuticals, leading to the recent product recall—the biggest in the history of the world—why will the minister not agree to an independent public inquiry into the TGA to establish exactly what did happen?

Senator PATTERSON—As I said, allegations have been made and they will be investigated. I will not just take allegations made by a former employee as gospel. It is important to understand that, despite a claim they would not make a tough decision, the TGA made one of the toughest decisions in recalling products of Pan Pharmaceuticals. They had to get it right and they had to have sufficient evidence to warrant it. As I said, the fact that there was no appeal against that indicates that the TGA got it right.

Telstra: Privatisation

Senator CHERRY (2.28 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts. Does the minister agree that last week’s ACCC draft finding that Telstra’s wholesale connection charges should be cut by 10 per cent shows that Telstra has been able to use its market power to extract excessive prices? Does he agree that this decision highlights fundamental flaws in the competition regime because Telstra is in fact carving excessive profits from wholesale pricing? Why is the government contemplating the full sale of Telstra when there are such manifest failings in its competition regime?

Senator ALSTON—What the ACCC did was to release its draft benchmark prices—in other words, to provide the market with an indication of the prices that the ACCC itself would regard as reasonable if it were required to arbitrate. There is no one right price in this business. Particularly where it is a matter of commercial negotiation, prices can vary quite considerably and, as you would expect, often the agreed price is a compromise. The ACCC is giving its view of what it would be likely to do in the event of an arbitration. That does not highlight any fundamental flaws. In fact, all it does is provide clarity to the parties so that they are much better informed in advance of what might otherwise be long and protracted commercial negotiations. So it gives them real insight, it gives them a pretty fair indication of what the ACCC is likely to do, it makes the market function much more effectively as a result and it ensures that you get competitive outcomes.

Far from highlighting any problems that you think might exist in the regime, maybe you ought to spend a bit more time having a look around the world to see who you think is doing better on competition. You will find that we are light years ahead.

Senator Robert Ray—Will you put us up at the St Regis?

Senator ALSTON—I think that, wherever you went, it would not be far enough to get to the bottom of some of these challenges. Maybe Grenada or British Guiana
would be very useful places to start your study tour.

The PRESIDENT—Senator Alston, return to the question and ignore the interjections.

Senator ALSTON—It was a sly ball and I thought I could hit it out of the ground, but you get caught occasionally!

The PRESIDENT—Senator Alston, return to the question!

Senator ALSTON—The umpire says I am out, so I am out. I would suggest to Senator Cherry that he has a good hard look at how competition is operating in other countries. We have had full and open competition here since July 1997. We have about 89 carriers out there and about 600 ISPs. It is very difficult in other countries to get even the major players to function effectively, let alone to get competitive marketplaces. Some of the icons are almost underwater in debt. By comparison, Telstra is travelling very well and so is the competition regime.

Once again, Senator Cherry seems to think that he can conjure up a bunch of highly competitive and almost equal alternative players in a marketplace. It just does not work like that in the real world. We will continue to drive competition reforms that we have fine-tuned over the last six or seven years. The accounting separation regime is designed to introduce transparency so that people do understand how their negotiations ought to proceed. I think you would be much better off going back and having a good hard look at it, rather than trying to come up with one-liners.

Senator CHERRY—Mr President, I ask a supplementary question. I would refer the Minister for Communications, Information Technology and the Arts to the OECD communications outlook released last month, which showed that Australia has some of the highest telephone charges for its basket in the OECD and also that it is one of the few countries in the OECD with broadband caps. I have discussed that with the minister before. Isn’t the minister concerned that the ACCC has said that competition in Australia is delivering revenues to Telstra beyond what it should be getting, of around $200 million or $250 million per annum? What impact will it have on Telstra’s share price if in fact that arbitrated decision comes out of the ACCC?

Senator ALSTON—The market will respond to all changes in the regulatory environment and any changes in Telstra’s pricing pattern. Telstra’s prices have gone down about 25 per cent over recent years across the long-distance, local and international areas. The market takes that into account. They are more interested actually in whether Telstra is making a profit than in whether its price levels are at a particular point. The fact is that broadband caps are not the only choice you have. We believe in competition. If you do not like caps, you can go to alternative service providers. You seem to have this Labor Party mentality that you ought to regulate the entire regime. They have a ‘Get Telstra’ strategy—I do not know what you have. Presumably, you will decide on what price levels you think are fair and reasonable. There is no fundamental problem here. This is the market working effectively, supplemented by stimulus to competition that we will introduce when the need arises.

Therapeutic Goods Administration

Senator FORSHAW (2.33 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Is the minister aware of the Therapeutic Goods Administration statement, made at estimates, that it had audited Pan Pharmaceuticals on 21 occasions since 1986, with seven of those audits being unscheduled? Does the minister agree with the TGA claim that this is proof that
they were concerned about Pan Pharmaceuticals as a company as well as being a vigilant regulator? Can the minister confirm that no unscheduled audits had been conducted of Pan Pharmaceuticals between 1994 and January this year? Given the well-documented history of problems at Pan Pharmaceuticals, why is it that there were no unscheduled audits of Pan Pharmaceuticals after the coalition government came to office until earlier this year when a number of people became violently ill after taking the travel sickness medication travacalm?

Senator PATTERSON—The visits to Pan Pharmaceuticals were quite detailed. I do not have the document here. We went through them in estimates. I do not know whether Senator Forshaw was actually asking the questions.

Senator Forshaw—I was!

Senator PATTERSON—that is how impressive the questions were—I do not remember that he was there asking them. We went through those questions and he had the opportunity to go through every visit in detail and whether it was unscheduled or unscheduled. The TGA indicated the difficulties of having unscheduled visits, in the sense that they do not have material prepared for them, but I cannot remember the detail on scheduled versus unscheduled visits. I will go back to that Hansard and I will give that to him. If there is any additional information that I can provide, I will do so.

Senator FORSHAW—Mr President, I ask a supplementary question. Given the serious implications for public health and safety arising from the problems at Pan Pharmaceuticals and the role of the TGA—problems which are documented back to 1992 when the TGA was established—why do the terms of reference for the government’s expert committee on complementary medicines inquiry not even mention the Therapeutic Goods Administration or their specific failures with respect to Pan?

Senator PATTERSON—I seem to recall that between 1992 and 1996 the Labor Party were in government.

Senator Forshaw—And we had two unscheduled audits—

The PRESIDENT—Senator Forshaw, you have asked your question. Allow the minister to answer.

Senator PATTERSON—as I said to the honourable senator, his questions were very detailed. I do not have the document in front of me with the detail we had in estimates. He had four hours to ask these questions in estimates. Obviously, he still thinks he has more questions to ask. I will get an answer for him and give it to him as soon as I possibly can, hopefully by the end of today or tomorrow.

Tasmania: Foxes

Senator MURPHY (2.36 p.m.)—My question is to Senator Hill in his capacity as Minister representing the Minister for the Environment and Heritage. The government has provided some $400,000 to the Tasmanian government for the purpose of eradicating foxes that are supposed to have been illegally introduced into Tasmania. Given that the Tasmanian police have conducted extensive investigations over a long period of time and have not found one single piece of evidence to support the claims of illegal introduction, can you inform the Senate if the federal government will be supplying more taxpayers’ money to support such things as the Tasmanian fox task force foxhunting jaunt into New South Wales at who knows what expense or the $36,000 to train two dogs to find dead foxes, which were then declared a failure by the Tasmanian fox task force manager, Chris Emms, and sent back to Victoria to be retrained, I assume for another $36,000?
Senator HILL—I remember when it was believed that foxes had been introduced into Tasmania and there were strong demands from the Tasmanian state government to the Commonwealth to assist it in efforts to find and eradicate those foxes. I can remember also that, as evidenced by the Tasmanian press, there seemed to be widespread public support for that. In fact I can remember the Commonwealth being attacked for not providing sufficient support to Tasmania when it was facing what was seen as an emergency situation. In relation to the outcome of that investment, I will seek advice from the Minister for the Environment and Heritage, Dr Kemp. In relation to any future funding in efforts to locate and eradicate foxes, I will seek advice on that as well.

Senator MURPHY—Mr President, I ask a supplementary question. I assume then that the government will consider spending more taxpayers’ money on the basis of a fox that was shot in Victoria, a fox skin that was received in the mail and an unidentified ‘Richard the Third’?

Senator HILL—I have received some advice that the Tasmanian minister has recently written to the Commonwealth minister with a request for further Commonwealth assistance, attaching a copy of the Kinnear review. Dr Kemp is considering the detailed outcomes of the review and Tasmania’s request. The primary role for the Commonwealth in threat abatement is providing long-term solutions. The Natural Heritage Trust has provided $2.2 million since 1996-97 to develop a fox immunocontraceptive virus which will stop foxes reproducing, which would be a good step towards a permanent solution, one might think. It would seem that in those circumstances, both in short-term remedial action and in long-term remedial action, the Commonwealth is investing taxpayers’ money wisely.

Defence: JSF Project

Senator CHRIS EVANS (2.40 p.m.)—My question is directed to the Minister for Defence, Senator Hill. Does the minister recall committing taxpayers to pay $230 million to allow Australia to participate in and bid for work on the design phase of the JSF project in June last year, with the government boasting Australia could win more than $3 billion worth of work? Twelve months on, can the minister confirm that just one contract worth several million dollars has been signed? Minister, aren’t we well short of getting our money back, let alone coming close to the $3 billion target set by the Minister for Industry, Tourism and Resources? Is the minister aware that a recent Audit Office report noted that government claims about the value of work flowing to Australian firms from defence projects were ‘unreliable and unauditable’? Didn’t the Audit Office find that, under the current arrangements, goods bought overseas and then on-sold to Defence by an Australian company can be classified as local content? Minister, what are you doing in response to that Audit Office report?

Senator HILL—There is great scope for Australian defence industry to invest in global supply chains. It is not the normal way in which Australian defence industry has done business; it has tended to build its business around supplying the ADF. Its market has therefore been limited. It has been difficult to build economies of scale. It has been difficult, therefore, to be globally competitive. The investment of funds in the design and development stage of the Joint Strike Fighter project is an opportunity for Australian defence industry to bid for work in what will be the largest military aeronautics project in global history—a huge project that is likely to run for some 30 or 40 years. The investment we have made has been over 10 years, as I recall. So, if you want to be fair, compare the work that Australian indus-
try gets over that 10 years against the investment made by the Australian government rather than what it has achieved within the first year.

We were pleased to announce yesterday the first contract to an Australian based company. It is for design work on the centre fuselage of the JSF. That is obviously critically important work because from that could flow manufacturing work ultimately, and that is when you start getting into the very large sums that the Minister for Industry, Tourism and Resources, Mr Macfarlane, was talking about. I know of two other anticipated contracts which we expect to be announced in the next few days. Whilst I am very tempted to say which Australian companies I expect to be successful, it would be inappropriate. If we were coming back next week, I would be confident that I could share that information. I also know of a number of other Australian companies that are in a good position to win work.

Australian companies have to be globally competitive. They are competing against the best in the world to win this work. They have made a start and I suggest, in contrast to what Senator Evans is suggesting, that they have made a very promising start. The government is pleased to support Australian defence industry that is having a go at the global level. But, through the JSF project, we will also support Australian defence industry that is having a go at the global level for the US Littoral Combat Ship program. Ultimately, if we engage in missile defence, there is the chance for Australian defence industry to engage in that global program as well. Ultimately, in my view, it will be a more efficient defence industry that is winning business for Australia and creating Australian jobs. Out of that, it will have a sustainable future and it will therefore be better able to supply and support the ADF in the years ahead.

Senator Chris Evans—Mr President, I ask a supplementary question. I note the minister did not answer the question about the Audit Office report, which criticised the very rhetoric he just repeated. Can the minister confirm that, to date, the so-called Australian company that has gained work under the JSF project is a wholly owned subsidiary of the UK based global giant GKN Aerospace, who established an Australian office just two years ago? Is the minister aware that the board of this so-called Australian company, GKN Aerospace engineering, contains only two board members who actually live in Australia?

Senator Hill—I am aware. I think it is a good story. A British company that established in Australia only two years ago is employing young Australian engineers. It is competing on the global market and it is winning work—

Senator Chris Evans—It’s not an Australian company. GKN is a global supplier.

Senator Hill—No, it is the Australian subsidiary, employing Australians, that is winning work in a global picture, even against its parent back in the United Kingdom. I am afraid Senator Evans and I disagree on this. I think work for Australian engineers is a tremendous thing. To see them competing successfully against the best in the world is a tremendous thing. It is good to create jobs, it is good to grow the economy and it is good to better support the ADF.

Political Parties: Donations

Senator Ferris (2.46 p.m.)—My question is to the Special Minister for State, Senator Abetz. Is the minister aware of any amendment to the funding and disclosure returns of the South Australian Labor Party? Will the minister inform the Senate whether this resolves all the serious issues surrounding the cash donation of $9,880 to Senator Bolkus?
Senator ABETZ—I thank Senator Ferris for her question. I am aware that Senator Bolkus has today submitted another return to the Electoral Commission, but there are still some very serious issues which need to be addressed. Senator Bolkus, when he submitted his first return for 2001-02, failed to declare that he had received any donation. He did not simply fail to fill out the relevant section; he deliberately put a line through it, indicating that he had received no money whatsoever. Couldn’t he remember that he had sat in a Sydney coffee shop and asked Mr Tan for a cash cheque and been presented with one for almost $10,000? I do not know about senators opposite, but I am pretty sure that if somebody gave me a cash cheque for $10,000 I would remember it. But, according to Senator Bolkus, it just fell through the cracks, sort of like a 20c coin in a public phone box.

Either today’s return is the truth, in which case he falsely certified the original, or, given Senator Bolkus’s form, both returns could be false. Given the information that I have, this may well be the case. I invite Senator Bolkus and Mr Crean to review the latest return and decide whether the donation was actually received from Mr Tan some four months later than claimed, just a few days before the election.

There are other issues which still are not clear. Steve Georganas, a former staffer of Senator Bolkus and the failed Labor candidate for Hindmarsh, has said that he had no knowledge of the donation, yet Senator Bolkus has publicly said that the money was for the Hindmarsh campaign. But Labor’s Hindmarsh campaign treasurer has also claimed no knowledge of it. How is it possible that these key people do not know about the money? And what was the nature of this raffle? Senator Wong sits over there like a sphinx, silent despite her own significant involvement in the Hindmarsh campaign. Perhaps she can get up and explain if there even was a raffle in Hindmarsh and, if so, how many tickets were sold, how much the tickets were and what the prize was.

Senators Wong and Bolkus could also explain why the raffle was not registered with the gaming authorities, as is required by South Australian law. It might be necessary to refer this matter to the South Australian Labor Minister for Gambling. I am sure his adviser on gambling matters could brief him on the requirements for the conduct of a raffle. You may well ask, Mr President: who is this ministerial adviser? It is none other than Steve Georganas, former Bolkus staffer, failed Labor candidate for Hindmarsh and the intended beneficiary of the $10,000 donation. Labor can stop the cover-up here and now. Senator Bolkus knew that Mr Tan wanted to hide his donation, and Senator Bolkus actively assisted him to do so. That is not an error; that is a disgrace. Mr Crean needs to take control of this scandal and force his friend and flatmate Senator Bolkus to finally tell the truth and put in a full and accurate third funding and disclosure return.

Defence: Gan Gan Army Camp

Senator FAULKNER (2.50 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister confirm that the 97-hectare Gan Gan army camp at Nelson Bay has been sold to a private developer for $5 million? Isn’t it true that the tender documents for this sale were processed in less than a fortnight? Does the minister agree with his colleague the federal member for Paterson when he claimed:

This has to be the fastest processing of a tender evaluation and contract exchange ever in the history of government.

Isn’t this just another case of a defence sale process being rushed through to ensure that the deal is done before the end of the financial year? Does the minister share Mr Bald-
win’s sense of outrage and disgust at the defence department for proceeding with a fire sale of the pristine Gan Gan property in order to fund the budget bottom line?

Senator HILL—I am not sure about pristine—I understand that at least part of the property is significantly degraded. This was a property that the government decided to sell, as it was no longer needed for defence purposes. It was put out to tender. The delegate within the department chose the successful bid and advised the party accordingly. I understand that evaluation took place on 5 June, the delegate approved the preferred tender on 13 June and contracts have been exchanged. I understand that it was sold significantly over valuation.

Senator FAULKNER—Mr President, I ask a supplementary question. Minister, are you aware that an environmental report on the Gan Gan army camp found that it was home to many rare and threatened species of flora and fauna, including a significant koala colony? Minister, isn’t it true that the New South Wales National Parks and Wildlife Service wrote to Defence nearly four years ago to express its strong interest in adding the site to the nearby Tomaree National Park? Minister, given the obvious environmental significance of this property, why did the government ignore these requests? I ask the minister whether he shares Mr Baldwin’s loss of confidence in parliamentary secretary Fran Bailey, given her failure to halt the sale process for this important heritage site.

Senator HILL—Again, I think there are differing views as to the environmental value of this particular site. As I said, I understand that at least part of it was significantly degraded. In relation to the New South Wales government interest, I understand that to have been on the basis that the property would be donated to it. I do not believe New South Wales put in a tender; it was not prepared to pay for the property.

The Commonwealth government was interested in selling the property because, in these circumstances where the property was no longer needed for Commonwealth purposes, it could put the capital to better use. We could use it to repay Labor’s debt and for other good purposes. That was the basis for the decision taken by the government, and that is in accordance with the practice that we have taken in relation to a number of Defence properties that are no longer needed.

(Time expired).

Health and Ageing: Mental Illness

Senator ALLISON (2.54 p.m.)—My question is to the Minister for Health and Ageing. Does the minister recall being presented with the Mental Health Council of Australia’s report in December last year, which said that the national health system does not adequately support people with mental illness? This morning, the CEO of the Mental Health Council said that ‘despite two five-year plans that have been world-leading in their intent, their philosophy and their scope, there has been an abject failure in implementation’. She also said:

... unless we get greater accountability from the states and territories, unless we get a greater injection of funds, unless we get some sort of independent monitoring of what’s going on, the Council is not confident that the system will change over the next five years.

Is this what people with mental illnesses and their families can expect?

Senator PATTERSON—The Commonwealth government has just offered to the states $42 billion for the health care agreements. That is a $10 billion increase and 17 per cent over and above the rate of inflation. Over the life of the last agreements, we committed 28 per cent over and above the cost of inflation. A significant part of that—
and I do not have the exact amounts here for Senator Allison—is committed to mental health.

The states basically have responsibility for delivering mental health services. The Commonwealth has shown leadership in a number of areas in mental health, including a very significant program to introduce issues of mental health, particularly suicide, into schools—73 per cent of Australian schools now participate in the Mind Matters program. I will be talking in a few weeks time about plans to continue that program for journalists and young students who are training in the media so that they understand the responsibilities they have in dealing with issues of mental health, how they can affect attitudes and how they deal with reporting on suicide. We have beyondblue, which has been funded to drive initiatives in depression. We have a program in mental health in general practice—and this is what I was talking about before; it is not just about increasing bulk-billing rates but also about delivering outcomes—in which we now have thousands of general practitioners who have undertaken training in mental health to deliver mental health programs and a mental health plan to assist people, particularly in rural areas, to deal with issues such as depression, grief and post natal depression et cetera.

The Commonwealth has shown enormous leadership in the issue of mental health. We have the Mental Health Strategy, which is probably one of the best in the world, and we are working with the states in addressing that. But the important thing is that the states sign up to the agreement, commit upfront how much they will spend, match our growth and commit to mental health in the way that we have, through the health care agreements.

Senator ALLISON—Mr President, I ask a supplementary question. Minister, the Mental Health Council obviously does not appear to be impressed by your efforts, and may I suggest that they are small programs. I ask the minister why it is that $917 million was found to dismantle Medicare but the government could find no real new money for mental health and prevention of mental illness. Minister, you said last year that the Commonwealth had spent an extra $500 million extra over the last decade. Is that really the best we can do? Will you at least consider the Mental Health Council’s recommendation that there should be an independent body monitoring the performance of health services? When will the federal government take responsibility for the parlous state of our mental health services?

Senator PATTERSON—As I said, the states have the basic responsibility for mental health services. As for the gratuitous comment from the honourable senator about the $917 million to—I have forgotten the words she used—break up Medicare—Senator Allison—Dismantle Medicare

Senator PATTERSON—how can half a billion dollars given to increase the number of medical students, plus having 150 new GP registrars on the ground and millions of dollars given to put nurses into general practice be dismantling Medicare? It beggars belief that you could make that comment.

Defence: Australian Army

Senator CHRIS EVANS (2.59 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Is the minister aware of the operations within Army of the Recuperation and Discharge Platoon, which receives injured soldiers taken out of their regular units and off training due to injury? Can the minister inform the Senate whether there are particular measures in place to identify and protect young soldiers and others in the platoon who are at high risk of developing depression while they are attempting to recover from their injuries? What are
those measures? Will the minister also inform the Senate when the inquiry being undertaken by the Army into the treatment of Private Jeremy Williams, an injured 20-year-old soldier who tragically took his own life due to his uncorrected apprehension that he would be discharged, will be finalised?

Senator HILL—I will have to take some aspects of that question on notice, but I can say to the honourable senator that the ADF treats issues such as depression extremely seriously. It takes the health care of service personnel very seriously indeed. It has, in fact, instituted special programs directed at identifying those who may be a risk to themselves, arising from depression or other illnesses and, obviously, when that can be discovered, it makes every effort to assist them. I will have to take on notice the parts of the question relating to the person to whom Senator Evans referred and the role of the Recuperation and Discharge Platoon.

Senator CHRI S EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer and I appreciate him taking on notice those aspects of the question he was not able to assist with. When the minister does that, would he also seek information as to what procedures are in place to assist families which have concerns about the welfare of a serving ADF member to get confidential assistance for that ADF member, without exposing their loved one to any adverse commentary or pressure within their units?

Senator HILL—I will get an answer to that as well. Mr President, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Indigenous Affairs: Domestic Violence and Child Abuse

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.01 p.m.)—During question time on 23 June, Senator Harradine asked me a question in my capacity as the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs regarding Indigenous family violence. I undertook to provide further information and now seek leave to incorporate those further details in Hansard and seek leave to table the information, as well.

Leave granted.

The answer read as follows—

Senator Harradine asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, without notice, on 23 June 2003:

In relation to a study undertaken by Memmott et al, into Indigenous family violence and the need for state governments to be involved

(1) “what is the outcome of the measures that have been taken so far?” and

(2) “are things improving or not?”

Senator Ellison—the answer to the honourable senator’s question is as follows:

(1) The issue of violence against, Indigenous women and children is one of the utmost concern to the Commonwealth. The government is working with everyone who has a stake in this problem to find lasting, practical solutions. Addressing the problem requires the effort of a number of parties including communities, Indigenous leaders, the Aboriginal and Torres Strait Islander Commission (ATSIC), and state and territory governments.

The primary responsibility for family violence issues lies with the states and territory governments including through the provision of adequate police and child protection services. Last year the Prime Minister put family violence and child abuse on the agenda of the Council of Australian Governments, where he sought a commitment from state and territory premiers and chief ministers to a more concentrated effort.

Commonwealth actions

For its part, the Commonwealth continues to fund a number of programmes aimed at reducing family violence in Indigenous communities. These
initiatives include the Partnerships Against Domestic Violence grants programme which, since 1997, has allocated approximately $10 million for a range of Indigenous projects, including $6 million to the Indigenous family violence community grants programme.

A commitment in the 2003-04 budget of $61.5 million over four years for ATSIC/ATSIS (Aboriginal and Torres Strait Islander Services) to provide 1000 new Community Development Employment Projects (CDEP) places to support activities in remote communities which help reduce family violence and substance abuse. The part of this funding relating to administrative costs is being provided from within ATSIC’s existing resources.

$10.5 million in 2003-04 for the Indigenous component of the Stronger Families and Communities Strategy, which aims to improve capacity in Indigenous communities, particularly regarding leadership, conflict resolution and strategies to increase social and economic opportunities. Several of these projects specifically target Indigenous family violence.

The Commonwealth also funds a number of programmes which address problems of Indigenous alcohol and substance abuse; problems which contribute significantly to family violence in Indigenous communities, including

- approximately $20 million per annum to support 65 Indigenous substance misuse services.
- from its total Commonwealth funding of $115 million, the Alcohol Education and Rehabilitation Foundation’s is required to spend $23 million on projects targeting Indigenous Australians.

ATSIC decisions

On 26 March 2003, ATSIC established a Standing Section 13 Committee on issues impacting Aboriginal and Torres Strait Islander women, of which family violence is a priority. Also in March, ATSIC released a Family Violence Policy Statement that identified a series of goals, strategies and directions central to ATSIC’s proposed approach. On 20 June 2003, the ATSIC Board announced that additional resources would be directed towards tackling family violence, including new funding to regional councils to develop family violence action plans.

Commonwealth/State cooperation

At the 2001 meeting of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA), the Commonwealth and ATSIC, together with state and territory ministers, agreed to seven priorities to address Indigenous family violence and related issues at the community level. The MCATSIA approach provides an overarching framework under which the states and territories agreed to support programmes to address family violence in Indigenous communities in their jurisdictions.

Jurisdictions agreed to target alcohol and substance abuse, child safety and wellbeing, to build community capacity, improve the justice system, create safe places in communities, improve relationships (focusing on perpetrators and those at risk of offending), and promote shared leadership (focusing on empowerment of women). Ministers also committed themselves to reducing the rate of hospital admissions for Indigenous women and children resulting from interpersonal violence as a way to measure progress against the priority areas for action. This was the first time there had been agreement on a common benchmark.

Ministers also agreed to support an audit of existing family violence services being conducted by ATSIC. Subsequently, the ATSIC board allocated $100,000 for the exercise. The audit is close to completion.

(2) It is difficult for the Commonwealth to accurately report progress on this matter as there is no nationally shared system of data collection on Indigenous family violence or child abuse. The available evidence would indicate that the incidence of Indigenous family violence is increasing. This may be due in some part to heightened awareness and greater reporting, although it is generally accepted that a significant level of violence remains unreported.

Subsequent to the release of the report “Violence in Indigenous Communities” (Memmott et al, January 2001), there has been the Fitzgerald Inquiry in Queensland (“Cape York Justice Study, Meeting Challenges, Making Choices” April 2002), and the Gordon Inquiry (“Putting the Pic-
ture Together—Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities”, July 2002), in Western Australia. The state governments are currently in the process of introducing initiatives to respond to the findings of these reports. Other governments are also endeavouring to come to grips with the issues of family violence within their jurisdictions.

**Defence: Depleted Uranium**

**Senator HILL** (South Australia—Minister for Defence) (3.02 p.m.)—I have some further information for Senator Allison relating to a question that she asked me yesterday regarding depleted uranium. I seek leave to have that information incorporated in *Hansard*.

Leave granted.

*The answer read as follows—*

**Senator Allison** asked the Minister for Defence on 24 June 2003:

Is it not the case that depleted uranium (DU) is radioactive for 4.5 billion years, making DU armaments much more dangerous than cluster bombs, which we have said we will not support.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

I am advised that wherever depleted uranium resides, it has a half life of approximately 4.5 billion years, the same as naturally occurring uranium 238. This means that it takes this amount of time to reduce in mass by 50 per cent. Depleted uranium is, however, less radioactive than naturally occurring uranium. Uranium occurs naturally within the environment and is widely dispersed in the earth’s crust. The environmental behaviour of uranium is strongly affected by many environmental variables, such as soil composition and chemistry, the level of the water table, the amount of re-suspension of depleted uranium containing dust into the air and agricultural practices.

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Answers to Questions**

**Senator JACINTA COLLINS** (Victoria) (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Health and Ageing (Senator Patterson) to questions without notice asked today.

**Senator Ferguson**—What about taking note of Senator Bolkus’s answers!

**Senator JACINTA COLLINS**—Actually, Senator Vanstone’s answers of yesterday would be my preference, Senator Ferguson, but, unfortunately, it is Senator Patterson’s answers today. I will spend my time highlighting the fact that the minister continues to refuse to accept that there are any enormous and growing problems for people in accessing general practitioners. She needs to accept that a fair part of this problem is due to the considerable decline in bulk-billing which has occurred under the Howard government. Bulk-billing is not the voluntary add-on that she seems to think it is; it is a significant part of the problems facing many Australians today to get fair access to general practitioners. The government’s plan to solve that will not address—

**The DEPUTY PRESIDENT**—Senator Collins, please resume your seat for a moment. I am having difficulty, firstly, seeing where you are, because of people standing in the chamber, and, secondly, hearing you, because of people conversing in the chamber. Those wishing to leave the chamber, do so.

**Senator JACINTA COLLINS**—As I said, I am highlighting with my motion to take note of answers Minister Patterson’s absolute refusal to address the problems faced by vast numbers of the Australian community in accessing medical practitioners. This new plan that has been put forward by the Prime Minister and this govern-
ment will not solve many of these problems. They are treating bulk-billing as if it is a voluntary add-on to Medicare, and it is not. It has been a significant part of ensuring that Australians have fair access to general practitioners.

Let us look at what has happened to bulk-billing under this government. Senator Crossin addressed this in part in her question to Senator Patterson. She highlighted that the rate of GP bulk-billing has fallen significantly since the government came to office in 1996 but has dropped even more dramatically since this minister took over the health portfolio 18 months ago. How far has it dropped? It has dropped 11 per cent; in the last 18 months, 6.7 per cent. And it is that decline in bulk-billing that is fundamentally compromising the system. The government hides behind the charade that you need 100 per cent bulk-billing if you are going to guarantee 100 per cent access to free services—that is not the point. The point is that Medicare, which is one of Labor’s proudest achievements, which was attacked time and time again during John Howard’s history in parliament—until he finally realised that he was never going to get elected unless he signed on to Medicare—is an example of where the government is seeking another change by pure stealth.

What is Senator Patterson’s answer? Her answer to the decline in bulk-billing is to sidestep: she sidestepped yesterday, she sidestepped the day before. Today’s answer, though, has reduced the whole situation to the utmost ridiculous. Today she says that, to get a serious response from her, we must demonstrate that not one person ever faced fees they could not afford under Labor under Medicare. That actually reminds me of this government’s response to the ‘children overboard’ affair. I think senators will recall—and certainly the Australian community will recall—the government’s answer there, demonstrated by the response of Max Moore-Wilton, when he was the secretary of the Prime Minister’s department, and the then Chief of Navy, now retired, Admiral Barrie. In that case, to demonstrate that there was any issue at hand, we were expected to demonstrate that a child was not thrown overboard. We now know what did transpire. We do not want to see Medicare thrown overboard, but that is what this agenda is all about. There is enough on the record from John Howard in his earlier days for us to be very confident that this plan is really about the destruction of Medicare by stealth.

This government wants to take us back to the culture of services only for the very needy. Meanwhile families, particularly those with young children, will suffer. Senator Patterson likes to put a positive spin on it by saying that seven out of 10 GP visits will have no out-of-pocket expenses and that nearly eight out of 10 visits by older patients to GPs will have no out-of-pocket expenses. This will not help young low- and middle-income families with young children who visit doctors time and time again, as in the examples I gave in question time today. You only need one or two children sick at the one time to blow your whole week’s budget. This government has no answer for those situations—nothing that will help contain costs when you have a free fee basis for GPs.

(Time expired)

Senator HUMPHRIES (Australian Capital Territory) (3.08 p.m.)—I confess to being a little surprised about Senator Collins’s motion to take note of answers. I frankly expected that the Senate would be providing some time for Senator Bolkus to clear up a few matters. I thought he was itching to rise and clear the air on those matters but when question time ended, to my amazement, he was out of the chamber faster than a scalded cat. We are left with a bit of a smoke and
mirrors exercise by his Labor colleagues, perhaps to take the heat off him, in raising the issue of health and attempting to establish some basis for taking the shine off the government’s very creditable Medicare reform package, A Fairer Medicare.

In the course of question time today I heard questions peppered with the sentiments that bulk-billing rates in this country were too low. I would not have thought it would take a great deal of nous to perceive that both sides of politics see that that is indeed the case—that Australia needs higher rates of bulk-billing. I would have thought it would take little nous on the part of those opposite to equally appreciate that a large part of the package announced by the health minister and the Prime Minister is about just that: increasing rates of bulk-billing by investing substantial amounts of money to ensure that those most in need of such services—those on the lowest incomes in Australia, those holders of concession cards—have access to them through incentives paid to doctors to provide those services to those people. That is focusing valuable taxpayer dollars to assist people in that position in the most advantageous way.

In this debate we do not have the advantage of knowing precisely what Labor’s alternative strategy is because Labor, more than halfway through the life of this parliament, have not deigned to tell us what they would do about the problems facing health care in this country. So we do not know—

Senator Forshaw—What do you mean? We told you our policy in our reply to the budget.

Senator HUMPHRIES—We know vaguely what you would do. You want to spend more but you cannot tell us where the money is coming from or exactly how it will be spent.

Senator Forshaw interjecting—

Senator HUMPHRIES—As far as we can tell, you want to spend a great deal more money funding Medicare, but where is the money coming from and how are you going to spend it? Are you proposing to use those dollars, wherever you get them from, to provide additional support and incentives for doctors to bulk-bill across the board?

Senator Forshaw—Yes, exactly. That is exactly what we want to do.

Senator HUMPHRIES—Apparently you do. So you want to subsidise the wealthy in the community—

Senator Forshaw interjecting—

Senator HUMPHRIES—those who do not need the additional benefit—

The DEPUTY PRESIDENT—Senator Humphries, please resume your seat for a moment. Senator Forshaw, I understand you are the next speaker in this debate. I invite you to participate in the debate at that time, but at this stage let Senator Humphries have a fair go.

Senator Forshaw—Mr Deputy President, I rise on a point of order: Senator Humphries has been asking me questions during his speech, and I am helping him by answering them.

The DEPUTY PRESIDENT—Senator Forshaw, you know that is not a point of order. Senator Humphries, address your remarks to the chair, please.

Senator HUMPHRIES—Certainly, Mr Deputy President. The fact is that when you look at this package you see a series of measures designed to assist those most in need. You see incentives for doctors to bulk-bill those on the lowest incomes: payments ranging from $3,500 in capital cities to $22,000 in rural and remote areas—designed expressly to help those people. What a surprise that it is we on this side of the chamber who have put forward such a measure, when
those opposite supposedly speak for the most disadvantaged in this community. It is a Liberal government that is targeting those most in need with these measures.

We are further assisting those people by making payment of their doctors’ bills more convenient and transparent. Rather than paying the bill, going to the Medicare office and getting the refund, we are allowing people to pay their bill at the doctor’s surgery and paying only the difference between the scheduled fee and what the doctor charges—that is, you know what the doctor is adding on to that scheduled fee; you know the difference. We are giving the consumer of health services some power over the way they purchase health products. That is a valuable measure, particularly for those on the lowest incomes who need to budget for such things.

We are putting in place a safety net. Senator Collins said that there was nothing in the budget measures designed to assist those who have a problem finding enough in their weekly budget to provide for health care. That is just nonsense. The government is introducing a new medical benefits schedule safety net. It will cover Commonwealth concession card holders for out of hospital gaps that total more than $500 in a calendar year.

(Time expired)

Senator FORSHAW (New South Wales) (3.13 p.m.)—I would like to make some remarks with respect to the questions I put to Senator Patterson regarding the Therapeutic Goods Administration. These questions were not answered by the minister, just as this minister consistently fails to answer questions about her portfolio in this chamber. It was quite obvious that the minister had no recollection at all of the issues raised only a matter of weeks ago at the budget estimates hearings where Senator Moore and I—and others—asked questions of the minister and of the officers of the TGA for some hours.

Those questions of course went to the very serious public health issues related to the collapse of Pan Pharmaceuticals and the recall of products manufactured by that company or by other companies utilising products supplied to them by Pan Pharmaceuticals. This was the biggest single crisis and the biggest single product recall ever in the history of the TGA—and indeed the biggest single product recall ever in the world.

When I asked the minister why it was that no unscheduled audits had been conducted on Pan Pharmaceuticals by the TGA in the life of this government and back to 1994, her response was to say that, ‘Between 1994 and 1996, the Labor government was in power.’ That also demonstrates just how little this minister knows about this area of her responsibilities. If she had gone back and checked the Hansard record of the estimates hearing and was on top of the issues in her portfolio, she would have known that after the TGA was established under the Labor government in 1992 there were unscheduled audits conducted on Pan Pharmaceuticals. Unscheduled audits are important because that is when you are most likely to find breaches of the regulations and the requirements in this most important area.

That is what happened in 1992 and again in 1994. Unscheduled audits turned up the fact that this company was not following proper procedures, was not adhering to the regulations and was engaging in illegal activities. The TGA in 1994, under a Labor government, took Pan Pharmaceuticals to court and prosecuted them for those breaches. So under the Labor government the TGA was doing its job. But, since this government came to power—notwithstanding a history that Pan Pharmaceuticals had been involved in illegal activities, had not complied with the regulations in the past and had other problems that came to light during the period after 1996, generally through sched-
uled audits—no unscheduled audits were conducted until this year when a crisis occurred. People suddenly started becoming violently ill after taking one of the products manufactured by Pan, namely, travacalm.

This is what is so important about the allegations that were made by a former employee on Background Briefing only last Sunday. That employee alleged that there was a culture within the TGA of not carrying out audits properly. He said:

If you took no action, you couldn’t make a mistake... So sometimes it was better to do nothing and sign the papers.

Yes, scheduled audits occurred. But the company was given notice of these, so they had time to fix up the problems before the auditors from the TGA came in.

There has been a saga of mismanagement, of failure to carry out their responsibilities in this whole episode with the TGA, as was outlined in the estimates proceedings. But what is the minister’s response? She blames the messenger, because he happens to be a former employee, and ignores the message. Two things should happen: firstly, there should be an independent public inquiry into how this whole saga occurred; and, secondly, the Prime Minister should sack her from this portfolio for her incompetence. (Time expired)

Senator BARNETT (Tasmania) (3.18 p.m.)—I totally reject that most unparliamentary accusation at the end by Senator Forshaw—I think it is unfortunate. Senator Kay Patterson, in her response to Senator Forshaw, made it very clear that the allegations were from a former employee. But, in any event, she said that she would take it on advice and try and find out the answers for Senator Forshaw and get back to him as soon as possible—either today or tomorrow. That was the response that I heard and I know others heard, because it is on the public record. So why Senator Forshaw is waxing lyrical this afternoon at this time with respect to Pan Pharmaceuticals remains unclear.

What I can say about Pan and the response of this government is that it was both forthright and professional. I stand here and commend the work of Trish Worth, who worked not only night and day and hand in hand with her many advisers and officers but also with the staff of the TGA to undertake the largest recall in Australian history. It was a very difficult and challenging task and nobody is going to deny that.

The complementary health care industry in this country is a vitally important one, and I support and commend them for the work that they have done in response. This relates to one particular company. The problems that have occurred do not relate to the other companies and businesses that are involved. There are many businesses not only in the manufacturing side but also in the retailing sector and there are jobs involved in those retail areas as well. I want to congratulate Minister Joe Hockey for the work that he has done to show support for those small businesses in the complementary health care industry in this country that have been impacted detrimentally by the Pan Pharmaceuticals crisis. His support for small business seems to be unwavering and he will stand up at every turn to help and encourage them to rebuild their businesses in light of this most unfortunate incident. I wanted to put those remarks on the record.

With respect to Senator Collins’s accusations and allegations, which are primarily unfounded and misleading, I would like to make a few comments. She refers to the bulk-billing rates. At least she admits in her statements that almost seven out of 10 of all GP services are actually delivered at no cost to patients. That is an acknowledgment, and I thank her for that; I thank the Labor Party for
at least acknowledging that. But they have not acknowledged that, with respect to their own policy, they have a discriminatory regime which is setting up a two-tiered approach, where they have one rule and one approach for rural and regional Australians and another for people in metropolitan areas.

They are happy with a bulk-billing rate of seven out of 10 or 70 per cent in rural and regional areas, and they have a higher rate for the city areas. They consider rural and regional Australians as second-class citizens, and that is something we simply will not stand for in the coalition and in the Liberal Party. Let me make it quite clear: it is discriminatory, it is two-tiered and it is anathema to the Australian way of life. I am absolutely certain that the Australian public will not accept it.

There was reference to the Ballarat Hospital by Senator Collins and to its usage by a particular resident, purportedly in the Ballarat community. Let me say to Senator Collins from Victoria that if she used her good offices and used her efforts to encourage and call upon the Premier of Victoria to sign up to the public hospitals health care agreement with the federal government then guess what would happen? They would have much better services in hospitals in Victoria. Waiting lists would go down and waiting times would be reduced. Senator Collins has not acknowledged that. She, as a Labor senator in Victoria, has the opportunity to talk to her Labor Premier and to say, ‘Sign up; match the increase that is being offered by the federal government,’ which is a 17 per cent real increase. For Tasmania, that is $220 million over the next five years but, for Australia, an extra $10 billion over that five-year period—in total, a $42 billion injection into the public hospital system. (Time expired)

Senator MOORE (Queensland) (3.23 p.m.)—I rise to take note of answers provided by Senator Patterson this afternoon and to engage, yet again, in the all too regular discussion that we have in this chamber on these issues. Again today the Minister for Health and Ageing has said in her responses that people on this side of the house seem to be fixated on bulk-billing. I say again that we are. There is no problem: we do accept that we are fixated on the issue of bulk-billing, we do watch the figures and we do see the way that the figures are reflecting access to medical services across this nation. However, the minister says that, because we seem, and in fact are, fixated on the issue of bulk-billing, that means that we automatically have no interest in and no concern about the genuine issue of access to effective medical care. That is where we have a great disagreement with the position put by the minister. Of course the people on this side of the house have great concern about the issues to do with access to medical care. That is why we are here. We are here to ensure that people in this community have access to medical care.

What seems to be happening all too regularly now in question time is some kind of mythology being created about a competition, a contrast, between the falling bulk-billing figures and people not being interested in effective measures on access to care. It is an argument that cannot be maintained. We heard, in one of the previous speeches, about smoke and mirrors. All I can say is that this is an effective use by the minister of smoke and mirrors. We have to get through it, because we need to assess what is happening with medical care across Australia. It is all too easy, I know, to look at figures, because figures are neat. However, we need to actually look at the figures and fit them together with effective policy. I am disappointed—and I share the disappointment that was expressed by Senator Humphries earlier—in her lack of awareness of any poli-
cies. In fact, the Labor Party has presented policies. It has presented policy in this house and we have actually put it out. Again, it is this mythology that we do not have any effective counterarguments.

The theme of the minister’s response today to a couple of questions was that we could not understand the issue to do with the need to create more doctors. We have had that over weeks and weeks of discussion in this place. It is a key part of our policy to ensure that we have effective medical training, and not just in the large capital cities. We acknowledge that the programs being provided are being provided for more rural services, for medical practitioners, into the future. However, we are again being divided, as though there is some kind of contest between rural and regional Australia and people who are living in the cities. I draw to the attention of people who are listening to this discussion that it is not just in areas that are defined as rural and regional Australia that there are plummeting—I do not usually use that word but I will today—figures on bulk-billing. As I have said before, where I live in Brisbane the figures have dropped by significant amounts. We are being encouraged to divide the community.

There is seemingly a strategy that, instead of looking at a collective approach, instead of looking at genuine policy about medical services, we draw some kind of divide. Then the amazing statement is made that nobody on this side of the house cares about people who live in regional or rural Australia. What a ridiculous comment. Then, to fulfil that, the statement is made that no-one that we represent lives in those parts of the world. That is not true. It is an attempt, yet again, to divide—the smoke and mirrors trick to take our eyes off the real issue. The issue is effective, affordable health care in our country. The minister said that something could not be worth tuppence in an argument. We are saying that an effective medical service is worth much more than that. At the moment, our figures show that it costs much more than tuppence to go and see a doctor who does not bulk-bill—in fact, growth across the country of over 55 per cent to about $13 on top of your rebate to see a medical practitioner. That is not in any particular part of country but everywhere. And, Minister, that is not tuppence.

Question agreed to.

Health and Ageing: Mental Illness

Senator ALLISON (Victoria) (3.29 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Health and Ageing (Senator Patterson) to a question without notice asked by Senator Allison today relating to support and services for the mentally ill.

The minister quoted some programs that the government has put together, and I will not criticise any of them. However, I would argue that we have a very serious situation with regard to people with mental illnesses in this country and for that reason I cited a report prepared by the Mental Health Council of Australia. The report is entitled Out of hospital, out of mind! and was produced in April this year. I will quote from the report, because I think it is significant and should be on the record:

A nationwide review of the experiences of those who both use and provide mental health services has documented that current community based systems are failing to provide adequate services. Specifically, these services are failing in terms of restricted access, variable quality, poor continuity, lack of support for recovery from illness or protection against human rights abuses. In the view of consumers and carers and the health professionals who provide services, this does not represent a failure of policy but rather a failure of implementation through poor administration, lack of accountability, lack of ongoing government commitment to genuine reform and failure to support the degree of community development
required to achieve high quality mental health care outside of institutional settings.

The minister falls back on the old familiar refrain that it is a state problem—that the states are not delivering on their promises, that the states are not putting enough money into the system. We have what is called a national mental health policy and, as this report suggests, that policy is very good one. Some very good people came together to report on it, plan it and put it together. In fact, it is leading edge stuff. It has a reputation around the world as being a very good plan. But it is not being implemented—it is being starved of resources—and the minister again falls back on the same old rhetoric of blaming it on the states. The report recommends that we:

Lift mental health expenditure to at least 12 per cent of total health expenditure—that is, an increase of just 5 per cent—within five years.

It is not saying tomorrow; it is saying that, within five years, that is where it should be. It is worth noting that, while mental disorders account for approximately 20 per cent of the burden of disease in Australia, only five per cent of the Australian health budget is spent on services for the mentally ill. I think we need to keep reminding ourselves that there may have been some extra spending over time—the minister likes to talk about the last decade and the extra $500 million—but remember that we are coming from an extremely low base. We are coming from a situation where, in the sixties, people with mental illness were pretty much put on the street and funding for them, in the community, has never recovered from that position. What else needs to be done? The report recommends:

Development of an agreement between heads of government to support and review mental health reform, and prioritising an annual reporting system on progress against agreed service improvements.

That seems straightforward to me. If you have an arrangement between the Commonwealth and the states why aren’t both parties making sure that they each hold up their part of the bargain? Isn’t the best way to do that to look at the objectives of your plan and see if they are actually being met? The Australian health care agreements appropriation legislation was dealt with in this place just a few days ago. I did not hear the Commonwealth government insisting that not only do they properly fund mental health but they make sure that the states do as well. It is off the agenda, because nobody is making this an embarrassing political issue for the government. It has disappeared again—still. The report recommends:

Establishment of a permanent independent commission to report on the progress of mental health reform in Australia and investigate ongoing abuse or neglect.

The Democrats have been trying to suggest for some time that this is a good idea. Let us have an independent arbiter. Let him or her wade through the rhetoric and the data and tell us whether, in fact, the states are not living up to their promises, because otherwise we do not know. The report mentions ‘real and sustained innovation’. It recommends:

Establishment of a national innovation system with a $100 million initial investment—

Not beyondblue or GP training, which are threepence-halfpenny worth; $100 million is needed—

and then should be supported at 5 per cent of recurrent mental health expenditure annually.

We just do not devote enough resources to this very important and demanding area. The report says:

The future costs of providing mental health care will increase substantially. This will be due to increased demand for services by, first, those who do not currently use services and, second, those who now receive grossly inadequate services.

(Time expired)
Question agreed to.

TEMPORARY CHAIRMEN OF COMMITTEES

The DEPUTY PRESIDENT—Order! Pursuant to standing order 12, I lay on the table a warrant nominating Senators Kirk and Marshall as additional Temporary Chairmen of Committees when the Deputy President and Chairman of Committees is absent.

NOTICES

Presentation

Senator Watson to move on the next day of sitting:

That the time for the presentation of the report of the Select Committee on Superannuation on planning for retirement be extended to 21 August 2003.

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

That on Thursday, 26 June 2003:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;

(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;

(c) the routine of business from not later than 4.30 pm shall be government business only;

(d) divisions may take place after 6 pm; and

(e) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

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

Broadcasting Services Amendment (Media Ownership) Bill 2002

Export Market Development Grants Amendment Bill 2003

Taxation Laws Amendment Bill (No. 4) 2003

Taxation Laws Amendment Bill (No. 6) 2003

National Handgun Buyback Bill 2003

Industrial Chemicals (Notification and Assessment) Amendment Bill 2003

Wheat Marketing Amendment Bill 2002

Migration Amendment (Duration of Detention) Bill 2003

Migration Legislation Amendment (Protected Information) Bill 2003

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

Customs Amendment Bill (No. 1) 2003

Customs Tariff Amendment Bill (No. 1) 2003

Superannuation (Government Co-contribution for Low Income Earners) Bill 2003

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003

Appropriation (Parliamentary Departments) Bill (No. 1) 2003-2004

Appropriation Bill (No. 1) 2003-2004

Appropriation Bill (No. 2) 2003-2004

Governor-General Amendment Bill 2003

HIH Royal Commission (Transfer of Records) Bill 2003

Australian Film Commission Amendment Bill 2003

Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003

Health and Ageing Legislation Amendment Bill 2003

Health Legislation Amendment Bill (No. 1) 2003

National Health Amendment (Private Health Insurance Levies) Bill 2003

Private Health Insurance (ACAC Review Levy) Bill 2003
Private Health Insurance (Collapsed Organization Levy) Bill 2003

Private Health Insurance (Council Administration Levy) Bill 2003

Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003

Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003

Civil Aviation Amendment Bill 2003.

Senator Forshaw to move on the next day of sitting:

That the order of the Senate of 20 June 2001, as amended on 27 September 2001 and 18 June 2003 relating to departmental and agency contracts—order for production of documents, be amended as follows:

Omit paragraph (9), substitute:

(9) In this order:

“agency” means an agency within the meaning of the Financial Management and Accountability Act 1997; and

“previous 12 months” means the period of 12 months ending on either 31 December or 30 June in any year, as the case may be.

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 26 June 2003, from 7 pm, to take evidence for the committee’s inquiry into the application and expenditure of funds by Australian Wool Innovation Ltd.

Senator Bartlett to move on the next day of sitting:

That the Senate—

(a) notes—

(i) the United States of America and Russia’s decision to partition the Korean peninsula in 1945,

(ii) the involvement of several countries, including Australia, in the 1950-1953 Korean War which ended in an armistice and the stationing of around a million troops on the North Korean/South Korean border to this day, and

(iii) Australia’s political and financial support for the 1994 Korean Peninsula Energy Development Organisation (KEDO) Agreement with aid being given to the Democratic People’s Republic of Korea (North Korea) in return for the dismantling of any potential North Korean nuclear weapons program;

(b) expresses concern—

(i) at the North Korean decision to withdraw from the Nuclear Non-Proliferation Treaty (NPT) announced on 10 January 2003,

(ii) that the proliferation of nuclear and other weapons of mass destruction represents a growing threat to Australian and regional security,

(iii) at the effect that a North Korean nuclear arsenal may have on regional governments’ compliance with the NPT; and

(iv) at the catastrophic effect that an exchange of nuclear weapons, or even a conventional military exchange on the Korean peninsula, would have on the region and Australia’s interests in it;

(c) notes:

(i) the commentary of the Korea Central News Agency of 9 June 2003 that a North Korean nuclear deterrent force would increase resources for civilian purposes by diverting them from conventional weapons programs, and

(ii) at the humanitarian crisis in North Korea due to a lack of food and medical supplies and previous problems of aid being diverted to the North Korean military; and

(d) calls on the Government to:

(i) increase aid to non-government organisations and United Nations
agencies providing food and medical supplies to the North Korean people,
(ii) support the use of multilateral
diplomatic means to arrive at a
peaceful solution without military
action, and
(iii) express Australia’s hopes for the
eventual peaceful reunification of
Korea.

Senator Cherry to move on the next day
of sitting:
(1) That the following matter be referred to
the Environment, Communications,
Information Technology and the Arts
References Committee for inquiry and
report by the last sitting day in March
2004:
The regulation, control and management
of invasive species, being non-native
flora and fauna that may threaten
biodiversity, with particular reference to:
(a) the nature and extent of the threat that
invasive species pose to the
Australian environment and
economy;
(b) the estimated cost of different
responses to the environmental issues
associated with invasive species,
including early eradication,
containment, damage mitigation and
inaction, with particular focus on:
(i) the following pests:
   (A) European fox (vulpes vulpes),
   (B) yellow crazy ant (anoplolepis
       gracilipes),
   (C) fire ant (solenopsis invicta),
   and
   (D) cane toad (bufo marinus), and
(ii) the following weeds:
   (A) mimosa pigra;
   (B) serrated tussock (nasella
       trichotoma),
   (C) willows (salix spp.),
   (D) lantana (lantana camera),
   (E) blackberry (rubus fruticosus
       agg.), and
   (F) parkinsonian aculeata;
(c) the adequacy and effectiveness of the
current Commonwealth, state and
territory statutory and administrative
arrangements for the regulation and
control of invasive species;
(d) the effectiveness of Commonwealth-
funded measures to control invasive
species; and
(e) whether the Environment Protection
and Biodiversity Conservation
Amendment (Invasive Species) Bill
2002 could assist in improving the
current statutory and administrative
arrangements for the regulation,
control and management of invasive
species.
(2) That the order of the Senate adopting
Report No. 4 of 2003 of the Selection of
Bills Committee be varied to provide
that the Environment Protection and
Biodiversity Conservation Amendment
(Invasive Species) Bill 2002 be referred
to the Environment, Communications,
Information Technology and the Arts
References Committee instead of the
Environment, Communications,
Information Technology and the Arts
Legislation Committee.

Senator Ridgeway to move on the next
day of sitting:
That the Senate—
(a) notes that:
   (i) 23 June to 28 June 2003 is Drug
       Action Week, aimed at generating
       community awareness about drug and
       alcohol abuse and the solutions being
       used to tackle these issues,
   (ii) each day of Drug Action Week
       highlights a different theme, and the
       theme for 26 June 2003 is Indigenous
       issues,
   (iii) the misuse of alcohol and other drugs
       has long been linked to the deep
       levels of emotional and physical harm
suffered by Indigenous communities since the colonisation of Australia,

(iv) alcohol and tobacco consumption rates continue to remain high in the Indigenous population, against declining rates in the general population, and the increasing use of heroin in urban, regional and rural Indigenous communities is of particular concern,

(v) substance misuse is probably the biggest challenge facing Indigenous communities today as it affects almost everybody either directly or indirectly and is now the cause as well as the symptom of much grief and loss experienced by Indigenous communities, and

(vi) the demand for the services of existing Indigenous-controlled drug and alcohol rehabilitation centres far exceeds the current level of supply;

(b) acknowledges that Indigenous communities have been tackling substance abuse for many years through a range of different approaches such as family and individual treatment programs, night patrols, harm minimisation, alcohol restrictions, and direct action against the sale and promotion of alcohol; and

(c) calls on the Government to:

(i) immediately fund the recently completed National Aboriginal and Torres Strait Islander Illicit Drug and Alcohol Strategy so it can be implemented before the next budget, and

(ii) improve co-ordination between Commonwealth, state, territory and local governments on these issues and ensure this facilitates greater Indigenous control over the development and implementation of all health programs.

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

That the following bill be introduced: A Bill for an Act to amend the Australian Protective Service Act 1987, and for related purposes. Australian Protective Service Amendment Bill 2003.

Senator Hill to move on the next day of sitting:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

- Civil Aviation Legislation Amendment Bill 2003

Senator HILL (South Australia—Leader of the Government in the Senate) (3.34 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Migration Amendment (Duration of Detention) Bill 2003, allowing it to be considered during this period of sittings.

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

Leave granted.

The statement read as follows—

**MIGRATION AMENDMENT (DURATION OF DETENTION) BILL 2003**

**Purpose of the Bill**

The bill amends the Migration Act 1958 (the Act) to make it clear that, unless an unlawful non-citizen is removed from Australia, deported or granted a visa, he or she must be kept in immigration detention, except where a court makes final orders that:

- the detention is unlawful; or
- the person detained is not an unlawful non-citizen.

Subsection 196(1) of the Act, which was inserted into the Act by the Migration Reform Act 1992,
provides that an unlawful non-citizen must be detained unless removed, deported or granted a visa. Subsection 196(3) specifically states that even a court cannot order the release of an unlawful non-citizen unless the non-citizen has been granted a visa.

Section 196 was inserted into the Act in response to a trend in the early 1990s of the Federal Court ordering the release of persons from immigration detention. Despite the insertion of section 196, a trend has emerged for the Federal Court to use its power under section 23 of the Federal Court Act 1976 to order the release of detainees on an interlocutory basis. In addition, it is arguable that there is scope for the court to make an interlocutory stay order on visa cancellations, which would also result in the release of detainees from immigration detention.

Reasons for Urgency
The release of 20 detainees overall by the Federal Court on an interlocutory basis since February 2003 highlights the erosion of the mandatory detention provisions in the Migration Act. In view of the potential for release of further detainees on an interlocutory basis (including persons of character concern into the Australian community), it is essential that these amendments be made as soon as possible.

(Circulated by authority of the Minister for Immigration and Multicultural and Indigenous Affairs)

Senator HILL (South Australia—Leader of the Government in the Senate) (3.35 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Civil Aviation Amendment Bill 2003
Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.
A major part of CASA’s regulatory reform programme relates to an integrated package of new rules for aircraft maintenance. These rules have been developed in consultation with the aviation industry and are due to be finalised in third quarter of 2003. These rules cannot proceed until the maintenance provisions in the Bill are implemented.

The repeal of section 192 of the Airports Act 1996 should occur before June 30th to remove the need for the Minister to make a determination in relation to Sydney Airport, which would be duplicative and unnecessary.

The Government amendments to the Civil Aviation Legislation Amendment Bill 2003 will give effect to the original intention of the Act and increase Air Services ability to pursue commercial opportunities overseas and in Australia. Flaws in the current legislation are creating uncertainty for AA in the way it can approach business opportunities both overseas and domestically. This uncertainty has already hindered, and has the potential to damage, AA’s ability to meet Government objectives for its behaviour as a business.

The Bill has been introduced into Parliament previously, initially as the Aviation Legislation Amendment Bill (No.2) 2000 (2000 Bill) and subsequently as the Aviation Legislation Amendment Bill (No.1) 2001 (2001 Bill) after a delayed introduction. Major delays in this important element of the CASA regulatory reform program will, therefore, occur if the Bill is not passed in the current session.

(Circulated by authority of the Minister for Transport and Regional Services)

WORKPLACE RELATIONS AMENDMENT (PROTECTION FOR EMERGENCY MANAGEMENT VOLUNTEERS) Bill 2003

Purpose of the Bill
The Bill will protect from dismissal employees temporarily absent from work on volunteer management duty with an emergency management organisation.

Reasons for Urgency
Presently, there is no specific federal legislation protecting volunteers who are temporarily absent from work undertaking emergency management activities. While there is some legislative protection in some states and territories, not all workers are covered, and the protections differ. This Bill will protect all workers who are absent from work on legitimate volunteer emergency management duties.

It will cover not only those on the frontline, but volunteers who contribute to the management of emergencies and natural disasters. These volunteers receive no financial reward for their efforts, and many forego paid leave to undertake these activities, and sometimes put their lives at risk. They do this to support their community and deserve the community’s support in return.

One of the major groups which will be protected is volunteer fire-fighters. They did an outstanding job last summer during an exceptionally bad fire season. They may face a similar challenge during the coming summer.

Passage of this Bill in the 2003 Winter Sittings, well before the next summer fire season, will ensure employee and employers have adequate time to become familiar with the new protections. If the Bill is not dealt with during this Sittings, then fire-fighters and other volunteers will be forced to wait before they are able to access this additional protection.

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

Senator Lundy to move on the next day of sitting:
That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by the last sitting day in March 2004:

(a) the current and prospective levels of competition in broadband services, including interconnection and pricing in both the wholesale and retail markets;
(b) any impediments to competition and to the uptake of broadband technology;
(c) the implications of communications technology convergence on competition in broadband and other emerging markets;
(d) the impact and relationship between ownership of content and distribution of content on competition; and
(e) any opportunities to maximise the capacity and use of existing broadband infrastructure.

Senator Brown to move on the next day of sitting:
That the Senate—
(a) notes that the Pan Pharmaceutical affair has had a devastating effect on the complementary healthcare industry in Australia; and
(b) calls on the Government to:
(i) begin an independent investigation into the appropriateness of the recall, and
(ii) implement urgent measures to assist the industry to recover from the effects of the recall, including streamlining of approvals to replace products.

Senator Tierney to move on the next day of sitting:
That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by the last sitting day in June 2004:
Parents as educators in the early childhood years, with particular reference to:
(a) the extent to which parenting skills and family support are factors in reducing educational and social risks of children in the 3 years and under age group;
(b) whether current patterns of parental involvement in community and school-based programs are adequate to respond to the challenge of assisting children with early learning and social behaviour problems;
(c) the current state and territory provisions and programs, whether based on preschools, schools, play groups or day-care centres etc, established to assist parents with early childhood learning support;
(d) best practice in home to school transition programs for children, and an assessment as to whether they can be adapted for national implementation; and
(e) the most appropriate role for the Commonwealth in supporting national programs for raising parental consciousness and levels of knowledge and competence in relation to the early educational, social and emotional and health needs of children.

COMMITTEES
Selection of Bills Committee
Report
Senator FERRIS (South Australia) (3.39 p.m.)—I present the seventh report for 2003 of the Standing Committee for the Selection of Bills.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 7 OF 2003
1. The committee met on Tuesday, 24 June 2003.
2. The committee resolved to recommend—
That—
(a) the provisions of the Migration Legislation Amendment (Sponsorship Measures) Bill 2003 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report on 12 August 2003 (see appendix 1 for statement of reasons for referral);
(b) the New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 11 August 2003 (see appendix 2 for statement of reasons for referral);
(c) the provisions of the Postal Services Legislation Amendment Bill 2003 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report on 18 August 2003 (see appendix 3 for statement of reasons for referral);

(d) upon its introduction into the House of Representatives, the provisions of the Financial Services Reform Amendment Bill 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 19 August 2003 (see appendix 4 for statement of reasons for referral); and

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

- Communications Legislation Amendment Bill (No. 3) 2003
- Customs Legislation Amendment Bill (No. 2) 2003
- HIH Royal Commission (Transfer of Records) Bill 2003
- National Transport Commission Bill 2003

The committee recommends accordingly.

3. The committee considered a proposal to vary the order of the Senate of 18 June 2003 adopting the committee’s 6th report of 2003 to provide that the Taxation Laws Amendment Bill (No. 6) 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 11 August 2003, but resolved that the bill not be referred.

4. 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.

Bill deferred from meeting of 24 June 2003

- Migration Amendment (Duration of Detention) Bill 2003.

(Johnnie Ferris)

Chair

25 June 2003

Appendix 1

Proposal to refer a bill to a committee

Name of bill(s):

- Migration Legislation Amendment (Sponsorship Measures) Bill 2003

Reasons for referral/principal issues for consideration

Further exploration of the technical aspects of the bill.

Possible submissions or evidence from:

Colleges, universities, employer organisations etc

Committee to which bill is referred:

Legal and Constitutional Legislation Committee

Possible hearing date:

Possible reporting date(s): September 2003

(sign)

Sue Mackay

Whip/Selection of Bills Committee Member

Appendix 2

Proposal to refer a bill to a committee

Name of bill(s):

- New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003

Reasons for referral/principal issues for consideration

Removal of the taxing point on conversion or exchange of certain traditional securities, provides for the deferral of tax liabilities. While it will facilitate capital raising for some companies, it may establish a precedent for other instruments which would be for the purpose of deferring tax rather than raising capital.
Possible submissions or evidence from:
Treasury, ATO, business organisations with an interest in capital raising and the investment industry

Committee to which bill is referred:
Economics Legislation Committee

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

Appendix 3
Proposal to refer a bill to a committee
Name of bill(s):
Postal Services Legislation Amendment Bill 2003

Reasons for referral/principal issues for consideration
To allow the committee to give due consideration to the regulation of document exchanges and aggregation services, and introduction of measures to monitor Australia Post’s delivery of services.

Possible submissions or evidence from:
Australia Post, Major Mail Users of Australia (MMUA), Post Office Agent’s Association Ltd (POAAL), Department of Communications, Information Technology and the Arts (DCITIA)

Committee to which bill is referred:
Environment, Communications, Information Technology and the Arts Legislation Committee

Possible hearing date: to be determined by the committee
Possible reporting date(s): 19 August 2003
(Signed)
Ian Campbell
Whip/Selection of Bills Committee Member

NOTICES
Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the names of Senators Stott Despoja and Bolkus for today, relating to the reference of matters to the Legal and Constitutional References Committee, postponed till 26 June 2003.

Business of the Senate notice of motion no. 2 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to the disallowance of item [2197] of Schedule 2 to the Migration Amendment Regulations 2003 (No. 3), postponed till 26 June 2003.

Business of the Senate notice of motion no. 4 standing in the name of Senator Carr for today, relating to the reference of a matter to the Employment, Workplace Relations and Education References Committee, postponed till 26 June 2003.

General business notice of motion no. 486 standing in the name of Senator Nettle for today, relating to Australia’s military ties with the United States of America, postponed till 26 June 2003.

General business notice of motion no. 492 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for
today, relating to a national ban on tail docking of dogs, postponed till 26 June 2003.

General business notice of motion no. 493 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to the introduction of the National Animal Welfare Bill 2003, postponed till 11 August 2003.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.40 p.m.)—I seek leave to move a motion to vary the hours of meeting and routine of business for the remainder of today.

Senator Brown—Before we give leave, I wonder if this ought not be postponed until the other half of the arrangement, which was that Senator Greig, Senator Nettle and I get certain information upon which we can proceed, is kept. It would save us debating the matter now.

Senator IAN CAMPBELL—I think that is reasonable. I seek leave to make a short statement.

Leave granted.

Senator IAN CAMPBELL—I think Senator Brown has shown a willingness to be very cooperative with the government in handling two major items of legislation, as have the Labor Party, the Democrats and others. We have before us the balance of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] and what has become known as the media ownership bill. They are two of the larger packages in terms of time required between now and when the Senate adjourns for the winter recess. We have during question time struck an agreement to try and do the media bill this afternoon and then the ASIO bill after 6.50 p.m. this evening. Part of the agreement was that the minor parties and Independents would be briefed on proposed amendments to that bill. The government is working furiously to get that briefing organised. We thought it would be possible to do so before now, but the Minister for Justice and Customs and his staff are still trying to get that organised. Senator Brown and others had agreed to proceed on the understanding that that would occur. I think it is only reasonable that we defer this arrangement.

Senator Robert Ray—Why don’t you read it out so that we all know what it is?

The DEPUTY PRESIDENT—That is what I was trying to lead to: foreshadow the motion so that people have some idea of what is ahead of them.

Senator IAN CAMPBELL—The motion that I propose to move at the appropriate time, which I have circulated to leaders and whips, reads:

That, on Wednesday, 26 June 2003—
(a) the hours of meeting shall be 9.30 am to adjournment;
(b) the routine of business from 6.50 pm shall be consideration of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]; and
(c) the question for the adjournment shall be proposed at the conclusion of proceedings on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2].

COMMITTEES

Economics References Committee

Reference

Senator CONROY (Victoria) (3.43 p.m.)—I move:

(1) That the following matter be referred to the Economics References Committee
for inquiry and report by 4 December 2003:

Whether the Trade Practices Act 1974 adequately protects small businesses from anti-competitive or unfair conduct, with particular reference to:

(a) whether section 46 of the Act deals effectively with abuses of market power by big businesses, and, if not, the implications of the inadequacy of section 46 for small businesses, consumers and the competitive process;

(b) whether Part IVA of the Act deals effectively with unconscionable or unfair conduct in business transactions;

(c) whether Part IVB of the Act operates effectively to promote better standards of business conduct, and, if not, what further use could be made of Part IVB of the Act in raising standards of business conduct through industry codes of conduct;

(d) whether there are any other measures that can be implemented to assist small businesses in more effectively dealing with anti-competitive or unfair conduct; and

(e) whether there are approaches adopted in Organisation for Economic Co-operation and Development (OECD) economies for dealing with the protection of small business as a part of competition law which could usefully be incorporated into Australian law.

(2) That the committee make recommendations for legislative amendments to rectify any weaknesses in the Trade Practices Act identified by the committee’s inquiry.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.44 p.m.)—At the request of Senator Heffernan, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Aviation Transport Security Bill 2003 and a related bill be extended to 19 August 2003.

Question agreed to.

Senator FERRIS (South Australia) (3.44 p.m.)—At the request of Senator Heffernan, I move:

That the time for the presentation of the following reports of the Rural and Regional Affairs and Transport Legislation Committee be extended to the last day of sitting in 2003:

(a) the administration of the Civil Aviation Safety Authority;

(b) the import risk assessment on New Zealand apples; and

(c) the administration of AusSAR in relation to the search for the Margaret J.

Question agreed to.

TURNBULL PORTER NOVELLI

Senator BROWN (Tasmania) (3.45 p.m.)—I move:

That there be laid on the table by the Minister representing the Minister for Industry, Tourism and Resources (Senator Minchin) by no later than 3.30 pm on 12 August 2003, all documents produced since 1 January 1999 relating to work undertaken by the public relations company Turnbull Porter Novelli for Biotechnology Australia and the department.

Question agreed to.

DEFENCE: PORTSEA SITE

Senator ALLISON (Victoria) (3.45 p.m.)—by leave—I table the document referred to in general business notice of motion No. 504. I move:
That the Senate—

(a) notes:

(i) the Expression of Interest prepared by the Victorian community, facilitated by the National Trust of Australia (Victoria) and the Victorian National Parks Association for the Department of Defence land at Portsea,

(ii) that this Expression of Interest has the support of the ‘Partners in the Victorian Community’, including Olivia Newton-John, Sir Rupert Hamer, Laurence Cox, Dame Elizabeth Murdoch and Ron Walker among others, and

(iii) the Victorian State Government supports the Victorian Community Expression of Interest as being ‘consistent with Victorian Government objectives’ that the site be ‘managed for public benefit consistent with the broad intent of the Community Masterplan’; and

(b) urges the Federal Government to transfer the land in question to the Victorian community to enable the establishment of the Point Nepean National Park and the Point Nepean Living Museum, as outlined in this Expression of Interest.

Question agreed to.

FREEDOM OF INFORMATION AMENDMENT (OPEN GOVERNMENT) BILL 2003

First Reading

Senator MURRAY (Western Australia) (3.46 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the Freedom of Information Act 1982 to give effect to recommendations made by the Australian Law Reform Commission and the Administrative Review Council, and for related purposes

Question agreed to.

Senator MURRAY (Western Australia) (3.46 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator MURRAY (Western Australia) (3.46 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

In 2000, I introduced the Freedom of Information (Open Government) Bill (‘the Open Government Bill’) as a Private Senator’s bill. It was an attempt to give effect to the changes recommended to the FOI Act by the Australian Law Reform Commission and the Administrative Review Council in their joint report of 1996.

The bill I am introducing today is an updated version of that legislation. It takes into account the recommendations of the Senate Legal and Constitutional Legislation Committee that closely examined the Open Government Bill.

The Committee endorsed many of the amendments to the FOI Act contained in the bill. Most importantly, it recommended that the bill proceed subject to certain changes.

At the time of introducing my original legislation, two things were clear. The first was that our FOI laws were in serious need of reform. The second was that the Government had no intention of delivering that reform.

Three years later, neither of these things appears to have changed.

FOI laws exist, firstly, to allow access to certain personal information held by government departments and, secondly, to provide a general right of access to government information.

FOI is a democratic imperative. Unless citizens have the power to access and independently scrutinise government information there is little prospect of having a genuinely deliberative and participatory democracy. FOI opens government up to the people. It allows people to participate in
policy, accountability and decision making processes. It opens the government’s activities to scrutiny, discussion, comment and review.

Former Prime Minister Malcolm Fraser identified as a fundamental requirement that ‘people and Parliament have the knowledge required to pass judgement on the government’. He said that ‘too much secrecy inhibits people’s capacity to judge the government’s performance.’ In 1983, Bob Hawke put the case bluntly: “Information about Government operations is not, after all, some kind of ‘favour’ to be bestowed by a benevolent government or to be extorted from a reluctant bureaucracy. It is, quite simply, a public right.”

It is a public right because it is in the public interest. Consider the example of policy documents that outline the criteria applied by government agencies in making administrative decisions. Such documents are almost never forthcoming in response to FOI requests, irrespective of the merits of the particular case. How can it be in the public interest to shroud in secrecy the terms on which public administrative power is exercised?

The principle of popular sovereignty demands that people have access to the very information they require to participate effectively in decision making processes. Alan Rose, former President of the Australian Law Reform Commission, made the point succinctly:

“In a society in which citizens have little or very limited access to governmental information, the balance of power is heavily weighted in favour of the government. It is doubtful that an effective representative democracy can exist in such circumstances.”

Liberal democracies throughout the world have passed freedom of information legislation in recent decades. The United States embraced the idea in the 1960s, and this example has been followed worldwide. After a protracted debate, Australia belatedly enacted the Freedom of Information Act in 1982.

It was only a partial enactment of the recommendations put to the Government by the Senate Standing Committee on Constitutional and Legal Affairs. Over the years, the Act has been widely criticised as inadequate.

Australia has embraced freedom of information much less vigorously than other democracies. In 1996, for example, the United States Attorney General announced that the Department of Justice was making FOI performance part of the job description for every relevant employee and rating them on how well they do. The New Zealand Court of Appeal has described New Zealand’s FOI legislation as of “such permeating importance” that “it is entitled to be ranked as a constitutional measure.”

The 1996 Constitution of the Republic of South Africa provides for a constitutional right of access to information held by the State. British Columbia’s FOI regime requires the government to disclose, among other things, “information which is clearly in the public interest.” This is a mandatory duty to disclose which arises even where no particular individual has specifically requested the information. In contrast, Australia’s commitment to freedom of information has been disappointingly half-hearted.

In January 1996, the Australian Law Reform Commission and the Administrative Review Council released an extensive review of the Commonwealth FOI Act. There can be no doubt that an effective freedom of information regime is crucial to the health of our democracy, and the Government’s failure to act on the moderate and sensible recommendations contained in the report is disappointing. This bill gives effect to many of those recommendations.

The review uncovered a disturbing culture of secrecy in some government agencies. The FOI Act establishes a rebuttable legal presumption in favour of the disclosure of requested documents. Unfortunately, this does not reflect the approach taken by some government agencies. The review found that some agencies decide immediately not to disclose information and quickly consult the list of exemptions to find some way to justify non-disclosure. As one submission stated:

“It is my sad conclusion… that with few exceptions the agencies of government have taken the Act as a guide to where they should dig their trenches and build their ramparts.”

This attitude is reflected in the Ombudsman’s subsequent observation that ‘few agencies have mechanisms in place which encourage or promote
the disclosure of information without recourse to the FOI Act. FOI should be the final resort for obtaining information. Many agencies simply refuse to provide information for no sound reason, forcing recourse to the FOI Act. This obstructionist attitude is most pronounced in relation to requests for policy information. The Ombudsman’s review of FOI administration in Commonwealth agencies offered the following conclusion:

“Collectively, the problems identified in this report are illustrative of a growing culture of passive resistance to the disclosure of information. These problems are unlikely to be overcome while ever there is no body or authority with oversight of administration of the FOI Act.”

The need for independent oversight of FOI administration was also highlighted by the Australian Law Reform Commission in its 1996 report. Indeed, Justice Kirby had stressed the need for a body to scrutinise FOI performance as early as 1983.

The Open Government Bill proposed just such a body. I stated in my second reading speech that the bill would:

“create an independent FOI Commissioner. The Commissioner will audit agencies’ FOI performance to ensure that the Act is administered consistently with its purpose. He or she will provide FOI training to agencies. He or she will issue guidelines as to how the Act is to be administered and will be available to provide advice and assistance to agencies relating to FOI requests.”

The Commissioner was to be an important check on FOI administration. There is little point in having a statutory right of access to government information in circumstances where a culture supporting the denial of that right is allowed to flourish. The arrogant attitude of some government agencies that treat requests for information in a dismissive and contemptuous manner should not be tolerated. The Open Government Bill was to make agencies accountable for their FOI performance.

The Senate Legal and Constitutional Committee accepted the need for an oversight agency such as an FOI Commissioner, recommending that the role be conferred on the Commonwealth Ombudsman. That recommendation has been adopted in this bill.

One technique that has been employed by obstructionist public servants and their secretive executive masters, their ministers, has been to impose excessive charges for FOI services to discourage use of the Act. As well as making the setting of fees subject to the scrutiny of the FOI Commissioner, this bill would establish a more reasonable fee system. Access to personal information would be free and the discretion to waive or reduce charges would be clarified. Various unnecessary charges would be abolished altogether.

I have adopted a number of Committee recommendations in reformulating this bill. The bill proposed a number of changes to exemption clauses to promote a pro-disclosure approach. It is apparent from the Committee Report that these changes do not at this stage enjoy cross-party support. The Committee took the view that reforming the exemption regime is a matter for the longer term to be considered in light of the practical effect of other proposed changes such as the establishment of an FOI Commissioner.

I do not resile from the view that the exemption clauses need reform. Indeed I do not believe it to be the position of the Committee that reform is not needed. However, I recognise that there is disagreement as to approach and timing. In the interests of progressing reform, I undertook to remove these items from the bill and have done so.

Consistent with the view of the Committee, the bill retains the exempt status of the Defence Signals Directorate and the Defence Intelligence Organisation in recognition of their status as intelligence agencies.

The Committee supported most of the changes proposed in the Open Government Bill to Part V of the FOI Act, concerning amendment and annotation of personal records. This Part is important to assist people in identifying errors and misleading or irrelevant information in their personal records. The Committee opposed the removal of the requirement that the person seeking to amend the personal record must have lawfully accessed the document, and the bill has been amended accordingly.
Submissions to the Committee illustrated division on the proposal in the Open Government Bill to remove internal review as a pre-requisite for review by the Administrative Appeals Tribunal.

Ultimately, the Committee took the view that it is preferable that the internal review systems and processes of agencies be audited to facilitate reform to ensure that applicants have access to competent and efficient internal review. Therefore, under this bill, internal review will remain a prerequisite for external review.

The Committee was not prepared to support changes to empower the AAT to grant access to documents exempt under s 43 (documents relating to business affairs) where the public interest justifies such access. It acknowledged concerns that commercial-in-confidence claims are misused but did not support the concept of an express public interest test. While I have removed this proposal from the bill, I remain of the view that there is, quite rightly, support for this change in the community and among commentators. It is an issue that the Government or the Parliament must address.

The FOI Act prescribes time limits for the processing of FOI requests. The Open Government Bill sought to reduce the time limit for processing a standard request from 30 days to 14 days. Both the Law Reform Commission and the Ombudsman’s reports suggested that existing time limits were too long. Most witnesses before the Committee welcomed the proposed changes.

The Committee acknowledged the expectation that technology and improved records management will enable a shorter response time to FOI requests. It suggested a 21 day time limit, which has been adopted in this bill.

It also noted the need to provide a maximum time frame for the actual provision of the information requested once access has been granted. The bill contains a seven day limit, as considerable time will have already elapsed in which the agency examined the information to determine its suitability for release.

I have removed from this bill the proposal to provide that, when determining whether a disclosure of a document would be contrary to the public interest, it is irrelevant that the disclosure may embarrass the Government. This important principle has been acknowledged in decisions of the Federal Court and the AAT. On that basis, it was considered unnecessary by the Committee. I am of the view that there is no harm in clearly enunciating this principle in the legislation. Nonetheless, it has been removed in line with the Committee’s recommendation.

I have also amended the test applying to exemptions based on legal professional privilege to bring it into line with the common law position and the Committee’s view.

The great challenge for our FOI laws is to give effect to the objects of FOI in circumstances where certain sectors will use any available excuse to conceal what need not and should not be concealed. This challenge will be overcome in part by establishing effective mechanisms for scrutiny and review of FOI administration, but also by clarifying the obligations of government agencies.

When these obligations are clarified, what may pass now for a superficially plausible excuse for refusing FOI requests will be seen for the spurious obstructionism it often is. Government agencies must be brought to account for their actions. The maladministration of Australia’s FOI laws has a serious negative impact on the quality of Australian democracy. It improperly excludes from public scrutiny and debate information to which the people, the sovereign rulers of our democratic nation, are entitled.

There are obviously circumstances in which information in the possession of government should not be made widely available. High level information dealing with such topics as national security and defence clearly must remain confidential.

The bill will also protect private personal information in the possession of government from disclosure to members of the general public. The FOI Commissioner will be required to develop, in consultation with the Privacy Commissioner, guidelines to protect private personal information from being accessed under the Act.

It is not the objective of this bill to create a raft of new rights to access governmental information. Much of it is devoted to giving effect to rights that currently exist in theory but are frequently
denied in practice. The bill makes FOI more accessible to ordinary people. The FOI Commissioner will have a role in publicising the Act in the community and ensuring that people have the information and assistance that they need to exercise their legal rights. Unjustified and unduly prohibitive fees will be eliminated.

Most importantly, the bill provides for a system of accountability in FOI administration. At present, oversight of FOI is palpably inadequate, resulting in the denial of important democratic rights. The proposed FOI Commissioner will provide, for the first time, an independent and effective check on the administration of the Act.

FOI reform is long overdue. The problems I have outlined are not new, nor are the solutions I offer. This is a moderate and sensible response to a serious problem, the existence of which has been documented in detail by such bodies as the Australian Law Reform Commission, the Administrative Review Council and the Commonwealth Ombudsman.

I have accepted the recommendations of the Senate Legal and Constitutional Committee, which did an excellent job of reviewing the Open Government Bill. In many cases, my support for the original proposals remains but it is clear that they are unlikely to proceed as part of a first wave of reform.

What remains is a package of measures that enjoy a considerable degree of support among a range of stakeholders. They would do a great deal to advance Commonwealth FOI laws. It now becomes a question of political will as to whether they will be implemented.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS

Withdrawal

Senator MURRAY (Western Australia) (3.47 p.m.)—by leave—I move:

That general business order of the day no. 9, relating to the Freedom of Information Amendment (Open Government) Bill 2000 [2002], be discharged from the Notice Paper.
previous one dealing with the leak of in-camera evidence dealing with the *Australian* newspaper, have aroused quite some publicity in the media. I have to say that most of the articles on this have been very self-serving. Not surprisingly, it is in the interests of journalists and media proprietors to have absolutely no controls placed over what they write in newspapers. I understand the perspective they are coming from; I do not necessarily concede, however, that the standard of the articles written has done anything to illuminate the issue. They have been very good at knocking over straw men, and that means that some of us have been fairly reluctant to enter a public debate on this, because we know just how one-sided it will be in terms of the press’s attitude.

These issues deal essentially with premature disclosure of Senate or parliamentary committee reports. They take one of two forms: either the disclosing of in-camera evidence or the disclosing of the conclusions of a report before it is tabled in this parliament. In some cases, that disclosure only happens one or two days before the reports are due to be tabled in the parliament—hence, it is not a question of the public’s right to know; it is just a matter of one journalist ratting on all their colleagues and getting a ‘scoop’, and that is why they do it. It is a breach of privilege to do it. We have drawn the attention of the press gallery here and media proprietors in general to the rules of parliament. To prematurely disclose such a report is a breach of privilege. It is not necessarily a contempt of parliament, because to meet that particular definition one would need the Privileges Committee to consider the matter and report to the Senate and the Senate to make a finding on it—we should not confuse the two things.

Of course, one of the great responses of the media and the Australian Press Council is to say, ‘Why don’t you go on a witch-hunt for the leakers? Why don’t you chase down the leakers?’ as though we never do. The fact is that we do. We are concerned about tracking down the leakers. That is why, if it is a Senate committee, we call all the senators in before us and ask them to affirm that they did not leak the material. It is interesting that we get no credit whatsoever for being probably the only legislature around the world with the honesty to point the finger at senators. If this were a parliament overseas, they would never concede their own went out and leaked material to the media. They would deny it. We are the realists. We say, ‘Yes, it probably, almost certainly, was a senator who leaked the material.’ We do not try to shift the blame onto committee secretariats or anyone else; we believe that it is some opportunistic senator who has leaked the material.

They ask, ‘Why don’t you go out and catch them?’ There is an absolutely simple way that we could catch them. We could compel journalists to attend the Privileges Committee hearings; we don’t. We could compel them to reveal their sources; we don’t. Why don’t we? Because we realise that the profession of journalism has its own ethical structure, one of the tenets of which is that journalists do not reveal their sources. We do not seek to make them break the ethics that they subscribe to. All we ask in return is that they do not breach the ethics of this parliament that reports are tabled in this chamber before they are published in newspapers. It is a one-way street for a lot of media proprietors and journalists. They want us to respect them and the ethics by which their profession is run, but they will not respect the ethics of the Senate itself.

The Press Council itself asks: ‘Why don’t you go and seize the telephone records of senators? Why don’t you go and seize the hard drives from senators’ computers so that you can track down a leak?’ There are two
reasons why we do not. We are not that sort of investigative body. We settle these matters based on the papers or by way of public hearings. The logical extension of that would be that we do not want to contemplate, and we are not going to contemplate, that we go and seize the hard drives and the phone records of journalists. What sort of position would that get us in? We reject those particular points.

Regrettably, as the correspondence shows, the most notable feature of the Press Council’s correspondence is a total lack of intellectual rigour and a total lack of understanding about what the Senate and the Senate Privileges Committee has been on about. That is absolutely obvious to those senators who read that correspondence. I know that in one of his letters the head of the Press Council suggested that one of my responses to him was rude, and I regret it if it was. I do not suffer fools gladly, and I have not suffered him too gladly for the glib remarks he has made in correspondence, but I hope that later correspondence in no way reflected any rudeness—only an impatience with the lack of intellectual rigour, the lack of substance and the almost obtuse understanding of the issues that the Press Council has shown. In one of the last paragraphs of Professor McKinnon’s letter—and I do not take this as a threat—he said that he would like to circulate his correspondence to editors, as though it was so edifying. I have saved him the trouble: we put it in the report with all our correspondence so that some objective assessment can be made of all of it, not just one side.

Question agreed to.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.55 p.m.)—by leave—I move:

That, on Wednesday, 26 June 2003—

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) the routine of business from 6.50 pm shall be consideration of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]; and

(c) the question for the adjournment shall be proposed at the conclusion of proceedings on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2].

Senator MACKAY (Tasmania) (3.56 p.m.)—I do not know if the Manager of Government Business heard me across the chamber, but I am just wondering whether any provision has been made for a break.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.56 p.m.)—No, there has not. There has been general agreement that, if it starts at 6.50, it should not take long and we can all have our din-dins after it has finished.

Question agreed to.

COMMITTEES

Scrutiny of Bills Committee
Report

Senator CROSSIN (Northern Territory) (3.57 p.m.)—I present the sixth report of 2003 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 7 of 2003, dated 25 June 2003.

Ordered that the report be printed.

Senator CROSSIN—I seek leave to have my tabling statement incorporated in Hansard.

Leave granted.
The statement read as follows—
As Senators are aware, the Scrutiny of Bills Committee considers legislation to ensure that it complies with appropriate civil liberties and principles of administrative fairness. It does this by bringing to the attention of the Senate provisions of bills which may infringe upon personal rights and liberties, or delegate legislative powers inappropriately or without sufficient parliamentary scrutiny.

In doing this, Committee members place considerable reliance on the explanatory material that accompanies each bill, in particular on Explanatory Memoranda and on Ministers’ second reading speeches. The work of the Committee, and the work of the Senate, is made more difficult where this material fails to explain clearly the operation and impact of legislative proposals.

In 1999 the Committee made the following comment on EMs:

As indicated by its name, an Explanatory Memorandum should explain what is being proposed. It should enable a reader of legislation to understand the reason for its introduction, the changes it proposes to make and the anticipated effect of those changes.

It seems, increasingly, that Explanatory Memoranda are failing to Explain.

This has the consequence of making it more difficult for Senators and Committees to give adequate consideration to legislation. It also leads to the production of correspondence from the Scrutiny Committee to Ministers aimed at discovering whether a bill attracts the Committee’s terms of reference, as opposed to why.

A case in point is a bill considered by the Committee at its meeting earlier today, and to be reported at a later date. While the EM in that case did contain an explanation which addressed the Committee’s concerns about the commencement of the bill, the explanation was not contained in the part of the EM dealing with the commencement provisions. If the EM had been clearer, the Committee would not have needed to engage in correspondence with the Minister nor alert Senators to potential difficulties with the legislation.

In other cases, information contained in EMs is presented in a technical manner, which does little to illuminate the proposed operation of bills but merely repeats their provisions. On other occasions material relevant to the Committee’s terms of reference seems almost deliberately obscure, or is omitted entirely.

As I noted in my tabling statement last week, the Committee addresses these issues, bill by bill, in its Alert Digests and Reports. The Committee has also been considering the standard of explanatory memoranda more generally through correspondence with the Government. At its meeting today the Committee received a briefing from the First Parliamentary Counsel, Hilary Penfold QC and Second Parliamentary Counsel, Peter Quiggan on EMs, and on the naming and numbering of bills, an issue which has periodically caused confusion in the consideration of legislation.

I’d like to thank Ms Penfold and Mr Quiggan for taking the time to address the Committee’s questions on these issues.

The Committee considers the standard of information contained in explanatory material to be an issue of vital concern. Many of the issues which repeatedly arise in the Committee’s consideration of bills—the retrospective application of laws, delays in the commencement of provisions, safeguards applied in the delegation of legislative power, and so on—should be comprehensively addressed in the explanatory material that accompanies those bills.

Senators considering legislation must have access to material which clearly explains the operation and impact of legislative provisions. The transparency of the legislative process, the quality of legislation and the ability of people to read and understand the laws passed by the Parliament will all be improved if the standard of explanatory material is improved.

The Committee will produce a considered response to these issues in the second half of this year.

Public Works Committee Report

Senator FERRIS (South Australia) (3.58 p.m.)—On behalf of Senator Ferguson and on behalf of the Parliamentary Standing Committee on Public Works, I present the report on the
provision of facilities for the ACT multi-user depot, HMAS Harman. I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

The report deals with a range of new and redeveloped facilities intended to establish a Multi User Depot at HMAS Harman for use by part-time Reserve and Cadet Units. The estimated cost of the works is $13.5 million.

The Multi-User Depot concept allows for maximum use and occupancy of a single set of facilities, by a number of Reserve and Cadet units. Typically, these units use the facilities only one evening per week and one weekend per month.

The project described in this report will allow Defence to relocate a number of units currently accommodated throughout the ACT to a single site at HMAS Harman. Under this proposal, seven units—comprising four Reserve units, two Cadet units and one regular RAAF unit—will be relocated. In addition to the units already accommodated at Harman, this will bring the total number of units utilising the Multi User Depot facilities to ten.

At present, Reserve and Cadet units in the ACT are located at three sites:

- HMAS Harman;
- The Werriwa Training Depot in Allara Street, Civic; and
- RAAF Base Fairbairn at Canberra Airport.

The decision to relocate units and consolidate facilities at a single site is, in part, driven by the closure in 2004 of RAAF Base Fairbairn, and by the planned disposal in 2004-05 of the Werriwa Training Depot.

Defence expects that the establishment of a Multi User Depot at HMAS Harman will minimise duplication of facilities across the ACT, resulting in both operational and cost efficiencies. Units will have access to existing messing, accommodation and sporting facilities at Harman, and will be supported by existing essential services infrastructure, without additional expenditure by Defence. The completion of the Multi User Depot works will also permit the termination of Defence’s current lease-back arrangement at RAAF Fairbairn, which will deliver further savings.

The proposed works will comprise:

- office accommodation;
- specialised and shared training facilities;
- general and weapons storage facilities;
- vehicle storage and maintenance facilities;
- separate ablutions facilities for Reserves and Cadets;
- overnight, barracks-style accommodation; and
- access to messing, gymnasium, medical facilities and parking.

At the public hearing, Defence informed the Committee of two changes made to the design of the new facility since the agency submitted its evidence in March 2003. The new design allows for:

- collocation of the Cadet and Reserve precincts; and
- provision of barracks-style overnight accommodation for up to 120 Cadets.

Defence believes that these changes represent better value for money for the Commonwealth.

Defence assured the Committee that the collocation of the Reserves and Cadets would not entail concurrent use of the facilities by the two groups. To ensure that Defence meets its duty-of-care in relation to Cadets, separate ablutions blocks will be provided for both unit categories.

In considering the written evidence supplied by Defence, Committee members noted that, while the submission outlined a number of proposed energy efficiency measures, no reference was made to consultation with the Australian Greenhouse Office.

At the public hearing, Defence stated that it intended to undertake such consultation. The Committee recommended that this occur, in order to ensure that the proposed works comply with the relevant sections of the Commonwealth Energy Policy.
During a confidential briefing on project costs, the Committee was curious to learn why the overall budget for the project had remained unchanged despite considerable alterations and additions to the project scope. At the public hearing, and in subsequent correspondence, Defence explained that collocation of the Reserve and Cadet precincts, a reduction in the planned number of class rooms, and the excision from the budget of proposed intersection works at Canberra Avenue, had freed up funds for expenditure on additional project elements.

Following the public hearing, the Committee recommended that Defence provide clarification of altered budget elements, and the revised budget as a whole, and that these be supplied to the Committee at the earliest opportunity.

Defence responded promptly to this request and was able to assure the Committee that the revised project costs were in order.

The Committee was displeased that copies of revised project costs were not supplied to members prior to the public hearing, and requested that, in future, such documents be made available to the Committee well in advance of the hearing.

Given that Defence has supplied appropriate budget information and has undertaken to consult with the Australian Greenhouse Office, the Committee recommends that the works proposed for the ACT Multi User Depot proceed at a cost of $13.5 million.

Mr President, I wish to thank the many people who assisted the Committee during the course of the inspections and public hearing, my Committee colleagues and the staff of the secretariat.

I commend the Report to the Senate.

Question agreed to.

Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee

Senator JOHNSTON (Western Australia) (3.58 p.m.)—I present the report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the examination of the annual reports for 2001-2002 in fulfilment of the committee’s duties pursuant to section 206(c) of the Native Title Act 1993, together with the Hansard record of proceedings.

Ordered that the report be printed.

Senator JOHNSTON—I seek leave to have my tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

The Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, on the examination of Annual Reports for 2001-2002 reviews the performance of the National Native Title Tribunal, the Indigenous Land Corporation and the Land Fund in the reporting period.

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Fund has a statutory duty to examine the Annual Report of the National Native Title Tribunal and the Indigenous Land Corporation. This report is prepared pursuant to s 206(c) of the Native Title Act 1993.

Section 206(c) of the Act requires the Committee to report at its discretion to both Houses of Parliament on matters concerning annual reports to which Parliament’s attention should be directed. This, the ninth annual report of the Tribunal, covers the financial year 2001-2002. It was tabled in the Senate on 11 November 2002 and in the House of Representatives on 12 November 2002.

The Indigenous Land Corporation’s annual report for the same period was tabled in the Senate and the House of Representatives on 18 September 2002.

To assist in its evaluation, the committee held public hearings on 4 March 2003 (National Native Title Tribunal) and 18 March 2003 (Indigenous Land Corporation), in Canberra.

National Native Title Tribunal

Mr President I would like to outline briefly, some of the issues which have arisen in the course of the Committee’s perusal of the annual report for the National Native Title Tribunal:
Compliance
I am pleased to report that the National Native Title Tribunal has again provided a report that complies with the requirements set out in the Department of Prime Minister and Cabinet’s Requirements for Annual Reports and other formal requirements. In doing so, they have provided a clear statement of its performance for the year under review. The Committee has none the less made some observations as to matters that could be included in future annual reports.

Indigenous Employment Practices
During the public hearing the Committee learnt that the Tribunal had set in place a number of strategies to encourage indigenous employment within the organisation. The Tribunal has developed a cadetship scheme and offers two full time scholarships for indigenous employees. They have also altered their advertising style, position documents and selection processes to encourage the indigenous employment at all levels in the organisation. The Committee has indicated that it would appreciate regular updates on the success or otherwise of these programs.

Performance Measures
The Committee noted that the nature and volume of the work of the Tribunal was not quite as predicted. The Tribunal has four output groups and some of the projections were greater than those delivered. The Committee commented on these shortfalls. It also commended the Tribunal on the transparent and accountable analysis of its performance and the explanation of the variations from the estimated outcomes.

Consultants
An interest in the number and level of consultants retained by the Tribunal has always been expressed by the Committee and its predecessors. The Committee noted that in the financial year under review, expenditure on consultants, under section 131A of the Native Title Act 1993, has increased again.

The Committee commended the Tribunal on initiating an extended consultancy with the James Cook University which will enable the Tribunal to commission the University to conduct research on native title matters affecting the Far North Queensland area.

Work of the Tribunal
The work trends within the Tribunal were also examined by the Committee. It considered where the Tribunal was directing its resources and noted that there was still work to be undertaken in the area of claims and that the work that majority of the Tribunal’s expenditure (Agreement making) remained constant from the previous year. The evidence taken by the Committee suggests that this would be the situation for the foreseeable future.

Overall I am pleased to report that the Tribunal has again produced an informative and accessible Annual Report.

Indigenous Land Corporation and the Land Fund
Mr President, I now turn to the Annual Report of the Indigenous Land Corporation, which also includes the report on the operation of the Indigenous Land Fund.

The Corporation has a primary responsibility to assist indigenous Australians to purchase land and also to assist in the management of Indigenous-held land. The Corporation’s annual reporting requirements can be found in the Aboriginal and Torres Strait Islander Commission Act 1989.

Although the Corporation has not met all the formal reporting requirements it has provided sufficient information for the Committee to comment on its performance in the year under review.

Performance measures
The 2001-2002 financial year was a year of review and restructuring for the Corporation. The organisational restructure resulted not only in the reintroduction of the position of Deputy General Manager but also saw the amalgamation of the Corporation’s three outputs into one—the assistance in the acquisition and management of land. The Committee noted the Corporation’s reason for this amendment but expressed some disquiet over the change. The Committee will continue to monitor the impact on the Corporation’s operations.

Donation to medical research
At the public hearing of 18 March the Chairperson of the Corporation raised the matter of the donation to the Queensland Institute of Medical
Research to investigate the occurrence of rheumatic fever among indigenous populations. The Corporation’s Board agreed to the donation at a meeting in August 2001. The Committee’s comments on this matter in the report are concluded with the suggestion that in the future, in such matters, the Corporation seeks and is guided by legal advice.

Decline in properties approved and divested

In this reporting period the ILC reports that there was a decline in the number of properties approved for purchase, purchased and divested. The number of acquisitions were half those of the previous financial year and only 15 properties were divested in the year under review.

The report indicates that there has been a deliberate shift in emphasis from acquisition to that based on long term sustainable land use planning, including an emphasis in economic planning. The Committee noted this shift and indicates that it will continue to monitor the situation.

Land Acquisition in Urban Areas

The Committee also noted that a matter which has been of concern to both it and its predecessors, that is, the position of Indigenous people living in urban areas and large country centres, is being considered by the Committee on Social and Urban Issues. The Committee welcomes this initiative.

Purchase Strategy

As a result of the internal status audit of properties the Corporation has given in-principal approval to a new purchase strategy. Properties will be purchased under one of four program streams—economic, environmental, social and cultural. These reflect the language of the legislation. Applicants for properties are asked to identify their primary purpose in the application. Further, business plans are required.

The Committee welcomes these efforts to place the Corporation’s work in its statutory context and notes the work of the Corporation to re-establish its operational and corporate framework.

The Land Fund

Finally Mr President, I refer to the Land Fund Report 2001-2002. The requirements for this report are established by s193I of the Aboriginal and Torres Strait Islander Commission Act 1989. The Land Fund finances the operations of the Indigenous Land Corporation.

The Land Fund was established in the 1994-95 Budget. In 2004 Government allocations to the Fund will cease, and the intention is that the capital base of the Fund would be sufficient to guarantee ongoing operational funding for the ILC. At the public hearing on 18 March 2003 the Corporation’s Acting General Manager indicated that the Corporation is aware that, from 1 July 2004, it will have to rely solely on the earnings from the Land Fund. This has lead to a number of strategies designed to assist in planning.

The Committee is of the view that the Corporation is prepared for the transition.

Senator RIDGEWAY (New South Wales) (3.59 p.m.)—by leave—I move:

That the Senate take note of the report.

I thank the Senate for allowing me some time to speak on the issue. I certainly will not take up much time. I did want to raise a few issues in respect of native title and the review by the committee. There are a number of things that need to be put on the record. It is now 11 years since the Mabo decision was first dealt with. It dealt with the recognition and status of Indigenous people and their rights in relation to land. After that time, we have to ask: at what cost does that come?

The first thing that needs to be said is that at least $600 million—more than half a billion dollars—of Commonwealth money has been spent on native title since 1993. The Commonwealth government has spent upwards of some $63 million on native title matters in the Federal Court, $167 million on funding the tribunal and approximately another $370 million through ATSIC to fund the various native title rep bodies across the country.

From the point of view of evaluating the effectiveness of the whole scheme that was put in place 11 years ago, or following on from the decision 11 years ago, if this were a company you certainly would not be invest-
ing your shares in it. Quite frankly, in relation to the determination of native title on the ground, whilst there have been successful agreements in local places through Indigenous land use agreements, the majority of successes have been, in a voluntary sense, outside of the regime that has been established. In many respects that needs to be kept in mind.

One of the things that I wanted to say—perhaps this is something that the committee can take up at some time—is that, as Senator Ian Campbell would know from talks that we have had in the past, there is a need for the federal government to start shifting emphasis to look at comprehensive agreements being established. Senator Ferris also has an interest in this issue, which needs to be dealt with. Quite frankly, at the end of the day we cannot accept that this is as good as it gets. I do not think I need to convince anyone, particularly those out there on the ground. I have met with miners and farmers. Whilst there is not a lot of information in the media, the end result is that people still have that high degree of uncertainty and there is still the need to provide some leadership and intervention in how some of the current issues might be resolved.

At the end of the day, I do not believe that winners are coming out of the process, because overall it is not changing the circumstances and there is a need to change the focus of how the native title legislation is being administered in this country. Most of all, we need to keep in mind that at the recent national native title conference at least three-quarters if not two-thirds of those in attendance were probably judges, lawyers or academics. It has created a native title industry, one that now predominates how native title is dealt with in the country, to the exclusion of traditional owners, and certainly those who have had an interest in the issue.

The whole approach of the burden of proof being put upon Indigenous people needs to change. I certainly encourage the government to set aside the question of even needing to look to the courts and using the courts only as a last option. From my point of view, the cost of proving native title as the regime predicates is prohibitive and wasteful and it certainly does not produce results. I want to encourage the government and Senator Johnston, as the chair of the committee, to review how the scheme is being administered so that we can start getting some real results on the ground beyond those that have been agreed as a result of goodwill negotiation.

Question agreed to.

MINISTERIAL STATEMENTS

Australian Fisheries

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.04 p.m.)—by leave—I am delighted today to be able to present to the Senate on behalf of the Howard government a policy statement on Australia’s fisheries entitled *Looking to the future: a review of Commonwealth fisheries policy*.

The initiatives contained in *Looking to the future* arise from a review of Commonwealth fisheries policy that was initiated by my colleague Hon. Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, advanced by the Hon. Wilson Tuckey MP, and finalised by me after a very lengthy and intensive consultation process. This review would not have been possible without the willingness and input of the Australian fishing industry, conservationists, recreational fishers and other stakeholder groups who contributed their cares and concerns, ideas and ideals, and visions for the future to the review process. I thank them for their substantial and very useful contributions to the policy review.
The purpose of the review has been to critically revisit the policy framework for Commonwealth fisheries that was set out in the 1989 ‘blueprint’ document—*New directions for Commonwealth fisheries management in the 1990s*. This new policy review, *Looking to the future*, has assessed the implementation and operation of *New directions* over the last decade and it concludes that we as a nation generally have fisheries management just about right. That said, however, the review identified areas that could be improved and opportunities that should be pursued—and, in line with the very proactive approach for which this government is renowned, they will be pursued and improved.

The outcomes contained in *Looking to the future* are a comprehensive suite of strategic initiatives that will help secure the future of Commonwealth fisheries and of all those who access and utilise these publicly owned resources.

**New Directions**

In its time, *New directions* was groundbreaking. And the implementation of the framework it envisaged began a new era in the Commonwealth’s administration of Australian fisheries.

On the one hand, it established:

- The Australian Fisheries Management Authority (AFMA), as a statutory authority with responsibility for the day-to-day management of Commonwealth fisheries, ‘at arm’s length’ from government.

- And it also set up the consultative structures to provide government with advice on fisheries matters, and it set out a framework to manage Australia’s international fisheries responsibilities.

On the other hand, it led to the establishment of the cornerstone objectives for administrators to aspire to in the management of the community’s resources, namely:

- To manage fish stocks, in line with the principles of ecologically sustainable development (ESD). The application of ESD in the management of fisheries resources was ground breaking in those days. These days, the Australian community rightly sees ESD as central to the proper ongoing management of natural renewable resources.

- Secondly, to maximise the economic efficiency of Commonwealth fisheries, including the cost-effectiveness of management.

- And thirdly, to ensure that management decision-making occurs under a participative model involving stakeholder expertise-based management and scientific advisory committees. Thus ensuring that industry and other stakeholders would have a real say in the way in which our fisheries would be managed.

- As well, the funding base for research and development in Commonwealth fisheries was expanded through the establishment of the Fisheries Research and Development Corporation (FRDC) and the Commonwealth’s Fisheries Resources Research Fund (FRRF).

**Importance of Fisheries Resources**

Fisheries and aquaculture continue to be recognised by the Howard government as one of Australia’s key primary industries. It ranks as our fifth most valuable primary industry after beef, wheat, wool and milk, with a gross value of production in the order of
$2.5 billion, of which Commonwealth fisheries contribute around 20 per cent.

Management of Australia’s fisheries has matured considerably over the past decade or so. We have witnessed growth in the sector at around six per cent in real terms each year since 1996, which, like Australia’s overall economic performance under the Howard government, is quite extraordinary for a primary industry in a developed country. Some 20,000 people are employed directly in the industry, and around another 80,000 indirectly. And fisheries exports contribute over $2 billion to the Australian economy. As well, our rapidly expanding aquaculture industry has enjoyed growth of over 150 per cent over the past decade.

By any measure, the Australian seafood industry continues to make a very significant contribution to the economy, employment and the quality of life for all Australians. It is also one of the strongest and most stable providers of regional and coastal employment and infrastructure.

Australia invests considerable resources and expertise in pursuing its national interests in fisheries in bilateral, regional and global fora. And as a nation we enjoy a reputation for punching well above our weight in the fight for the long-term sustainability of fisheries resources within our own exclusive economic zone (EEZ) and on the high seas. One example of this is the action taken against those pirates who seek to pillage the Australian people’s resources in the Australian maritime jurisdiction, be they in our northern waters or off Heard Island and McDonald Islands in the subantarctic or elsewhere.

**Review Outcomes**

The outcomes of the review are set out in considerable detail in the policy statement, and I will not repeat them here. However, I did want to highlight the central findings of *Looking to the future*.

The review has confirmed the central elements of *New directions*, and they remain as valid today as they were 10 or so years ago.

All stakeholders continue to support the framework outlined in *New directions* and they are broadly content with the institutional model, based on an independent body having day-to-day responsibility for Commonwealth fisheries, retaining policy expertise within the Department of Agriculture, Fisheries and Forestry, and engaging actively in regional and international fisheries matters.

This said, stakeholders did take the opportunity presented by the review to highlight areas for improvement. The Howard government is committed to ensuring that these improvements are made in a timely manner. Dominating these is the recognition that the legal, policy and commercial context for fisheries management has changed substantially since the late 1980s, bringing with it:

- A need for greater transparency and accountability in the decision-making process.
- A need for explicit allocations of resource access to each of the commercial, recreational, charter, traditional and aquacultural sectors.
- A need for an increased focus and understanding on the broader impacts of fishing on the marine environment.

**More on the Initiatives**

1. **Staying Focused on Sustainable Fisheries Resources**

At its core, the review has shown that the principles for the management of Commonwealth fisheries remain unchanged. The need for fisheries resources to be managed in accordance with the principles of ecologically
sustainable development (ESD) is strongly reaffirmed.

The ‘triple bottom line’ remains unchanged. We are still faced with the need to balance our economic, ecological and social aspirations against maintaining the long-term sustainability of the fisheries resources and ecosystems upon which these depend.

The application of ESD principles, including ecosystem-based fisheries management, is now widely regarded as the equal and an inextricably linked partner, to economic efficiency in the management of fisheries resources. And the Government intends to give a clearer expression within the Fisheries Management Act of what is meant by these essential management objectives.

Commonwealth fisheries will continue to operate under evolving policy frameworks, such as those emerging under Australia’s oceans policy, including regional marine planning, and the implementation of the national representative system of marine protected areas that this government introduced in the interest of the conservation of Australia’s maritime jurisdiction.

The review also highlighted that the present fisheries arrangements under the offshore constitutional settlement (OCS) require a reappraisal. Fisheries OCS arrangements have worked extremely well in some instances, but remain problematic in others. Accordingly, I have asked my department to evaluate ways that these arrangements can be used to achieve greater cooperation between jurisdictions in the pursuit of sustainable natural resource management. This work will be undertaken in close consultation with the Australian Fisheries Management Authority and the states and territories, including the external territories. I do look forward to and emphasise the importance of working closely with the states.

2. Improving the Management of Commonwealth Fisheries

There is widespread support for AFMA, the Australian Fisheries Management Authority, maintaining a continuous improvement approach to the way that it undertakes its business and manages its relationships with its clients and other stakeholders.

AFMA is challenged to make further strides in improving its management communication and consultation with all stakeholders. However, there is a view in some quarters that a gap exists between the theory and practice of good fisheries management relating to the decision-making process and its implementation, and this also needs to be intelligently addressed.

AFMA will be tasked to explore with Indigenous representatives means to ensure that traditional fishing is more effectively incorporated into Commonwealth fisheries management where appropriate, and my department will be examining opportunities for the involvement of Indigenous people in commercial fishing.

The coalition will also continue to refine the legislative arrangements for Commonwealth fisheries, in particular the management of aquaculture in Commonwealth waters; the granting of access rights in new fisheries; and penalty arrangements for fisheries offences.

As well, AFMA will maintain its efforts in the finalisation of the strategic fisheries assessments required by the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) which will provide the Australian public with greater confidence that their resources are being managed on a long-term rather than immediate basis.
3. Resource Security Results in Industry Development

I am pleased to report that the existing preference for ‘output controls’ through individually transferable quotas (ITQs) is widely supported, along with an emphasis on providing clear and secure access rights in the form of statutory fishing rights (or SFRs). That said, there is an acknowledgment that ITQs may not always be right and that different fisheries may require different mixes of controls. The review outcomes highlight that greater sophistication will be required to achieve ecosystem based fisheries management, including the refinement of the role played by ITQs in Commonwealth fisheries.

The government is evaluating the role of auction and tender in the granting of ongoing fishing rights in new fisheries and has removed the provision for ‘balloting’ these rights in a bid to increase certainty in the management of new fisheries. Additionally, we are examining the implications of removing licence cancellation provisions and replacing them with a graduated and strict penalty system to ensure those responsible for any regulatory breaches are held responsible.

As previously mentioned, the review highlights the need for explicit resource allocations. Up until now this issue has largely been ignored due to its inherent complexity. Unlike past governments, the coalition has not been scared off by this difficult task and we have already made some substantial progress on developing a framework that will deliver this objective in a fair and equitable manner.

The fact that we have not shied away from the tough decisions is an indicator that we do more than pay lip service to these important issues, and it should give confidence to the Australian people that this government makes the right decisions regardless of their popularity.

4. Australian Fisheries and Seafood Forum

A major new initiative that I am pleased to announce today is the creation of an Australian Fisheries and Seafood Forum to advise me, and future Commonwealth ministers, on new and emerging fisheries matters.

The present ad hoc consultation arrangements on strategic issues are no longer adequate, given the complexity and volume of issues arising in this area.

The forum will not duplicate or replace AFMA’s consultative arrangements. Rather, it will have a broad agenda, including aquaculture, food and international issues, and will assist the government to ensure that there is an adequate focus on the issues of high priority to all stakeholders, and in realising the potential development opportunities that do exist in Australia.

This government recognises and affirms the broader and strategic role for the ministerial councils for natural resource management and primary industries—principally through the Marine and Coastal Committee—in assisting the Commonwealth, states and Northern Territory to improve the management of Australia’s total fisheries resources.

5. Aquaculture

I have been impressed by the Australian aquaculture sector’s drive and vision since I took up my present role. Clearly, the Howard government would be doing a disservice to the future of this rapidly expanding sector if it were not to take forward a range of new aquaculture initiatives. The main vehicle for these initiatives is the National Aquaculture Industry Action Agenda, which has been developed in parallel with the Commonwealth fisheries policy review and approved by the cabinet. The first meeting of the new Aquaculture Industry Action Agenda Implementation Committee has already been held and a
new national aquaculture policy statement will be made shortly.

6. Regional Engagement

The review strongly endorses Australia maintaining its involvement in bilateral, regional and international fisheries issues, negotiations and organisations, to secure, protect and build Australia’s domestic and high seas fisheries interests.

We are in the process of finalising our acceptance of the Food and Agriculture Organisation (FAO) of the United Nations Compliance Agreement. And, in accordance with our UN obligations, we are moving quickly to formulate national plans of action (NPOA):

- To prevent, deter and eliminate illegal, unregulated and unreported fishing in Australian waters.
- To reduce the incidental catch of seabirds in longline fisheries.
- To conserve and manage sharks.
- And to manage fishing capacity.

Australia is known for taking a proactive stance and pursuing an ambitious agenda with regard to the issue of illegal fishing both domestically and internationally. In addition to the NPOA-IUU our agenda will be pursued through working with like minded countries to forge stronger relationships and binding commitments to stamp out this socially, economically and ecologically destructive practice. Particular attention will be paid to Australia’s Northern and Southern Ocean fisheries where the problem of illegal fishing is currently having the greatest impact.

We will continue to build on the treaty negotiated with France and started with the Republic of South Africa, and we will maintain and extend our influence in regional fisheries management organisations such as the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), and the Western and Central Pacific Fisheries Commission (WCPFC) when it comes into being.

Concluding Comments

I am confident that the comprehensive range of measures that I have outlined to the Senate today and which are set out in detail in Looking to the future policy document will serve the interests of Australia and its Commonwealth-managed fisheries well into the new millennium for the current and future benefit of every Australian man, woman and child.

And I again thank the broad range of people who have contributed to the review process.

My parliamentary colleagues will notice the very distinct lack of politics in this statement and I can say that there is a very good reason for this. I have searched high and low for credible alternative policies for Commonwealth fisheries and all that I have managed to turn up is a five-page ‘discussion’ paper that my colleague Senator O’Brien, on behalf of the Australian Labor Party, has issued. I am pleased to report that this ‘discussion’ paper outlines initiatives that have already been implemented by the Howard government when this ‘discussion’ paper was written in July last year. So I thank Senator O’Brien and the Australian Labor Party for yet again falling in behind the coalition for the benefit of all Australians. It does, however, concern me, Senator O’Brien, to a certain extent that if you maintain this approach you will perhaps make me redundant.

And on that note I commend to the parliament the Howard government’s policy statement on Commonwealth managed fish-
Senator O'BRIEN (Tasmania) (4.18 p.m.)—by leave—I move:

That the Senate take note of the statement.

Labor welcomes the tabling of the statement and the document. We consider that the fishing industry is a key sector of the economy. Properly managed, fisheries can create and sustain jobs and earn export income while protecting the fish stocks and the marine environment. That is our objective and I know it is the objective of both commercial and recreational fishers. Australian fisheries, as the minister says, are worth in the order of $2½ billion per annum to the economy and generate, I am told, over $2 billion in export income.

Despite being in office since March 1996, the Howard government has failed to build the policy platform for a sustainable Australian fishing industry. I have not had an opportunity to consider in detail this document Looking to the future: a review of Commonwealth fisheries policy, so I cannot say whether or not this represents such a policy platform. But at least we have something on the table, and I compliment the minister for that. I note, however, that outcome 5 in this document refers to the preparation of another policy paper to address means of ‘maximising economic efficiency’ while applying ‘the principles of ecologically sustainable development’. If we have to wait another three years, it will be me tabling that document.

The Hawke Labor government delivered the last Commonwealth statement on fisheries in 1989, nearly 13 years ago. Since that time the following issues have significantly reduced the effectiveness of the current regulatory regime: the very high value of the resource; the need for the industry to adopt ecologically sustainable practices; increased government involvement in international agreements on resource management; and competing pressures of recreational and Indigenous fishers for resource access. While there has been widespread recognition of the need for reform for some time, this government has failed to deliver. In June 2000 the then minister, Mr Truss, announced a review of Commonwealth fisheries policy. It has taken three years and three ministers to deliver on that commitment. I note Senator Macdonald thanks the industry for its assistance in the development of this statement. He should have considered apologising to those people for the lack of interest and clear lack of action by Mr Truss and Mr Tuckey.

Mr Acting Deputy President, you might recall, as mentioned by the minister, a discussion paper that I released with the fishing industry last year. Since that time I have had the opportunity to talk to all the people that I am sure Senator Macdonald has been talking to. A number of key issues have emerged from that process, and I will be announcing Labor policy on these matters at a later time. But I would like to highlight one key area of concern—that is, the increasing administrative complexity of the numerous Commonwealth agencies that have an interest in the management of Commonwealth fisheries. I am not sure that this matter is properly addressed in this document.

The introduction of new agencies into the original management system for Australian fisheries by the Howard government has made the management task more complex, more expensive and, arguably, less able to achieve the objectives of sustainable resource use, wealth generation and environmental security. The Australian Fisheries Management Authority established in 1992 by Labor has the primary responsibility to manage the fisheries. The Department of Ag-
riculture, Fisheries and Forestry provides the minister with advice, development and related matters through the fisheries branch. The Australian Bureau of Agricultural and Resource Economics, the Bureau of Rural Sciences and the National Office of Food Safety have a role. Environment Australia also has a direct role in the management of Commonwealth fisheries and state and territory fisheries that involve exports through the EPBC Act of 1999. The National Oceans Office is developing regional marine plans based on a framework for integrated and ecosystem based planning practices. The National Oceans Office reports to a board of no less than five federal ministers. The Fisheries Research and Development Corporation is the key research body with annual funding in the order of $21 million. The relationship between these agencies and how they impact on the management of the 18 Commonwealth fisheries must be addressed with the objective of developing a more administratively efficient and effective system of managing a fisheries resource.

If drawing that problem to the attention of the Senate is a matter of falling in behind the government’s policy, I guess that means the government thinks the current system is right. I do not think that the industry does, and if that is the implication of the minister’s statement then I think the industry has a lot to be worried about. The coordination of fishery responsibilities between the Commonwealth and the states is achieved through Commonwealth-state offshore constitutional settlement agreements and I note the minister plans to review these agreements, which is a welcome move.

Sustainable management of Australia’s fisheries is an issue that concerns all Australians, not just government and industry. It is important that industry and government work closely with all stakeholders to keep abreast of community expectations and to ensure that the industry grows in a sustainable way. There is an urgent need to review the original AFMA single management authority structure and its association with these new agencies to provide clear reporting lines to the federal parliament, accountability to the industry and more effective management arrangements with states and territories. Labor believes that the management tools, education and training programs for the industry should be built around these new industry standards.

Recreational and traditional fishing have an impact on the sustainable use of fishery resources. State and territory governments generally manage these activities but there are some fisheries where there is considerable recreational activity that could be managed by the Commonwealth. I note that the minister’s statement goes to this matter also. Labor believes that aquaculture will play a major role in the future of the industry as increasing pressure on wild catch fisheries puts them under significant stress.

There is also need for the development of a policy framework to support sustainable aquaculture based on Commonwealth fishery species. The aquaculture industry must be encouraged to grow through research and development to produce environmentally compatible, efficient and cost-effective production techniques that yield a consistent and high-quality resource supply. It is essential that the management of fisheries be underpinned by science but there is also a need to ensure that within that science based management system regional economic and social considerations are given appropriate attention. Adjustment plans for fisheries must take into account regional and social implications. This is an important issue for a number of Australian fisheries that must reduce their take to maintain long-term sustainability. There is also a need to consider management tools in terms of their impact on
local small-scale fishers. Any regionally based programs, however, must be built around education, training and innovation.

As I have said, I have not yet had an opportunity to consider the detail of the minister’s statement and the report which he has tabled but I will do so and I will test its contents against some principles. They are: the sustainable use of marine resources, including the establishment of sustainable, cost-efficient management systems for all fisheries; minimising waste and better utilising unavoidable by-catch; maximising the value of the catch; promotion of long-term investment in the sector; equitable allocation of resources where there are strong competing interests between commercial, recreational and traditional fishers; allocation of resources for research into the best options for the development of broad ecosystem management systems; closer links between research and management agencies to ensure the delivery of better management outcomes; elimination of duplication of effort in all Commonwealth agencies that have an involvement in fisheries management; coordination of management between state and Commonwealth jurisdictions while maintaining a key role for environmental oversight; and development of modern compliant systems that rely on risk based management and independent audit processes rather than a heavy regulatory and policing regime.

Finally, it must be some considerable relief to Australian fishers that the Prime Minister, after a couple of massive failures, has appointed a minister who has an interest in his job and has a plan. The industry will now be hoping that Senator Ian Macdonald has the right plan and that he can deliver. Mr Truss certainly could not.

Senator GREIG (Western Australia) (4.27 p.m.)—I rise to speak in the debate on the motion to take note moved by Senator O’Brien. The report tabled today by the Minister for Fisheries, Forestry and Conservation, Looking to the future: a review of Commonwealth fisheries policy, is welcome. It does make for some interesting reading. There is no question that Australia’s fishing industry makes a significant contribution to the wealth of the nation, and that the Commonwealth plays a pivotal role in the regulation and management of that industry. I speak with a little experience in that area having worked for some years in my father’s rock lobster fishing business in Western Australia. The policy framework for the management of Commonwealth fisheries was set out originally in New directions for Commonwealth fisheries management in the 1990s, which was released in 1989. After almost 14 years it was time for this policy framework to be reassessed. We Democrats certainly welcome that.

While the Australian Democrats are supportive of the fishing industries, we are concerned that the Commonwealth managed fisheries are not being managed on a sustainable basis. Fisheries managers seek to maximise the sustainable yield of our fisheries; however, they do so on the basis of incomplete information and without adequate regard for the precautionary principle and the natural heritage values of the marine environment. This has resulted in many of our fisheries being overfished and the loss of many natural heritage values. In this regard, the report notes that there are some 11 fish stocks now targeted in Commonwealth managed fisheries that are known to be overfished and 45 where the status of the fish stock is still unknown. Of concern is the potential for several commercial fish species or stocks to become extinct or commercially extinct, if measures are not taken immediately to address the overfishing problems. Southern bluefin tuna and orange roughy are examples of this where there is considerable
evidence that stocks of these species have declined over the past 10 to 15 years. The Australian Democrats call on the Commonwealth again to include these species and other threatened marine species on the list of threatened species that is maintained under the Environment Protection and Biodiversity Conservation Act 1999.

By-catch also remains a significant problem in several Commonwealth managed fisheries, particularly longline and trawl fisheries. By-catch of seals, marine birds, marine turtles and other icon species are extremely important issues. The Australian Democrats call on the federal government to do more to reduce the by-catch of these species. There are also large numbers of less glamorous, non-target species that suffer greatly from commercial fishing; however the impacts on these species are often unknown and they are often overlooked in by-catch management strategies. Unless these problems are addressed immediately, we will witness the decline of important elements of our marine biodiversity that form the bedrock of our fisheries industries. This will require a greater commitment of resources to researching the impacts of fishing on the marine environment and a greater willingness to establish and enforce stringent by-catch management standards.

The Democrats are pleased to see that this report acknowledges the need for fishing effort to be reduced in certain fisheries to allow for the recovery of depleted fish stocks and for ecosystem based fisheries management to be embraced. We are also pleased to note the commitment to prepare and implement a framework for resource sharing between the different sectors that use Commonwealth fisheries resources. The undertaking to examine opportunities for the involvement of Indigenous people in commercial fishing ventures is also very welcome, as are the commitments concerning greater transparency in decision making processes. While acknowledging these positives, the Democrats would like to see the Commonwealth devote greater attention and resources to the establishment of marine protected areas. The establishment of such marine protected areas is vital for the conservation of natural heritage values. These areas are also important for the replenishment of commercial fish stocks. We are also a little disappointed to see the report’s conclusions and recommendations concerning enforcement and compliance. The Australian Democrats are concerned that the government is shying away from enforcing environmental laws in Commonwealth fisheries. This may be generating a culture of noncompliance and contributing to the decline in fish stocks and biodiversity in certain fisheries. Having said this, we do note and applaud the Commonwealth’s attempts to rein in illegal fishing by foreign fishing vessels in Australian waters.

Finally, I must comment on the minister’s closing remark in his statement where he said he had searched high and low for alternative policies in this area but could only find something produced by the opposition. I happily draw his attention to www.democrats.org.au/policies, where he will find a range of tremendous policies, including policies on fisheries. Key policies to be found on that site include Democrat proposals to ensure that research programs to determine ecologically sustainable harvesting rates for coastal fisheries are undertaken and completed, that the licences for coastal fisheries are undertaken and completed in accordance with the results of such surveys in terms of both harvesting rates and administrative costs, that measures be taken to prevent the collapse of fishing stocks due to exploitation, that research and monitoring of commercial breeding stocks be accelerated and that action be taken to reduce fishing pressures where necessary. Minister, there
are 17 policy points in total in the area of aquaculture and fisheries, including—you might be interested to know—Democrat concern to support an education program encouraging restaurants to kill live lobsters and crabs humanely. So there is everything from A to Z in the Australian Democrat fisheries policy and I invite your scrutiny of it.

Senator MURPHY (Tasmania)  (4.34 p.m.)—I rise to speak on the ministerial statement and the report, Looking to the future: a review of Commonwealth fisheries policy. Over the years that I have been here, we tend to see these glossy reports come and go and we are often left wondering, as a result of what are sometimes well-intentioned statements, what the end result of it all will be. With regard to fisheries, whilst there have been some advances made, in the main not too much has happened from the Commonwealth’s point of view. Firstly, in relation to the section on sustainable management of the fisheries in the report, it seems that there is a consistent theme that has been in other reports over the years. At the end of the day, the reality is that we know global fish stocks—the same fish stocks that we find around this country in Commonwealth and state waters—are dwindling, some of them seriously so. Some of them are on the verge of extinction and, at some point in time, I would hope that a government would step up to the plate and actually set a course of action that will ensure that some of those fish stocks might be given the opportunity to survive. I know it is not just this country’s and this government’s responsibility because in many respects it is a global matter. I hope that we would at least try to take a role in that, if not a leadership role.

I turn to page 42 of the report and to point 4.3, ‘Realising the potential of aquaculture’. This is another critical aspect of the provisioning of seawater and freshwater fish as food for the population of this country and other countries. We know they are in high demand and we know there is an ever-growing shortage of supply. Under the heading ‘Realising the potential of aquaculture’, the government’s commitments are stated as follows:

developing a National Aquaculture Policy Statement
promoting a regulatory and business environment...
implementing an industry-driven action agenda
ensuring the industry grows within an ecologically sustainable framework
protecting industry from aquatic disease and pests
investing for growth in the aquaculture industry
promoting aquaculture products in Australia and overseas
research and innovation
making the most of education and workplace training
creating an industry for all Australians including Indigenous Australians.

I bet if I were to get the reports from last year and the year before, they would probably say the same things. I want to draw the attention of the Minister for Fisheries, Foresty and Conservation to something in this report. The left-hand side of page 42 contains a picture of ocean perch and sea mullet. Minister, could you please inform me which part of the aquaculture industry is actually successfully breeding and raising ocean perch and sea mullet in captivity and putting them into the market via the aquaculture industry?

Senator Ian Macdonald—You’re meant to be able to read the text, not just look at the pretty pictures.

Senator MURPHY—I suggest that it would be more important and more relevant if you actually had a picture that represented the aquaculture industry on the page where you talk about aquaculture. I suggest to you
that one might be found on page 22, which would be more relevant to the part of the report that covers aquaculture.

Senator Ian Macdonald—I’ll blame the printer.

Senator Murphy—I notice, Minister, that the report has your picture in the front and one assumes that, if you signed it, you must have read it before it went to the printer.

Senator Ian Macdonald—Yes, but I didn’t pick the pictures.

Senator Murphy—I could say something in that respect, Minister, with regard to your knowledge of the industry, but I will not. I also want to say that I do not think it serves any useful purpose to make the comments that the minister has made in his concluding comments. Ultimately, the parliament will be required to come to grips with the dilemma that our natural fisheries face. It will require a bipartisan effort to take the protection measures, which are going to be required for the natural fisheries in this country, to a level that will ensure their long-term future. I suggest that, when we get to the next review: (a) we try not to be as repetitive as we have been in this one; and (b) we might actually have some policy and some initiatives that might lead us somewhere for the future, and particularly for the future of natural fisheries in this country.

Debate (on motion by Senator McGauran) adjourned.

DOCUMENTS
Auditor-General’s Reports
Report Nos 56 and 57 of 2002-03—Performance Audit—Management of Specialist Information System Skills: Department of Defence; and

COMMITTEES
Reports: Government Responses
Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.42 p.m.)—I present the government’s response to the President’s report of 12 December 2002 on outstanding government responses to parliamentary committee reports, and I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

GOVERNMENT RESPONSES TO PARLIAMENTARY COMMITTEE REPORTS
RESPONSE TO THE SCHEDULE TABLED BY THE PRESIDENT OF THE SENATE ON 12 DECEMBER 2002

Circulated by the Leader of the Government in the Senate
Senator the Hon Robert Hill
25 June 2003

A CERTAIN MARITIME INCIDENT (Select)
A Certain maritime incident
The response is under consideration and will be tabled as soon as possible.

ASIO, ASIS AND DSD (Joint, Standing)
Annual Report 2001-02
The response is being finalised and will be tabled as soon as possible.

COMMUNITY AFFAIRS REFERENCES
The patient profession: time for action—Report on nursing
The response is being finalised and will be tabled shortly.
Participation requirements and penalties in the social security system [Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002]

The response was addressed during the debate on the Bill which received Royal Assent on 24 April 2003.

CORPORATIONS AND SECURITIES (Joint Statutory)

Report on aspects of the regulation of proprietary companies
The response is being finalised and will be tabled shortly.

CORPORATIONS AND FINANCIAL SERVICES (Joint Statutory)

Review of the Managed Investments Act 1988
The government is considering the recommendations of the Committee’s report and will table a response in due course.

Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001
The response is being finalised and will be tabled shortly.

ECONOMICS REFERENCES

Report on the operation of the Australian Taxation Office
The report is being considered and will be tabled in due course.

Report on the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies
The response was presented out of session on 17 December 2002 and tabled on 5 February 2003.

Inquiry into mass marketed tax effective schemes and investor protection—Interim report
The report is being considered and a response will be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement
The report is being considered and a response will be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Final report
The report is being considered and a response will be tabled in due course.

A review of public liability and professional indemnity insurance
The response is being finalised and will be tabled shortly.

ELECTORAL MATTERS RELATIONS (Joint, Standing)

The integrity of the electoral roll: Review of ANAO report no. 42 2001-02
The government is currently considering the recommendations and a response will be tabled in due course.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION

Workplace Relations Amendment (Paid Maternity Leave) Bill 2002
The government does not propose to respond formally. The government will respond during any Senate debate on the Bill.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES

Education of students with disabilities
The government is considering the recommendations and will table a response in due course.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES

Report on the powers of the Commonwealth in environment protection and ecologically-sustainable development in Australia
The response was tabled on 15 May 2003.

Inquiry into Gulf St Vincent
The draft response is in the final approval stage and will be tabled shortly.
Inquiry into electromagnetic radiation
The response was tabled on 6 February 2003.

The value of water: Inquiry into Australia’s urban water management
The response is being considered.

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
Report on the Charter of Political Honesty Bill 2000 [2002] and 3 related bills
The response will be given during any Senate debate on the Bill. The government does not propose to respond further.

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
Re-booting the IT agenda in the Australian Public Service—Final report on the government’s information technology outsourcing initiative
The response was tabled on 19 June 2003.

Departmental and agency contracts: Report on the first year of operation of the Senate order of the production of lists of departmental and agency contracts
The response was tabled on 19 June 2003.

FOREIGN AFFAIRS, DEFENCE AND TRADE (Joint, Standing)
From phantom to force: Towards a more efficient and effective Army and A model for a new Army: Community comments on the ‘From phantom to force’ parliamentary report into the Army
The response was tabled on 19 June 2003.

Australia’s role in United Nations reform
The response was tabled on 27 March 2003.

Review of Foreign Affairs, Trade and Defence annual reports 2000-01
The response was tabled on 27 March 2003.

Visit to Australian forces deployed to the International Coalition Against Terrorism
The government is currently considering its response which is expected to be tabled in the near future.

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
Japan: Politics and society
A draft response is under consideration and will be tabled shortly.

Recruitment and retention of ADF personnel
The response was presented out of session on 15 April 2003 and tabled on 13 May 2003.

INFORMATION TECHNOLOGIES (Select)
In the public interest: Monitoring Australia’s media
The report is being considered in the context of the current proposals for media legislation reform and the government expects to address it in that process.

LEGAL AND CONSTITUTIONAL REFERENCES
Inquiry into the Commonwealth’s actions in relation to Ryker (Faulkner) v The Commonwealth and Flint
The response was tabled on 15 May 2003.

Inquiry into sexuality discrimination
A response to the report will be considered in due course.

Migration zone excision: an examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters
The Bill was rejected by the Senate on 9 December 2002 and reintroduced in the House of Representatives on 26 March 2003. The government responded during the debate of the Bill on 16 June 2003 and does not propose to respond further.

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters
The government has responded to the Committee’s findings by way of amendments to the ASIO Bill, which were moved in the December 2002 sittings. The government does not intend to respond to the Committee’s report beyond this. The Bill was introduced into the Senate on 13 May 2003, and is awaiting debate.
MIGRATION (Joint, Standing)

Not the Hilton—Immigration detention centres: Inspections report
The response was presented out of session on 27 February 2003 and tabled on 3 March 2003.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint, Standing)

In the pink or in the red? Health services on Norfolk Island
Following consultation with relevant portfolios the response is being revised and updated.

Risky business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort
The response was tabled on 6 February 2003.

Norfolk Island electoral matters
A draft response is under consideration and will be tabled in due course.

Striking the right balance: Draft amendment 39, National Capital Plan
The response was presented out of session on 11 June 2003 and tabled on 16 June 2003.

NATIONAL CRIME AUTHORITY (Joint Statutory)

The law enforcement implications of new technology
A draft response is under consideration.

Australian Crime Commission Establishment Bill 2002
The response was presented out of session on 3 February 2003 and tabled on 5 February 2003.

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND (Joint Statutory)

Second interim report for the s.206 inquiry: Indigenous land use agreements
A draft response is under consideration and will be tabled shortly.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)

Corporate governance and accountability arrangements for Commonwealth Government business enterprises, December 1999 (Report No. 372)
The government is presently conducting a ‘Review of Governance Arrangements of Statutory Authorities and Officer Holders’, and finalisation of the government’s response is expected following that Review.

Review of the accrual budget documentation (Report No. 388)
The response was presented out of session on 6 May 2003 and tabled on 13 May 2003.

Review of independent auditing by registered company auditors (Report No. 391)
A response to the Committee’s report is awaiting finalisation of a government legislative package which is expected to be introduced in the second half of 2003.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION

An Appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements
Preparation of the response has required extensive consultation across government portfolios. The response is in progress.

The proposed importation of fresh apple fruit from New Zealand—Interim report
The response was tabled on 20 March 2003.

The Australian meat industry consultative structure and quota allocation Interim report: Allocation of the US beef quota; Quota management control on Australian beef exports to the United States; and The Australian meat industry and export quotas
A draft response covering the above reports is under consideration.
RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES

Airspace 2000 and related issues
A revised draft response is being prepared with a view to tabling it shortly.
The Incidence of Ovine Johne’s Disease in the Australian sheep flock—Second report
The response was tabled on 19 June 2003.

SCRUTINY OF BILLS (Senate Standing)

Fourth report of 2000: Entry and search provisions in Commonwealth legislation
Preparation of the response has required extensive consultation across portfolios departments. The response is in progress.
Sixth report of 2002: Application of absolute and strict liability provisions in Commonwealth legislation
A draft response has been prepared, but wider consultation across government portfolios is occurring.

SUPERANNUATION (Senate Select)

Taxation treatment of overseas superannuation transfers
The government is currently considering the response and it is expected to be tabled shortly.
Provisions of Superannuation Legislation Amendment (Choice of Superannuation funds) Bill 2002
The government will respond to issues raised in the report during debate of the Bill.
Tax arrangements for superannuation and related policy
The government is currently considering the report and will table a response in due course.

SUPERANNUATION AND FINANCIAL SERVICES (Senate Select)

A ‘reasonable and secure’ retirement?: The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes
The response was presented out of session on 13 December 2002 and tabled on 5 February 2003.

Prudential supervision and consumer protection for superannuation, banking and financial services: Third report—Auditing of superannuation funds
The response was tabled on 20 March 2003.
Report on early access to superannuation benefits
The response is approaching finality and is expected to be tabled shortly.

TREATIES (Joint, Standing)

UN Convention on the Rights of the Child (17th Report)
The response was tabled on 6 March 2003.
Extradition—a review of Australia’s law and policy (40th Report)
A draft response is under consideration and will be tabled shortly.
The Statute of the International Criminal Court (45th Report)
A draft response is under consideration and will be tabled shortly.
Treaties tabled in August and September 2002 (48th Report)
The response was tabled on 19 June 2003.
The Timor Sea Treaty (49th Report)
The government’s response will be finalised shortly.
Treaties tabled 15 October 2002 (50th Report)
The response was tabled on 19 June 2003.

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.42 p.m.)—I table a correction to the explanatory memorandum relating to the Workplace Relations Amendment (Termination of Employment) Bill 2002.

PARLIAMENTARY ZONE

Proposal for Works

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and
Conservation) (4.43 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to additional works connected with the reconstruction of the Old Parliament House gardens. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator IAN MACDONALD—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being additional works connected with the reconstruction of the Old Parliament House gardens.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Brandis)—The President has received letters from party leaders seeking variations to the membership of certain committees.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.44 p.m.)—by leave—I move:

That senators be discharged from and appointed to various committees as follows:

Finance and Public Administration References Committee—

Appointed: Senator Moore
Discharged: Senator Marshall

Employment, Workplace Relations and Education References Committee—

Appointed, as a participating member: Senator Moore

Foreign Affairs, Defence and Trade Legislation Committee—

Appointed, as a participating member: Senator Bartlett for matters relating to the Defence and Veterans’ Affairs portfolio

Foreign Affairs, Defence and Trade References Committee—

Appointed, as a participating member: Senator Bartlett for matters relating to the Defence and Veterans’ Affairs portfolio

Question agreed to.

GOVERNOR-GENERAL AMENDMENT BILL 2003

MIGRATION LEGISLATION AMENDMENT (SPONSORSHIP MEASURES) BILL 2003

First Reading

Bills received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.44 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 MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.45 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—
GOVERNOR-GENERAL AMENDMENT BILL 2003

This bill is to set the annual salary to be payable to the next Governor-General. Section 3 of the Constitution precludes any change to the salary of a Governor-General during the term of office. Therefore, whenever a Governor-General is to be appointed, changes to the salary of the office must be made by way of amendment to the Governor-General Act 1974 prior to the appointment. The salary needs to be set at that time at a level that will be appropriate for the duration of the appointment.

The salary proposed in the bill is consistent with the convention applying since 1974 under which the salary of the Governor-General has been set with regard to the salary of the Chief Justice of the High Court of Australia. As Dr Hollingworth was the first Governor-General to pay income tax on his salary, the relevant comparison before then was between the tax-free salary of the Governor-General and the estimated average after-tax salary of the Chief Justice for a notional term of appointment of a Governor-General of five years. As part of the convention, the practice had then been to set the Governor-General’s tax-free salary at a level estimated to moderately exceed the projected average after-tax salary of the Chief Justice over the notional five year term.

In proposing a salary for the next Governor-General, the government has maintained the link with the salary of the Chief Justice. As the Governor-General’s salary is now subject to income tax, the salary can be referenced directly against, and—in line with the convention—set to moderately exceed, the estimated average salary of the Chief Justice over a notional three year term of appointment.

Following its recent annual review, the independent Remuneration Tribunal has determined a 4 per cent increase for judicial offices, to take effect on 1 July 2003. As a result of this determination, the salary of the Chief Justice is expected to be $336,450 as of that date. It is therefore proposed to set the Governor-General’s salary at $365,000, which also takes account of the fact that the Chief Justice’s salary is reviewed annually by the Remuneration Tribunal while the Governor-General’s salary will remain unchanged during the Governor-General’s term of office. The Governor-General’s salary over a notional three year term of appointment will slightly exceed the estimated average annual salary payable to the Chief Justice over the same period.

The proposed salary is therefore commensurate with the office and maintains the traditional relativity between the Chief Justice and the Governor-General.

MIGRATION LEGISLATION AMENDMENT (SPONSORSHIP MEASURES) BILL 2003

This bill makes a number of amendments to the Migration Act 1958 in relation to sponsorship. Sponsorship is an important element of the system for managing the entry and stay of persons in Australia. It plays a central role in protecting the Australian community from the costs and risks associated with the stay of non-citizens in Australia.

Sponsorship benefits the sponsored person, the sponsoring body and the Australian community as a whole by offering a degree of protection and certainty to all concerned.

The bill formalises the long-standing government policy that such costs should be borne by sponsors who bring persons to Australia, rather than by the Australian community. This is particularly relevant in the case of those temporary residence sponsors who gain a commercial advantage from the sponsorship arrangements.

The bill establishes a comprehensive and transparent framework for the Migration Regulations to deal with sponsorship requirements, enabling a formal recognition of the important and increasing role of sponsorship. It enables processes to be established in the Migration Regulations, relating to sponsorship application, sponsorship eligibility and approval criteria, sponsorship validity and so on.

In accordance with the recommendation of the report In Australia’s Interests—A Review of the Temporary Residence Program, this bill aims to standardise sponsorship arrangements as much as possible. However it also recognises differences between types of sponsors and sponsorships, and
the need to provide for different sponsor relationships.

The framework proposed by the bill provides for regulations to be made, depending on the type of visa, for:

- sponsorship to be a criterion for a visa (both a criterion for the application or for the grant of a visa);
- a process and criteria for the approval of sponsors; and
- undertakings to be made by sponsors.

The bill also allows certain actions to be taken against sponsors of prescribed temporary visa holders, if they breach their undertakings. These actions include the ability to cancel sponsorship, or impose bars on sponsors. These bars can prevent the sponsors from gaining further approvals as a sponsor, and from sponsoring further persons under their existing approvals.

The bill gives power to make regulations that differentiate between the approaches taken in different visa regimes. This is the case in relation to sponsorship approval criteria and processes, as well as the undertakings and sanctions applicable against sponsors. This will enable the government to take different approaches to sponsors of different types.

For example, it will allow us to differentiate between sponsors who sponsor large numbers of people or gain a commercial advantage from sponsorship, and sponsors in the family stream.

The regulation making powers provided in the bill are not intended to affect sponsorship regulations made under any other provision of the Act. This is further supported by the “opt in” provision of the suite of amendments, which will require that different visa regimes and their accompanying sponsorship requirements will need to specifically come within the new framework, before it will apply to them.

This is important, because it will allow the existing regulations relating to sponsorship to be changed and implemented gradually, following appropriate consultations. It also means that any regulations that are made pursuant to the new powers will be subject to parliamentary scrutiny.

Initially, regulations are proposed to be made to include the long stay sponsored business visa (Subclass 457) and the new sponsored Professional Development visa (Subclass 470) under the new framework.

**Sponsored Business Visa**

This is a very important visa class that has provided Australian businesses with rapid access to highly skilled labour from overseas to enable these businesses to remain internationally competitive.

The benefits of this visa class are well documented in research done by Access Economics. There is, however, a need to continue to make the operations of this visa as efficient as possible so that it remains responsive to the needs of Australian industry.

An important element of the proposed changes is to make sponsor undertakings clearer and to enable a range of possible sanctions to be applied where undertakings are breached. In particular, these sanctions will be designed to discourage any possibility of overseas employees being exploited and to make sure that all sponsor undertakings are enforceable.

**Professional Development Visa**

The ability to enforce sponsorship undertakings is an integral part of the new proposed Sponsored Training Regime. The sponsored Professional Development Visa is being developed in response to requests from the Australian international education industry to allow professionals and senior government officials to undertake tailored training. The ability to offer this training will enable Australia to establish itself in this niche market and support our bilateral economic and political relations with major countries in our region and beyond.

The sponsorship aspect of the visa enables education providers to assume responsibility for potentially large numbers of visa holders from markets that traditionally exhibit high immigration risk, and reduces risk for immigration integrity and the public purse. Our ability to enforce sponsorship undertakings in this regime is therefore essential to its effectiveness.

Although to date the number of sponsors who have failed to comply with their undertakings has
been relatively small, it is likely that this number would grow with the increased use of sponsorship for temporary residence visas.

Sponsorship undertakings for this visa need to be legally enforceable, and should be underpinned by a system of sanctions appropriately targeted to ensure that sponsors comply with the undertakings they have entered into.

**Associated Merits Review Change**

In addition, the bill seeks to prevent abuse of the merits review process by certain temporary visa applicants who are required to have a sponsor but who, at the time of applying for review, do not have a sponsor or have not attempted to obtain one.

In these cases, the decision to refuse to grant the visa cannot ever be overturned by the Tribunal, because the requirement that the applicant be sponsored is simply not satisfied.

This amendment will effectively close off a loophole that has led to visa applicants pursuing what are clearly unmeritorious claims.

In summary, the measures in the bill will ensure that the integrity of Australia’s migration and entry programs is not compromised.

I commend the bill to the chamber.

Debate (on motion by Senator Crossin) adjourned.

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

**TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH) BILL 2003**

**First Reading**

Bill received from the House of Representatives.

**Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.46 p.m.)—I move:**

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.46 p.m.)—I move:**

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

At the May 2002 Ministerial meeting on Public Liability Insurance, the Commonwealth, State and Territory Ministers agreed to a range of measures to address insurance industry concerns. These measures included the establishment of a panel of experts to review the law of negligence.

This Review was established to assist the Commonwealth, State and Territory Governments to formulate a consistent approach to the problems of rising premiums and reduced availability of public liability insurance.

The members of the Review were the Honourable Justice David Ipp, Professor Peter Cane, Associate Professor Donald Sheldon and Mr Ian Macintosh.

The Review’s terms of reference were broad and required it to consider, amongst other things, the application, effectiveness and operation of common law principles applied in negligence to limit liability arising from personal injuries or death. The Review was also asked to develop and evaluate principled options to limit liability and the amount of damages awarded in a given case. Options to limit claims for negligence to within three years of the date of the event were also to be developed and evaluated.

In addition, the Review was asked to consider the interaction of the Trade Practices Act with the common law principles applied in negligence.


The Review recommended a number of changes to the Trade Practices Act 1974.

In this Bill, the Government is responding in part to the Review recommendations related to the
Trade Practices Act by proposing a first tranche of amendments.

In particular, this Bill will implement Review recommendations 19 and 20. Recommendation 19 recommends that the Trade Practices Act 1974 be amended to prevent individuals bringing actions for damages for personal injuries and death under Division 1 of Part V. Recommendation 20 recommends that the Act be amended to remove the power of the Australian Competition and Consumer Commission to bring representative actions for damages for personal injuries and death resulting from contraventions of Division 1 of Part V.

Division 1 of Part V of the Trade Practices Act prohibits, under civil law, unfair practices in trade and commerce, including misleading and deceptive conduct. Division 2 of Part VC of the Act applies criminal sanctions to similar conduct.

The measures contained in this Bill will amend the Trade Practices Act to prevent individuals, and the ACCC in a representative capacity, from bringing civil actions for damages for personal injuries or death resulting from contraventions of Division 1 of Part V of the Trade Practices Act. As a consequence, these measures will ensure that plaintiffs continue to seek damages for personal injuries or death by pursuing a right of action under the common law rather than by relying on Division 1 of Part V of the Trade Practices Act.

These reforms are aimed at limiting public liability claims costs in order to reduce pressure on insurance premiums and assist in delivering affordable public liability insurance.

To date, Division 1 of Part V of the Trade Practices Act has rarely been used to seek damages for personal injuries or death. However, the potential for Division 1 of Part V being used as a basis for such claims is significant. Claims of this nature are more likely to be brought under Division 1 of Part V in response to State and Territory civil liability reforms.

By introducing these measures, this Bill will ensure that the Trade Practices Act cannot be used to undermine State and Territory civil liability reforms.

NSW has already introduced amendments to its Fair Trading Act 1987 to address Review recommendations 19 and 20. I understand that other States and Territories are progressing similar reforms.

The Bill does not amend the range of other civil orders and remedies that are available under the Trade Practices Act for unfair practices in trade and commerce that are in contravention of Division 1 of Part V. The Bill will have no impact on the availability of criminal sanctions under Division 2 of Part VC.

The Review made further recommendations in relation to the Trade Practices Act. These recommendations relate to rules on quantum of damages, limitations on actions and other limitations on liability to claims for personal injuries and death brought under other Parts of the Trade Practices Act. The Government is still formulating its response to these recommendations. It is anticipated that the Government’s response to these recommendations will be included in a further Bill to be introduced during the Winter Sittings.

Ordered that further consideration of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

- Taxation Laws Amendment Bill (No. 2) 2003
- Energy Grants (Credits) Scheme Bill 2003

**BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002**

In Committee

Consideration resumed.

Senator CHERRY (Queensland) (4.48 p.m.)—It was pointed out to me before the lunch break that there is a slight flaw in my amendment (1) in that I was to replicate sections 152 and 153 of the Broadcasting Services Act and apply those to commercial broadcasters, and I had only replicated section 152. So whilst the amendment had the
ability to give the ABA the power to issue a notice to a broadcaster to do an apology or a retraction it did not give them the power, if they refused to do that, to table a report in the parliament. I have requested a revised amendment to be drawn up, which is currently coming and should be here very soon. So it might be appropriate if we move on to the next amendment until that one comes into the chamber. I move:

That consideration of the amendment be postponed until a later hour.

Question agreed to.

Senator CHERRY—I move:

(2) Schedule 2, page 37 (after line 8), after item 8, insert:

8AB At the end of subsection 152(2)

Add “or providing a right of reply”.

Amendment (2) is only a very small amendment to simply give the ABA a few more options as to what it may put into a notice. Where there has been a breach of a code of practice, at the moment the ABA has the ability in its notice to a public broadcaster to request a retraction or an apology. It may be appropriate in some circumstances, rather than a retraction or an apology, for a right of reply to be offered as a more appropriate remedy. It is entirely up to the ABA and of course, under this clause, it is entirely for the public broadcaster to accept or reject that notice, in which case it would be reported back to us.

That is consistent with the approach that has been adopted, as I said earlier, in Canadian broadcasting law where, for cross-media exception certificates in that jurisdiction, they are requiring a right of reply. The right of reply to some extent is even picked up in the objectives of the Press Complaints Council’s powers in terms of newspapers. I think it is only a small amendment and I commend it to the Senate.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.51 p.m.)—I indicate that we do not support that. I have taken the opportunity to look at the breaches that Senator Cherry seems to think are significant. In fact they are significantly down on the number of breaches from last year. Seven of them relate to complaints handling, which is a process issue, five relate to accuracy, four to violence, three to privacy, three to fair and impartial presentation of news, three to failure to correct significant errors of fact and two to unfairly identifying a single person when commenting on a group.

There might be some privacy issues there, but the idea that somehow the place is riddled with examples of the need to come up with rights of reply is simply not valid. The commercial television association has been asked to look at the issue of privacy in the context of its review of its existing code. The ABA does have the power to impose standards, as it has done on one occasion in relation to the cash for comment episode in radio. Five out of the 34 breaches relate to A Current Affair, so I really think Senator Cherry has vastly overstated all this. He has not done the homework that has now been done on the issue. It is quite obvious to me that the problem is a very low-level one, if it is a problem at all.

Senator CHERRY (Queensland) (4.53 p.m.)—I might respond to that. What constitutes a low level and what constitutes a high level is obviously in the eyes of the beholder. I am not trying to say that there is a crisis in the area of complaints to the ABA or that we have some dramatic movement; I am saying that the powers of the ABA to deal with a breach finding when it actually gets one are simply inadequate. I think it is perfectly reasonable that, if there has been a breach report and it has been found that a broadcaster has breached a code of practice, its viewers find
out about it. At the moment the only place that these things are published is on the Internet, which means that, as has been shown by some of the repeat offenders, that is of only marginal concern to broadcasters. I think that to allow a notice for retractions or apologies—and, if a broadcaster does not do that, to have that reported to this place—is a reasonable request.

As I said earlier, it is in the act for public broadcasters, and we are only proposing to extend it to private broadcasters. I am not saying that there is a crisis here; I am saying that, where there is a breach of a code of practice—and I think that a breach of a code of practice is a serious matter—the ABA should have adequate powers to deal with that. The proposals I put up last year were much more radical, based on the British model. They were to make codes of practice into licence conditions, as they were probably—and someone can correct me if I am wrong—pre 1991. In the UK, a breach of a code of practice is a much more serious matter. The Broadcasting Standards Commission has much more power than our ABA has to ensure that a broadcaster is pinged on it. There are significant fines and penalties, as well as much more power to require apologies, retractions and rights of reply.

In this instance, I am suggesting only that it be a power of the ABA to issue a notice and, if a broadcaster ignores it, following the current structure of the act, that it be reported to the parliament. I do not think that is a radical reform, as the minister is suggesting, but it does pick up what I think is a serious matter, which is repeated breaches of a code of practice. I am looking at the figures here for the last few years. The figures for breaches—the fair comment and broadcasting figures—are not huge but they are repeated. That is something which I think this parliament should be concerned about.

Question agreed to.

Senator HARRIS (Queensland)  (4.56 p.m.)—I would like to indicate to the chamber that I will be withdrawing One Nation amendment (1) on sheet 3003. After discussions it has been proved that what I was setting out to do would have been made more complicated by bringing the amendment in. That was not the intention, so I will not be proceeding with that amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts)  (4.57 p.m.)—by leave—I move government amendments (3) to (10) on sheet QS205:

(3) Schedule 2, item 4, page 11 (line 2), omit “licence; or”, substitute “licence.”.

(4) Schedule 2, item 4, page 11 (lines 3 to 6), omit paragraph (d).

(5) Schedule 2, item 4, page 11 (before line 7), before the definition of week, insert: unacceptable 3-way control situation, in relation to a person, means the situation in which the person would, apart from this Division, breach each of the following prohibitions:

(a) a prohibition in section 60 or 61 that relates directly or indirectly to a set of media operations that consists of:
   (i) a commercial television broadcasting licence; and
   (ii) a commercial radio broadcasting licence;

(b) a prohibition in section 60 or 61 that relates directly or indirectly to a set of media operations that consists of:
   (i) a commercial television broadcasting licence; and
   (ii) a newspaper that is associated with the licence area of the licence;

where the licence and the commercial radio broadcasting
licence mentioned in paragraph (a) have the same licence area;

c) a prohibition in section 60 or 61 that relates directly or indirectly to a set of media operations that consists of:

(i) a commercial radio broadcasting licence; and

(ii) a newspaper that is associated with the licence area of the licence;

where the licence and the commercial television broadcasting licence mentioned in paragraph (a) have the same licence area.

(6) Schedule 2, item 4, page 11 (lines 12 to 15), omit paragraph (a), substitute:

(a) a cross-media exemption certificate is in force in relation to the set of media operations; and

(7) Schedule 2, item 4, page 11 (line 24), omit "the company.", substitute "the company; and"

(8) Schedule 2, item 4, page 11 (after line 24), at the end of section 61C, add:

(d) an unacceptable 3-way control situation does not exist in relation to the person in connection with any licence or newspaper included in the set of media operations.

(9) Schedule 2, item 4, page 13 (line 4), omit "vexatious.", substitute "vexatious; and"

(10) Schedule 2, item 4, page 13 (after line 4), at the end of subsection 61E(1) (before the note), add:

(c) the ABA is satisfied that, if the certificate were to be issued, paragraph 61C(d) would not stop the certificate from becoming active.

These amendments seek to impose an additional safeguard for media diversity by extending nationally the restriction that a person may control only two of the three types of media that are covered by the cross-media rules in a single market—that is, commercial television, commercial radio and associated newspapers. Amendments (3) to (10) extend the two out of three limit uniformly across Australia. Amendment (5) in particular identifies as an unacceptable control situation the circumstances where a person controls a television station, a radio station and an associated newspaper operation in a single market. This will have the effect of ensuring that in every market no person may control more than two types of media covered by the cross-media rules. Under the current bill, this rule applies only to regional areas. These amendments strengthen the already robust diversity safeguards contained in the bill and the act, including limits on the number of commercial television and commercial radio licences a person may control in a market, and the requirement for editorial separation.

Senator MACKAY (Tasmania) (4.58 p.m.)—I will indicate the Labor Party’s position. These are the government’s big-ticket Senate amendments which Senator Alston hopes will see this bill through the Senate. With these amendments the government has backed down from a complete repeal of the cross-media ownership restrictions as provided for in the original bill. The original bill allowed for a proprietor to own a television station, a newspaper and up to two radio stations in the same market. It was an outrageous attempt to allow massive consolidation of commercial media ownership in Australia.

The original bill was slammed by all the key interest groups in the Senate inquiry—other than the media proprietors themselves, of course. Thankfully, the Senate committee and the Independent senators who hold the balance of power in this place have indicated that they are not going to cop such an outrageous consolidation of media ownership in Australia. But the government was still not going to cave in. It still wanted to ensure that the media giants could grow larger and more powerful through the joint ownership of newspapers and television stations in the
cities, which is prohibited under current laws. In its first series of amendments after the Senate report into the bill, the government announced that it would limit cross-media ownership to two out of three forms of media—television, radio and newspapers in regional markets. In the latest series of amendments, we find the government is extending the two out of three rule to metropolitan markets.

This is an interesting concession from the government. It shows that even the government, with its blind faith in the nonsensical concept of editors being free from the influence of owners, tacitly accepts the necessity for cross-media ownership laws. Labor’s view is that the two out of three rule will still lead to too great a concentration of media ownership in Australia. It will still allow television station owners to own newspapers in metropolitan cities. For instance, it will still permit News Ltd to acquire the Seven Network, PBL Nine Network, Fairfax and the Ten Network, and Southern Cross’ radio interests, thereby creating three commercial media giants dominating the market. Effectively, these amendments still give the larger media proprietors what they want, which is to control newspapers and televisions in the big capital cities. The amendments still lead to Australia’s six major commercial media groups effectively shrinking to three to the detriment, in our view, of media diversity in Australia and thus to the detriment of our democracy. This outcome is not acceptable to Labor, which is why we remain opposed to the bill as amended by the government. We will therefore be voting against these amendments.

Senator CHERRY (Queensland) (5.01 p.m.)—I want to state for the record that the Democrats will also be voting against these amendments. The two out of three rule that these amendments essentially put into place is, I think, a very inadequate means of dealing with the issues of diversity of viewpoint. They are inadequate because they still equate the level of radio—in terms of its influence—with the level of television and newspapers. I do not particularly want to downplay the importance of radio, because I think radio is significant. But the simple fact is that, in terms of listening audience, in terms of revenues and in terms of news provision, a commercial radio station has nowhere near the influence of a daily newspaper or a television station. From that point of view, to actually equate in a two out of three rule radio with television and newspapers allows this particular rule to open up a very large exemption—in fact, a very large hole through which several Mack trucks and very large media proprietors can be driven. It is better than three out of three, or four out of four if you include pay TV. In our view two out of three allows too much media concentration of the most powerful mediums to occur. Essentially, they are television and newspapers. I know we are dealing with more important amendments on this later in the debate, but I wanted to note for the record that the Democrats will be opposing these amendments.

Question agreed to.

Senator LEES (South Australia) (5.03 p.m.)—by leave—I move amendments (1) to (6) on sheet QS 220:

(1) Schedule 2, item 4, page 10 (after line 5), after the definition of metropolitan licence area, insert:

minimum number of media groups test has the meaning given by section 61FA.

(2) Schedule 2, item 4, page 12 (after line 23), after subsection 61D(5), insert:

minimum number of media groups test has the meaning given by section 61FA.

(5A) The ABA may, by written notice given to the applicant, extend the 60-day period referred to in subsection (5), so long as:

CHAMBER
(a) the extension is for a period of not more than 60 days; and

(b) the ABA has been unable to make a decision on the application within that 60-day period because of the need to apply any or all of the following:
   (i) paragraph 61E(1)(aa);
   (ii) paragraph 61E(1)(ab);
   (iii) section 61FA; and

(c) the notice includes a statement explaining why the ABA has been unable to make the decision on the application within that 60-day period.

(3) Schedule 2, item 4, page 13 (after line 2), after paragraph 61E(1)(a), insert:

(aa) the set of media operations is not exempt from the minimum number of media groups test, and the ABA is satisfied that the minimum number of media groups test is satisfied for the set of media operations; and

(ab) the set of media operations is not exempt from the minimum number of media groups test, and the ABA is satisfied that, if the certificate were to be issued and become active, neither:
   (i) the transactions, agreements and circumstances that resulted in the certificate becoming active; nor
   (ii) any related transactions, agreements and circumstances;

will result in the minimum number of media groups test not being satisfied for the set of media operations; and

(4) Schedule 2, item 4, page 13 (line 5), after “Note”, insert “1”.

(5) Schedule 2, item 4, page 13 (after line 5), at the end of subsection (1) (after the note), add:

Note 2: For the minimum number of media groups test, see section 61FA.

Note 3: For exemptions from the minimum number of media groups test, see section 61FB.

(6) Schedule 2, item 4, page 14 (after line 16), after section 61F, insert:

61FA Minimum number of media groups test

(1) Use the table to work out whether the minimum number of media groups test is satisfied for a set of media operations:

| Minimum number of media groups test | Item | If the set of media operations is... | the minimum number of media groups test is satisfied if...
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a commercial television broadcasting licence and a commercial radio broadcasting licence</td>
<td>there are at least the applicable number of points in the licence area of the commercial radio broadcasting licence.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>a commercial television broadcasting licence and a newspaper</td>
<td>there are at least the applicable number of points in each commercial radio broadcasting licence area with which the newspaper is associated.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>a commercial radio broadcasting licence and a newspaper</td>
<td>there are at least the applicable number of points in the licence area of the commercial radio broadcasting licence.</td>
<td></td>
</tr>
</tbody>
</table>

Applicable number of points

(2) For the purposes of the application of subsection (1) to a commercial radio broadcasting licence area:

(a) if the licence area is an area in which is situated the General Post Office of the capital city of:
   (i) New South Wales; or
   (ii) Victoria; or
   (iii) Queensland; or
   (iv) Western Australia; or
   (v) South Australia; or
(vi) Tasmania;

the applicable number of points is 5; and

(b) in any other case—the applicable number of points is 4.

Points

(3) Use the table to work out the number of points in the licence area of a commercial radio broadcasting licence (the first radio licence area):

<table>
<thead>
<tr>
<th>Points</th>
<th>Item</th>
<th>This... is worth...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a group of 2 or more media operations, where: (a) a person is in a position to exercise control of each of those media operations; and (b) each of those media operations complies with the statutory control rules; and (c) if a commercial television broadcasting licence is in the group—more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (d) if a commercial radio broadcasting licence is in the group—the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and (e) if a newspaper is in the group—the newspaper is associated with the first radio licence area</td>
<td>1 point.</td>
</tr>
<tr>
<td>2</td>
<td>a commercial radio broadcasting licence, where: (a) the licence complies with the statutory control rules; and (b) the licence area of the licence is, or is the same as, the first radio licence area; and (c) item 1 does not apply to the licence</td>
<td>1 point.</td>
</tr>
<tr>
<td>3</td>
<td>a newspaper, where:</td>
<td>1 point.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Points</th>
<th>Item</th>
<th>This... is worth...</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>a group of 2 or more commercial television broadcasting licences, where: (a) each of those licences complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of each of those commercial television broadcasting licences; and (c) the commercial television broadcasting services to which those licences relate pass the shared content test in relation to each other; and (d) item 1 does not apply to either of those commercial television broadcasting licences</td>
<td>1 point.</td>
</tr>
<tr>
<td>5</td>
<td>a commercial television broadcasting licence, where: (a) the licence complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (c) the commercial television broadcasting service to which the licence relates does not pass the shared content test in relation to any other commercial television broadcasting service, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the licence to which the other commercial</td>
<td>1 point.</td>
</tr>
</tbody>
</table>
television broadcasting service
relates; and
(d) item 1 does not apply to the
first-mentioned licence
(4) If, apart from this subsection, all the
media operations in a group of media
operations mentioned in an item of the
table are also in one or more other
groups mentioned in an item of the
table, then, for the purposes of
subsection (3), ignore the existence of:
(a) if one of the groups has the highest
number of media operations—the
remaining group or groups; or
(b) if 2 or more of the groups have an
equal highest number of media
operations:
(i) all but one of the groups that
have an equal highest
number of media operations; and
(ii) the remaining group or
groups; or
(c) if the groups have an equal number
of media operations—all but one of
those groups.

Anti-avoidance
(5) If the ABA is satisfied that:
(a) a person (either alone or together
with one or more other persons) has
entered into, begun to carry out, or
carried out, a scheme; and
(b) the person did so for the sole or
dominant purpose of ensuring that
the minimum number of media
groups test is or will be satisfied for
a set of media operations; and
(c) apart from this subsection, the
scheme results or will result in a
group of media operations being
covered by an item of the table in
subsection (3);
the ABA may, by writing, determine
that the existence of that group is to
be ignored for the purposes of
subsection (3).

Statutory control rules
(6) For the purposes of this section, a
media operation complies with the
statutory control rules if, and only if:
(a) no person is in breach of a
prohibition in Division 2, 3 or 5 that
relates directly or indirectly to the
media operation; or
(b) a person is in breach of a prohibition
in Division 2, 3 or 5 that relates
directly or indirectly to the media
operation, but the ABA has
approved the breach under section
67.
Note: Section 67 is about
approval of temporary
breaches.

Shared content test
(7) For the purposes of this section, a
commercial television broadcasting
service passes the shared content test
at a particular time in relation to
another commercial television
broadcasting service if:
(a) the program content of at least 50% of
the total number of hours of
programs broadcast by the
first-mentioned service during
daytime/evening hours during the
6-month period ending at that time;
were the same as:
(b) the program content of at least 50% of
the total number of hours of
programs broadcast by the other
service during daytime/evening
hours during the 6-month period
ending at that time.
(8) For the purposes of subsection (7),
ignore the following:
(a) advertising or sponsorship material
(whether or not of a commercial
kind);
(b) a promotion for a television program
or a television broadcasting service;
(c) community information material or community promotional material;
(d) a news break or weather bulletin;
(e) any other similar material.

(9) For the purposes of subsection (7), ignore the following:
(a) any material covered by paragraph 6(8)(b), (c) or (d) of Schedule 4;
(b) a program covered by paragraph 37EA(1)(a) of Schedule 4.

Overlapping licence areas

(10) Section 51 does not apply to this section.
Note: Section 51 is about overlapping licence areas.

Definitions

(11) In this section:

daytime/evening hours means the hours:
(a) beginning at 6 am each day; and
(b) ending at midnight on the same day.

media operation means:
(a) a commercial television broadcasting licence; or
(b) a commercial radio broadcasting licence; or
(c) a newspaper.

scheme means:
(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

61FB Exemptions from the minimum number of media groups test—remote areas

Use the table to work out whether a set of media operations is exempt from the minimum number of media groups test:

| Item | If the set of media operations is... | the set is exempt from the minimum number of media groups test if...
|------|-------------------------------------|---------------------------------------------------------------|
| 1    | a commercial television broadcasting licence and a commercial radio broadcasting licence | the commercial radio broadcasting licence area is:
(a) Remote Commercial Radio Service North East Zone; or
(b) Remote Commercial Radio Service Western Zone; or
(c) Remote Commercial Radio Service Central Zone. |

These amendments are actually the city version of what Senator Alston just moved on the two out of three rule. I will address Senator Cherry’s concerns first. This is part of a package of changes; it is not intended to stand on its own. The two out of three rule goes with the minimum voices rule, which goes with the one newspaper rule, which goes with later amendments that Senator Harradine and possibly Senator Murphy are going to move. You need to look at the bigger picture. You need to look at what we end up with at the end of the day; not at each amendment in isolation.

As we have just seen, the government acknowledges that in rural and regional areas it was not feasible to have three out of three—in other words, for someone to own everything—although, in my experience in rural South Australia, it was once the case in Mount Gambier. But it certainly is preferable that we have different owners and I think it is particularly important in capital cities. Therefore, I have agreement with the government, and these amendments extend the two out of three rule into the cities.
Senator CHERRY (Queensland) (5.04 p.m.)—by leave—I move Democrat amendments (2) and (3) on sheet 3000:

(2) Amendment (6), page 3, subsection 61FA(3), table item 1, after “media operations” (first occurring) add “(other than a group composed of 2 or more commercial radio broadcasting licences)”.

(3) Amendment (6), page 3, subsection 61FA(3), table item 2, delete “1 point”, insert “0 points”.

These amendments relate to what I was speaking about a few minutes ago. These amendments are about ensuring that the weighting of a radio station in the counting of the five—or four—voices test is zero. I did toy for a while with whether the weighting should be zero or 0.2. If you go through and work out the share of the listening audience that each radio station has on average and then average that as a percentage of the media influence of a television station or a newspaper, you come out with a figure of 0.2. I might explain how I did that.

In 2001, the ABA did a survey of sources of news and current affairs. Part of that survey determined what sources of media people rely on for the purposes of getting their media. That survey is very interesting and it is worth reporting it to the Senate. The survey found that the most important source of media by far was television. Table 7 of section 4.4 talks about the hierarchy of news and current affairs sources. This survey was done of about 1,100 people around Australia by the Centre for New Media Research and Education at Bond University. It found that roughly half of all Australians cited their most used source overall for news and current affairs as television stations. Of the other half, roughly 28 per cent cited newspapers and 22 per cent or thereabouts cited radio. Of those who cited radio, half of them, in turn, cited the public broadcast of the ABC, and the rest were shared between the commercial radio stations.

If you take those particular figures and divide them by the number of commercial radio stations in each of the metropolitan markets, you get an idea of how much of the total media market each of the radio stations is responsible for. It works out to be somewhere between zero and 0.2 per cent of the total media market of a newspaper or a television station measured by a diversity measure—the measurement I think should be used—which is what people are relying on to get their news and current affairs. From that point of view, it is totally inappropriate to look at this particular five voices test and, knowing that a radio station is getting only between zero and 0.2 per cent of the audience for media diversity purposes of a daily newspaper or a television station, then say that they count as one for the purposes of the five voices test. To suggest in the Sydney market that 2KY, the racing tips station with a two per cent listening audience, is the equivalent to the Sydney Morning Herald, the Daily Telegraph or Channel 9 news for the purposes of the voices test is absolutely ludicrous. To suggest that 2SM, with 0.6 per cent of the listening audience, is the equivalent of National Nine News with a 30 per cent share or the Daily Telegraph with a daily circulation of 400,000 is, in my view, quite ludicrous. As a test of media diversity it completely and comprehensively fails.

That is why it is very important that we amend these amendments. If this bill is going to live or die on the issue of a five voices test, let us make sure that the damn thing works. The only way to make the thing work is to take radio out. If you take radio out, in recognition that radio is nowhere near as important to media diversity as television and newspapers, this test actually works because then we are required to have five real voices in each market. In Sydney and Mel-
bourne that would mean that those five voices would be the three television stations and the two daily newspapers. If someone wants to open a new newspaper, they would be the sixth voice and they would get to meet the test. That is why I move the amendments and I commend them to the Senate.

Senator MURPHY (Tasmania) (5.09 p.m.)—With regard to Senator Cherry’s amendments and the five voices test, I note that his amendment (2) refers to a group other than a group composed of two or more commercial radio broadcasting licences. I take it from that that there is some acknowledgment on his part that radio constitutes a voice in the market. I am not quite sure that he is not defeating his argument by stating that the five voices should comprise three television stations and two newspapers. I think radio plays a very important part in being a voice in servicing the community. You only have to look at the revenues of some of the radio networks in Sydney and Melbourne, in particular, and even more so in Perth, Adelaide and Brisbane to see that that is the case. Radio has an important role to play. I suspect, and I think Senator Cherry acknowledges this in his amendments, that in terms of the five or four voices test proposed by Senator Lees in her amendments, where there are two or more commercial radio broadcasting licences these people will be in healthy and competitive form and they will continue to provide a service to the community in that respect. They will remain a very strong voice.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that the amendments moved by Senator Cherry to Senator Lees’ amendments be agreed to.

Question negatived.

Original question agreed to.

Senator HARRADINE (Tasmania) (5.12 p.m.)—by leave—I move amendments (1) to (3) standing in my name on sheet 2985:

(1) Schedule 2, item 4, page 12 (line 30), omit “if”, substitute “provided”.

(2) Schedule 2, item 4, page 13 (after line 4), at the end of subsection 61E(1) (before the note), add:

; and (d) the application is not in relation to a set of media operations in a metropolitan licence area that includes a television broadcasting licence and a newspaper associated with the licence area.

(3) Schedule 2, item 4, page 13 (after line 5), after subsection 61E(1), insert:

(1A) The ABA must refuse to issue a cross-media exemption certificate if it relates to a set of media operations in a metropolitan licence area and the set includes a television broadcasting licence and a newspaper associated with the licence area.

I move these amendments to protect against media proprietors having undue influence in the metropolitan media markets. My amendments are quite straightforward. They would ensure that a media proprietor could not own both a television licence and a newspaper in the same mainland capital city or, as the legislation describes it, a ‘metropolitan licence area’. The definition of metropolitan licence area used in the legislation does not include all Australian capital cities. It does not include Darwin, Canberra and, most importantly, Hobart. I was initially concerned about the omission of Hobart from the definition, but I am satisfied that the minimum voices rule detailed in the most recently passed amendments will protect Hobart and also Launceston from media concentration.

The amendments protect against media proprietors having undue influence, particularly in a city, by owning both a television
licence and a newspaper in that city. I have also been concerned that some of the larger media groups in television and newspapers might have undue national influence if they were allowed to merge. I made the arguments before in my speech on the second reading debate about what the Productivity Commission says. I think we should take special note of what the Productivity Commission has said in this regard. The commission found:

... the likelihood that a proprietor’s business and editorial interests will influence the content and opinion of their media outlets is of major significance.

There is a strong preference for more media proprietors rather than fewer. The report also said:

... diversity of opinion and information is more likely to be encouraged by greater rather than less diversity in the ownership and control of the main media.

These are the central points that I have in mind when considering these amendments, and I hope you have them clearly fixed in your minds as well. My amendments are specific to newspapers and television. We have just heard Senator Cherry outline to the Senate the type of influence that these media each have—I think Senator Cherry said 50 per cent for TV, 28 per cent for newspaper and 22 per cent for radio—and half of that was the ABC.

The reason that my amendments are specific to television and newspaper is that these are the types of media that have been found to be influential sources of news for the general public and, most importantly, they count for fewer voices than other media like radio. There is already some concentration in the TV and newspaper markets. In the mainland cities of Perth, Brisbane and Adelaide, for example, there is only one daily newspaper. There are two local daily newspapers in Sydney and Melbourne. Further, the free-to-air stations across Australia are protected against new competitors under the terms of the licence moratorium in the act. No new television licences are permitted until 2006. In contrast, there are a number of commercial radio stations in each of the mainland capitals and plans for new FM radio licences in Adelaide, Brisbane, Melbourne and Sydney.

Without my amendments—and through you, Madam Temporary Chairman, I ask that honourable senators consider this—I put it to you that this is the scenario. A media owner of one particular Australian television network which has the potential audience reach of over 70 per cent of the population could look to purchase or merge with a newspaper group. If a merger were agreed with one of the major newspaper groups which has almost 70 per cent of the capital city and national newspaper market, that would create a situation which would be totally unacceptable to the public interest.

An examination of influence at the city level is just as concerning. The circulation rates in the single newspaper towns of Perth, Brisbane and Adelaide are well known. If you do a few calculations based on the TV ratings in those markets, you can get an idea of how many people might be reached each day in each of the three cities. In one of these markets, a cross-media owner could almost double his potential reach to the general public by owning both the newspaper and a television station—an audience reach of about 450,000 people. Even more significantly, this owner would control the local daily newspaper market for that city and a third of the television viewers. In Sydney and Melbourne, the only markets where there are two local daily newspapers—and we are all aware of who owns those—there are newspapers that have circulations of over 400,000 and over 500,000 respectively. Couple that with a television station reaching up to a
third of the audience and you can potentially have a very significant influence.

This issue is far too important to let go and not to address in this particular measure. I hope that, if my amendments are passed, the government will be able to support the amended bill. I have actually never ceased to be amazed at the grasp the minister has of the minutiae and the policy parameters of his portfolio. I hope that the government will not ditch the bill if my amendments are adopted by the Senate. They go to the heart of diversity and, indeed, of democracy. The minister would readily acknowledge the substantial improvements made to the bill by his own amendments and those of other senators. A lot of time and work has been put into them, and I acknowledge that.

On the issue of the growth of the industry, my amendments would still allow room for media proprietors, particularly the smaller proprietors, to move and grow. They will, for instance, still allow newspapers to merge with radio and allow television to merge with radio in the metropolitan area. They also allow a media proprietor to own a newspaper in one city and a television licence in another city. Regional areas will not be directly affected by these amendments.

I acknowledge that some media lobbyists have suggested that the big media owners are doing very well, thank you very much, under the existing legislation. But, really, I cannot accept that letting the big players make large cross-media purchases to form a combined newspaper-television group is in the interests of the general public. It might be in the interests of the media groups but it is certainly not in the public interest.

The amendments I am moving were first drafted and raised with the government in March, both in correspondence and later in meetings with colleagues. I had hoped that, over time, we would be able to come closer to an agreement on this legislation. I have always been troubled by the issue of how to best ensure media diversity and the influence that one media proprietor can have under the current laws, and I am now troubled by the even larger influence they could have under the current bill if it is not amended. I would like to thank honourable senators who have worked on this legislation. I know that many of my colleagues have done substantial work on this issue. I have valued the opportunity to discuss the issue with them. I ask the Senate to support my amendments.

Senator MURPHY (Tasmania)  (5.23 p.m.)—I will start by saying I am going to support Senator Harradine’s amendments and, in doing so, I draw to the attention of the Senate to part 1, section 3 of the Broadcasting Services Act 1992 which relates to the objects of the act. I note that there are no amendments proposed in the bill to this particular part of the act, nor in any of the proposed amendments to the bill. Therefore, I assume that the objects of the act remain intact. I would like to quote three of those objects. In section 3, subsection (1) says:

(c) to encourage diversity in control of the more influential broadcasting services; and
(d) to ensure that Australians have effective control of the more influential broadcasting services; and
(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; ...

Of course we all know, although we may not all acknowledge it, that the media industry has been transforming at a very significant rate, particularly from a technological point of view, and that, like all laws, media laws often fall behind in respect of regulating industry change. It is probably fair to say that this is the case in respect of the existing media regulations as they would apply to some of the changes that have occurred within the
media industry from a technological point of view and from the introduction of new services—things like the Internet, pay TV, data-casting and a whole range of other things that have occurred and will continue to occur. But what is important in all of that is that those objects of this act remain intact. This should never be about giving more control—and I do not like to use the word ‘control’ but, in this case, I have to because I cannot think of another word—to particular companies that have already got significant influence within the Australian media industry. I have been looking at this process whereby governments have sought from time to time to make adjustments to media laws in this country—and this government is now in its second attempt at that.

I am also drawn to refer to the Productivity Commission report of March 2000 and cite recommendations they made for a process of introducing more competition into the Australian media industry. I do that on the basis that they must have had a concern, in light of their recommendations, that there was a problem with regard to competition within the media industry. That is why they recommended progressive change to media regulation laws in this country. That, of course, has not happened. If you look at it from the point of view of the removal of foreign ownership restrictions, players within the media industry have argued that if you do that you place them at risk, from a national or domestic perspective, of not being able to compete with international players.

I suppose if you were to accept that as a half reasonable argument then you would need to move on the domestic laws as well, and the government has sought to do that. Nevertheless, what we cannot walk away from in this place are the objects of the Broadcasting Services Act. I cannot, because I want to see more competition in the media industry in this country and I want to ensure that those players that exist within the industry, even some of those that are at the higher end of the horsepower range, are given the opportunity to bring about some more competition from what are two essential standout players. One of them is a standout player from a global point of view.

The government is now confronting a situation—although I think it could have had other options—where we have to take what Senator Harradine is proposing by way of amendment to ensure that the objects of the act are met. I can listen to all of the argument, which I will have to do, from the minister with regard to the strength of the industry. Senator Harradine very rightly pointed out that the free-to-air television industry is very healthy—the industry would suggest that. There have been reports of its market share and advertising revenue taking reasonable increases—not quite a J-curve, but a curve in gain of market share. We really have to take a step here to ensure that we allow some flexibility within the industry and at the same time make sure that the public interest is protected.

With regard to the issues that relate to diversity, I suspect that the minister will argue that with the editorial separation rules et cetera in place it somehow will protect the diversity of views and so on and that, by allowing certain players in the game to do what they can, we will still have these sorts of things as a fallback. That is just not an acceptable position. The government might argue, ‘What you are creating is an uneven playing field.’ The playing field is already uneven. What is proposed by the amendment is to ensure that the playing field is probably a little more even.

As I have said, the government probably could have proceeded in a slightly different way and we probably could have ended up in a different set of circumstances but at the end
of the day I am going to vote for what is in the public interest. We are confronted with a media industry that is changing and it will continue to change. I guess that, even if the bill does not ultimately pass, it will not be too long in the future that we will revisit the issue because of the whole range of new circumstances that will occur. Given the circumstances that we are in, I will support the amendment. I commend the amendment to the Senate.

Senator BROWN (Tasmania) (5.33 p.m.)—The Greens support the amendment because we are fearful that the bill will pass and that a constriction will be brought upon the ownership of the media through that process. The Greens would not concede anything from the existing legislation that would allow a concentration of media ownership. If we were confident that this bill was not going to pass—and we will be voting against it even if it is amended—we would not be supporting this amendment. But this amendment allows for a further concentration of media ownership. Let us make no mistake about that. It is not a freeing-up; it is a clamping-down. It does mean that, whereas previously in the big cities in particular you could not have a newspaper and a TV station, you could not have a TV station and a radio station, or you could not have a radio station and a newspaper, you now can have two of the three provided one of them is a radio station. That is what this amendment means. That is a very considerable concession to the enormous pressure to allow further aggregation of media ownership and, therefore, editorial narrowing. Therefore, it is a fearful amendment to me and to the Greens. The only greater fear is that the bill may pass without that amendment.

Well, how do you weigh up those things? The real crux of the debate is the aggregation and the constriction of media ownership in this country. It is worse than in almost any other comparable country. Therefore, Australians are not getting the variety of opinion and diversity of news, opinion and, I think, entertainment that we would get if there were a bigger diversity of ownership. That just stands to reason. In particular, control of the media by Mr Packer and Mr Murdoch is stultifying. Senator Murphy has just read the objects of the legislation again but last night the committee voted to remove the prohibition on foreign media ownership. That was an enormous breach of the objects of the legislation as it stands, which is to protect and extol the things that make us as Australians special in our own eyes, as all peoples everywhere do, and give us a sense of celebration about ourselves and our culture.

The argument against the legislation passing is very compelling indeed and there has been a lot of media comment about it. I think that it has even split media organisations but I have seen nothing but a preponderance of opinion coming from those who work in the media, particularly the news media, against this legislation. So I was interested today to indirectly read on Crikey.com, under the heading ‘Hilmer censors Paul Keating’: Given that Keating was the architect of the last great changes to media ownership laws in Australia, you’d think his views would be valued.

Senator Mackay—You have just got free membership.

Senator BROWN—I will need some assistance with that, Senator. I would not accept it. It says: Crikey can bring you a sneak preview from what is a wonderful piece that Herald editors—

I presume this means the Sydney Morning Herald. It does; that is revealed later—will hopefully develop some spine over and run in tomorrow’s paper. SMH opinion editor Julia Baird should stand up and be counted.

It has a quote from what is said to be Mr Keating’s piece, and then it says:
Crikey called the Keating office this morning and was emailed the following comment from the great man when we asked what he thought about Hilmer’s apparent censorship: ‘I do not approve of material of this kind being handed to third parties, but that said, the very fact that this article has struck difficulty in being published proves the very point the article makes. That is, that a point of view which differs from the commercial interests of the three major commercial media players often won’t see the light of day and as the number of players gets smaller, the prospect of publication of views of this kind commensurately diminishes.’

We are genuinely dealing with an authority here and he is speaking about a very specific issue—that is, the ability to get opinion and, in his case, the opinion of a very recent and very highly regarded Prime Minister on an issue like this—

Senator Alston interjecting—

Senator BROWN—By your interjections, sadly for you—I do not think you know this—you are proving the point, which is that we have a right to a diversity of opinion in this country. You disagree with him and I did on many issues, but I absolutely agree with his point of view that he should be able to put his point of view out to the wider public where there are millions of Keating supporters in this country of ours. I have what is, I think, a copy of what Mr Keating wanted to say and, because it is very important to this debate, I will acquaint the committee with it. It says:

Eric Beecher is incorrect in arguing that a change to the cross media rules will simply make the media companies larger and more commercial and less focussed on editorial content.

This does not square even with the recent history of News Limited, where the mastheads of that organisation fell slavishly into line with the Group’s editorial view on the invasion of Iraq. The Fox news channel on Foxtel had the same line as the Sydney Daily Telegraph and The Australian. Ownership does matter.

Beecher asked ‘does anyone really believe either of the enlarged groups would harness its television stations alongside its newspapers as serious political propaganda tools?’ The real question is how could you not believe this? And how could you have been in the media as long as Beecher has, yet have such a wide-eyed view of what proprietors get up to?

An enlarged media company will align its television and its print whenever it suits it. Not every day but when it really counts. Look how Rupert Murdoch’s organisation cracked the whip in support of George Bush’s campaign against Iraq.

All News Corporation’s media outlets went flat out for it. And no reflection now about those missing weapons of mass destruction. Not a bit of it.

How naive would you need to be to believe that in the event that the Packer organisation acquired Fairfax, that John Alexander wouldn’t swoop, falcon-like, from Park Street to Darling Park to do to The Sydney Morning Herald that which he has recently done at Channel Nine. Including, where and when it was judged appropriate, decide the editorial line of the paper.

Anyone who believes that lines of editorial policy can be set separately for particular mastheads within a commonly owned group must believe in fairies at the bottom of the garden.

And all the nonsense about convergence is just that; nonsense. Everything is going digital so everything must go together. What claptrap. The Productivity Commission report of a couple of years ago put paid to that argument.

The crunch point is this. If Senator Alston succeeds in getting the Senate to agree to break the cross media rule and the television groups acquire Fairfax or News Corporation acquires free to air television, the diversity of our media goes backwards. Pretty simple. They get bigger; our range of news and opinion gets smaller.

If you live in Sydney would you really want John Alexander, or anyone in his position, deciding what The Sydney Morning Herald and Channel Nine should do conjointly. And if you didn’t like what they served up you could turn to The Daily Telegraph as the major alternative. Talk about Hobson’s choice.
Or in Melbourne; the Packer organisation could decide the editorial line of The Age and GTV 9; a one size fits all policy when it suits. 'Give 'em what's good for 'em'.

There is nothing draconian about the cross media rule. What it says is that the holder of a major television licence cannot own and control print in the same city. In other words, the public interest in diversity should prevail over pure commercial aggregation.

All the current campaign is about, is the government doing the bidding of PBL and News Limited. These companies wish to own things. Own more things. The rest of us are meant to roll over while they can more comprehensively tell us what we should think.

And poor old Fred Hilmer is helping their case. For all of Fairfax's primacy in news and advertising, Fred thinks it has no future unless it owns a free to air television station. No new media for Fred; he would prefer to own a declining free to air television station. Just like the clutch of newspapers he recently overpaid for in New Zealand.

Fred, in advocating changes to the cross media rule thinks he is joining Kerry and Rupert in the media proprietors' club. The difference is that each of them is long experienced and accomplished in the game of snatch and grab. Devouring a company or two before the main course has arrived. Fred would be still unfolding his napkin as the assets were swept off the table.

I cannot vouch that this is actually Mr Keating's piece, but it has the wit and acerbity there, and I congratulate the author if I am wrong. To get back to the piece—and I am nearly finished—it continues:

And while his mate Eric would be waiting expectantly in the foyer for news of what the other two let Fred have. It wouldn't be a game it would be a shame.

A democracy functions by the formation of informed opinion; more particularly, by resort to diversity of opinion. A nation that crimps the diversity of its own news and comment, has a poor regard for its own rights and interests.

Australia is a continuing story of takeovers and amalgamations. In this country, the number of institutions shrink rather than expand. This should not be allowed to happen with the major media companies and their respective organs. If Fairfax were not independently owned this article would not be published by the other major media outlets.

We will wait to see in the morning whether this article got a run at all. I take some risk in reading out such an article because I have not checked my sources. But I thought it put such a lyrical, pertinent and compelling argument that I was only too willing to contribute it to the debate at this particular juncture. I think it is a very salient argument.

Senator CHERRY (Queensland) (5.45 p.m.)—I am not sure what is more extraordinary in this debate so far: Senator Brown reading out a speech written by Paul Keating or Senator Harris voting against the removal of all foreign investment restrictions. This particular amendment is a very important one but it does not actually go far enough. I commend Senator Harradine on moving this amendment because it is very important. I commend him on his speech as I think it picked up some of the points which have really been missed, particularly by the government, in this debate. But I want to point out that this amendment does not go far enough because it just applies to five markets. There will be an awful lot of markets but there will be an awful lot of concentration.

I was just doing a bit of a scribble using the research provided by the Communications Law Centre. For example, in the Hobart market there are currently six media proprietors. That number will reduce to five under the five-voices rule. In the Launceston market there are currently five media proprietors. That will reduce to four. In the Brisbane market, under the five-voices rule we go from nine owners to five. In Townsville, Senator Harris, we go from six to four. In Cairns we go from seven to four. In Newcastle we go from six to four.
from seven to five, and so on. In fact, a report which the Communications Law Centre sent through to me actually goes through what the likely reduction in independent voices will be around Australia under the five-voices rule. In Sydney, we will go from 12 to nine; in Melbourne from 11 to eight. I gave the Brisbane figure earlier; I think this one here is not quite correct. In Cairns and Mackay we go from seven to four. We go from six to four in Rockhampton, Toowoomba, Townsville, Maryborough, Bundaberg, Albury, Coffs Harbour, Dubbo, Newcastle, Orange, Wollongong, Ballarat and Shepparton. We go from five to four in Launceston, Ipswich, Gympie, Gold Coast, Bendigo, Geelong, Mildura, Bathurst, Grafton, Lismore, Tamworth, Wagga Wagga and Kempsey. So from that point of view the Democrats will be supporting this amendment, but it does not go far enough because it will allow the concentration of all of those regional markets. In all of those regional markets, under the four-voices rule, proprietors and diversity will disappear from what are already very concentrated markets. So from that point of view we will support it but we will not necessarily think that it is going far enough. We would hope that, in whatever negotiations follow this bill, this particular amendment will be beefed up to protect those regional markets better.

We released last September our policy position on media ownership because we felt it was a very important public issue. We felt it was very important that we put on the public record what we would be negotiating. I think we—other than the government, which of course put up their policy position in the first place—have been rather unique in doing that. That position made it quite clear that we felt that you could in fact liberalise some elements of media ownership in respect of radio ownership and new entrants without necessarily upsetting the notion of viewpoint diversity. I know I have raised this before but it is really worth pointing to the survey that the ABA did on sources of news and current affairs. Of the top 24 most-used sources overall for news and current affairs, the first six are television and the next 12 are largely newspapers. The first commercial radio broadcaster comes in at No. 18 out of 24. There are only three commercial radio broadcasters in the top 24 most relied on news sources in Australia. I do not like to downgrade the role of radio, because it is important, but I want to point out that it is a different level of importance to that of newspapers and television. That is emphasised in the survey work which has been done.

I would also like to point out the importance of diversity from the point of view of the public. In that same survey I have been talking about, the respondents were asked about perceived influence on news and current affairs products. They were asked, ‘Do you think these particular people are influential on news and current affairs products or not?’ and 66.9 per cent of respondents, which is a pretty emphatic answer, said media proprietors were ‘very influential’ and another 23.2 per cent said ‘somewhat influential’. So the public are saying to us, ‘We think they are too influential. We think they are very influential. We are worried about it.’ Then 53.1 per cent said that big business was ‘very influential’ and another 36.2 per cent said ‘somewhat influential’, so they are worried about the whole business influence, the business flavour, coming through and impacting on the coverage of the news. You would be pleased to know, Senator Alston, that politicians are only regarded as ‘very influential’ by 26.1 per cent of respondents. So, luckily, the public does not think that we can influence what is in the newspapers. Rather unfortunately, only 15.8 per cent think regulatory bodies are influential, which is why we have to strengthen their powers. Interests and lobby
groups: 13.4 per cent thought they were ‘very influential’; religious groups, 6.4 per cent; small business, 2.1 per cent; commercial sponsors, 48.5 per cent and audiences—and this is what I liked—we were thought to be ‘very influential’ by 29.7 per cent of people. So twice as many Australians think that the proprietor, rather than the audience, determines what is on their news source. That is why ownership is important. That is why every market in the world that actually has media ownership laws recognises that diversity is where it starts from. Whether you look at the UK or the US or Europe or here right up until this particular bill, ownership is in fact important.

One of the things I have been worried about with this debate is its lack of a proper analytical basis. That is why, in this debate, I have tried base my position on real research. We have to do that. The research is out there about where people get their news and current affairs from, what they think about the news and current affairs as provided, and what impact that has. In fact, empirical work has been done on whether news organisations actually affect election outcomes, which is one of my favourite things. There was a study by CREST, the Centre for Research into Elections and Social Trends at Oxford University, on the 1997 UK election campaign which tested over 1,000 voters by measuring the positive or negative bias of TV news coverage and the effect on each party’s committed class of votes. The results were astounding in that in the London and South-East UK media environment, TV news partisanship moved voting patterns by a minimum of around 0.5 per cent. In an against the grain effect, pro-Conservative or pro-Labour media bias moved Labour or Conservative voters by a minimum of 0.33 per cent against their natural or committed-to party. The measures were found to impact, whatever the socioeconomic status of the voters polled or other television watching variables.

The work by that particular centre at Oxford University and work also at Harvard University’s School of Press and Politics Research shows the same sort of trend. Media ownership and the biases which ultimately come out in that coverage do in fact move voters—not huge numbers, but 0.5 per cent has been the winning or losing margin in probably three or four of the last federal elections in this country. We have to be aware of that, which is why by concentrating ownership, by allowing those voices to become more influential, we do in fact constrain the confines of our political debate.

This is why the Democrats will be supporting the amendment—because at least it recognises, more than the five voices test that we have dealt with earlier, that when you are talking about diversity you have to look at the importance of the media that you are talking about. Television and newspapers are what this debate is about. That is where we have to keep the debate; that is where we have to try to come up with rules that ensure that our democracy can operate, grow and flourish. That is what this debate should be about. That is why we will be supporting Senator Harradine’s amendments, with some reluctance as I cannot quite see why, in so many regional markets in Australia, we will allow further concentration of ownership down to the four minimum voices—and I read out the list earlier—to occur. I would ask Senator Harradine why that is permissible but not permissible in the metropolitan markets. With that one reservation I will support the amendments.

Senator HARRIS (Queensland) (5.54 p.m.)—I rise to place on the record that One Nation will also support Senator Harradine’s amendments. Senator Harradine’s amendments go to the heart of ensuring that we do
not have further concentration, particularly in the main metropolitan areas. Senator Lees made a very pertinent comment during her contribution—that is, it is important to look at the overall changes within the legislation. We should not focus on one particular amendment in isolation. Senator Harradine’s amendment is exactly the same as that: it is part of a process to get assurance that the regime that we are changing to is considerably better than the regime that we currently have. As I said earlier, I believe it is a combination of the broadcasting legislation and the Trade Practices Act that has brought us to the point of having this debate. We are having this debate primarily because of the government’s willingness to bring it on and the willingness of Senator Harradine, Senator Lees, Senator Murphy and I to look at the issues.

Senator Cherry keeps referring to changes in positions. I would remind him that it is very dangerous for people who live in glass-houses to do that. If he wanted to have a look at the record I am sure he could find some absolutely diametrical reversals of policy that the Democrats have been responsible for in relation to changes. One Nation will support Senator Harradine’s amendments because they are integral to the overall changes that we perceive are necessary for this bill to deliver a better regime in the future.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.57 p.m.)—I should place the government’s position on the record in relation to this because this is a watershed amendment. The whole purpose of reform of cross-media, not just in Australia but in the US and the UK in particular, is to free up markets in such a way that you allow the industry to expand, grow and prosper and thereby, because they tend to be dominated by people who specialise in media activity, provide more outlets and more investment in that very important sector while at the same time preserving what are crucial values to society. I trust we are all in heated agreement that diversity of opinion is crucial. The trouble seems to be that those here who, for their own purposes, are not interested in change pretend that somehow diversity of numbers is the be-all and end-all of the game. If diversity of opinion is what it is all about—and that is what I think the objects of the act are directed to—then we are preserving that in spades. We have safeguards built into this legislation; we have gone out of our way to try to ensure that there is no reduction in diversity of opinion. The single most important planks that are in the Broadcasting Services Act, if you simply take this diversity of ownership issue at face value, are that you cannot own more than one television station per market and more than two radio stations per market. You cannot have an audience reach of more than 75 per cent. They do not apply those rules in America. I think in some markets you can own up to eight radio stations now. They have an audience reach rule, according to the FCC’s latest ruling, which will allow up to 90 per cent.

We actually ensure a much greater minimum number of voices than do other countries. We do it because we have those fundamental building blocks in place, and that is if you are just looking at the number of players in a market. I think if you apply the FCC formula—and I am glad Senator Cherry has realised how stupid his misunderstanding of the diversity index was—you will find that they would have about two fewer minimum voices in Sydney than we would have under our regime. Indeed, we have two national broadcasters in this country, which I think is more than any other country has. Clearly, they add an enormous amount of diversity of opinion in themselves. I have not yet heard anyone say that there is a voice that cannot be accessed one way or another—that people
are not able to access whatever voice they want to. For crikey.com to take up about 15 minutes of this debate I think proves the point that people can get access to any information they choose. Diversity of opinion is absolutely alive and well in this country.

What I found fascinating were the contortions that Senator Cherry went through to try and pretend that radio was not important. I think at one stage he had the cheek to say, ‘If you are only rating two per cent, you should not be taken seriously.’ As Senator Harris says, talk about people in glasshouses! This an outfit going out backwards that have been rating two per cent consistently over about the last 12 months. Most of them are looking at losing their seats at the next election and they have the cheek to point to other people and say, ‘Because they are only rating two per cent, they should not be taken seriously.’

The fact is that it is an absolute nightmare to try and rate a weightings index based on the ups and downs of public opinion. You need to ensure that people have access to every point of view, and you do have that in Australia. Do you know what the Democrats are obsessed about? It is the fact that Senator Brown gets far too much coverage. That is what they are obsessed about. They would have a media index that limited the number of times he got a run on ABC radio. That is what they are terrified about. He is the ultimate grandstander.

Senator Mackay—You really do not want to get this legislation through, do you?

Senator ALSTON—I know where Senator Brown is coming from, and he knows where I am coming from. Senator Brown has never had the slightest interest in changing any of this legislation, so I do not think we run any risk here, Senator Mackay, in that regard. In fact, I was intrigued that Senator Brown seems to be blissfully unaware of Paul Keating’s antecedents in relation to the media. This is a guy who used to belt up on journalists for a living. That is what Keating did. Keating used to ring them up, threaten them, cajole them—

Senator Carr—What do you do on the ABC on a regular basis?

The TEMPORARY CHAIRMAN (Senator Brandis)—Order, Senator Carr!

Senator ALSTON—Mr Temporary Chair, what I did with journalists in one instance was to ring them up and say, ‘If you actually run a story which is totally inaccurate’—provided to them by Senator Carr—‘I will sue.’ And I did. Senator Carr coughed up because he acknowledged his own defamation.

Senator Carr—That is nonsense.

Senator ALSTON—that is what I have done in relation to the media.

Senator Carr—Mr Temporary Chair, I raise a point of order. I have had to put up with this for several years now. He knows that is a complete nonsense, and I ask him to withdraw it.

The TEMPORARY CHAIRMAN—There is no point of order.

Senator ALSTON—I am not withdrawing a thing. It is odd that he bites now, isn’t it? He has not bitten before because he never had a defence in the past. The point is that Mr Keating is the classic example. Remember when the Sydney Morning Herald wanted to write stories exposing Keating’s involvement in his business dealings in Indonesia and the piggery? Keating used to threaten them. He had lawyers writing to them, threatening them and refusing to answer questions, until they finally shunted the story off the front page—a little pointer to a big inside story. That is how Mr Keating used to behave. Mr Keating actually threat-
ened Conrad Black—do you remember that? He said that he wanted balanced coverage and, if he found any evidence that they were favouring the Tories, he would go after them big-time. That was Mr Keating’s approach to the media.

Do you remember what Mr Keating did in relation to the cross-media rules? We know what he did from reading books by people such as Max Suich and others. Mr Keating saw cross-media as a way of getting the Herald and Weekly Times Ltd for the campaign they ran against the Labor Party on the assets test in 1984 and because they always hated Fairfax; they regarded them as being in the pocket of the conservatives. I can assure you things have changed dramatically since then, but that was the Keating view of the world. Of course, what Mr Keating did, when he finally got this nonsense through the parliament, was to rush off and boast about how clever he had been and how he expected a lot more support for the Labor Party as a result. So for Senator Brown to be a member of the Keating adoration society is just breathtaking in this context. Keating was the bloke who was the greatest threat to the media that you could ever imagine.

I also noticed that Senator Cherry—in his gymnastics to try and pretend that radio was not important—talked about the influence of media proprietors and a whole raft of other people, but we did not get one mention of journalists. What are we meant to conclude from that? That journalists are not taken seriously by anyone? That it is the media proprietors who are really pulling all the strings and writing all the stories? They are the ones who really have a world view that you dislike. Was it Senator Brown who said, ‘You are away with the fairies if you think that you get different editorial lines out of a common masthead’? The fact is that at the last election, as I recall it, the Age newspaper was on the fence, the Sydney Morning Herald and the Daily Telegraph were for the coalition, the Sunday Telegraph was not for the coalition, and I cannot remember whether or not the Courier Mail abstained as well. Again, it did not suit his world view so he trotted it out.

The fact is that what you ought to be concerned about is diversity of opinion, and you can do that in a range of ways. That is why other countries are going down the same path. They are not scared stiff that somehow some opinions are going to be stifled. They regard a robust democracy as a place where all opinions can be aired, subject obviously to some laws that have always limited freedom of speech, whether that be in relation to defamation, vilification or other over-the-top examples. But by and large, overwhelmingly in democratic societies as secure and robust as Australia, the United States and the United Kingdom, all opinions are heard, are able to be accessed, and that is what this debate should be about.

To say, as Senator Murphy said, that this issue is one that will inevitably have to be revisited in a couple of years time, if we do not resolve it this time, is really to say that the imperative remains: you have to acknowledge that the world is changing. Yet we are not prepared to change. What change involves is freeing up the cross-media rules. I do not know why Keating ever put radio in. I suppose it was to give some symmetry perhaps. But the fact is that television and print are important elements. They are not the be-all and end-all. The idea that somehow people do not think radio is important—tell Bob Carr that Alan Jones is not very important. I suppose it was to give some symmetry perhaps. But the fact is that television and print are important elements. They are not the be-all and end-all. The idea that somehow people do not think radio is important—tell Bob Carr that Alan Jones is not very important. Tell the political leaders who seek to go over the head of the spin merchants who write newspaper articles under the guise of fact—but which are often opinion pieces—that they should not go out there and go on Neil Mitchell, John Laws, Alan Jones and the host of radio talkback programs of people who
are desperate to peddle their wares. The fact is that radio is a very significant medium, but it is only a medium. It is not the be-all and end-all. If people do not want to listen to Stan Zemanek, they do not listen to him. If they do not like Alan Jones, they do not listen to him. If they do not want to read the newspapers, they do not—and increasingly they are not.

Newspapers have generally been in a long-term decline. There are huge costs involved—the practical barriers of entry—in starting up newspapers. Nonetheless they are very welcome if people are able to do it. But history tells us that it is a very big ask. Why should we be artificially limiting the very few opportunities there might be for media organisations to expand and to become more robust and positive in their businesses and their involvement in this important area—as long as we safeguard the crucial protections of the diversity of opinion? That is what we do; that is what we have always done. And I have never heard any evidence to demonstrate that it is not happening and that it would not happen under this regime. The argument always comes down to the point that a quantitative reduction in the number of owners somehow is a threat to democracy. It is just totally illogical.

This bill does contain significant limitations on cross-media ownership. As you know, we propose a two out of three rule. There are the editorial separation provisions, which are designed to ensure that you do not have a single owner with a single news selection process. If they own more than one media, each of those media outlets has to decide their own news items, the balance of them, the priority they give them and in fact whether they should be given a run at all.

For Senator Brown to say that Australians are not getting enough diversity of news, current affairs and entertainment, again it is all part of this conspiracy theory. I do not know what news and current affairs they are not getting at the moment. I would have thought Senator Brown gets a pretty good run. He probably thinks the government gets far too good a run. Are there other voices that are not being heard out there? Is there another lunatic party that wants to get a big run in the media? I do not know about it. To say we are not getting enough entertainment, just wait—you will have 250 channels on pay TV in the not too distant future. I am afraid we cannot deliver you that number of free-to-air channels or newspapers or radio stations. Nonetheless, we have dramatically increased the number of radio licences, both regional and metropolitan, over the last six or seven years, and each of those adds to the diversity of opinion. Do they really add something new and different each time? I suspect not. I suspect, if you are in the entertainment business, news is at the margin and always will be.

Do changes of ownership matter much? I do not think they do. I think the important thing is that people operate within the rules. If you have complaints mechanisms, if you have the ability to control community standards and if you have separate ownership of each television station, it seems to me that a change in ownership is not going to be making any significant difference. At the end of the day, they are in there to run profitable enterprises, not to run political lines. It is not like the United Kingdom where London has a population of 10 million. They can afford a bunch of newspapers, a number of which prosper by simply having a set place in the political marketplace. We do not have that here. No newspaper could survive if it went over to one side or the other. They are all hovering around the middle, as they have to—otherwise they would lose half their readership. That will not change. The commercial imperative is to prosper.
That being the case, it is the journalists whom you ought to be worried about, not the media proprietors. It is the journalists who are the players in debates like this. There are journalists running around and into politicians’ offices pushing their lines. I have it. I do not know about you. But I know journalists who can barely sleep at night pushing a line on this issue. They are the players. It is not the proprietors who are ringing up and arguing the case; it is the journalists who are pushing the case. We see that this amendment goes to the absolute heart of the cross-media reforms. If you do not go down this path, you are essentially not seeking serious reform of the cross-media laws. (Time expired)

Senator MACKAY (Tasmania) (6.12 p.m.)—I am really not quite sure what to say after that contribution, I must say. But I would say this: I do not think Senator Alston has any real intention of ever getting any legislation through the chamber, from that contribution. I take Senator Harradine’s point that he provided the minister with an outline of this amendment in March, so I think the minister has had a fair bit of time to do a bit better than that. Anyway, maybe he is here just going through the motions in respect of this bill; I do not know. I would say to the minister that I think Senator Harradine made a number of very good points. One of the good points he made is that the minister should listen very carefully to what Senator Harradine said, and I think the minister should.

The minister can keep arguing black is white for as long as he likes. Certainly, there is no intellectual basis for that level of rhetoric, but he continues to assert it. The reality is that, after all these months and after all the iterations with respect to this bill, he still cannot get the majority of the Senate to agree. And, if you cannot get the majority of the Senate to agree, what does that say in respect of people’s views on it? He has been negotiating with parties and senators for months, and he has failed to convince anyone. The minister asserts that anybody in Australia can get access to whatever information they choose. That might be the case if you live in Kew or if you have access to a $6,000 plasma television, for example, but out in the regions it just is not the case. Senator Cherry, I know, is aware of this. You just do not have the plethora of access, for example. That is just not the real world.

As for the stuff about Paul Keating, there is obviously some odd obsession there and I may not go there. But I did think it was peculiar that the minister, who has been beating up on the ABC—and on everybody else in the chamber, incidentally, in the last speech—had the temerity to criticise or accuse other people of the same thing. Having been at those estimates, I thought Russell Balding played the minister beautifully, but we will move on from that. If the minister really wanted this legislation through he would have put some intellectual rigour into that last contribution.

We are supporting Senator Harradine’s amendment on very similar grounds to the Greens and the Democrats in terms of the caveats. We are fearful that, if this amendment does not get up, the bill may well be passed without any ameliorating impact at all. Senator Harradine’s amendment is the closest thing the Labor Party has to an ameliorating influence with respect to this legislation. We are in a very similar situation to the Greens and the Democrats in this. We do have similar concerns to those that have been outlined very cogently, I believe, by previous senators.

Senator Harradine’s amendment does what this minister has been disingenuously claiming that his bill does. For example, Senator Alston claimed on Meet the Press...
last Sunday that the large media groups, News Ltd and PBL, would not grow under his bill but that the smaller players would. This is a somewhat Orwellian black is white idea. This is total rubbish. Without this amendment PBL Nine would be likely to buy Fairfax, and News Ltd would be likely to buy the Seven or Ten networks. Senator Harradine’s amendment stops that. I would also like to say at this point that Senator Harradine had the grace to thank other senators for discussions, and on behalf of the Labor Party I would also like to convey our appreciation to him for his patience.

That is the situation we are in. We support Senator Harradine’s amendment because we are fearful that the bill will get through. We hope the bill does not get through. We will be voting against the bill. But just in case it does, we are supporting Senator Harradine’s amendment. We believe it actually goes to the crux of the matter. It is the cleanest amendment available in respect of ensuring that the more disconcerting aspects of the bill are removed. If we are going to have the bill—and I hope we do not—then this amendment will go some way to alleviating our concerns. With those short remarks I commend Senator Harradine’s amendment to the chamber.

Senator MURPHY (Tasmania) (6.17 p.m.)—I do not want to take up too much of the Senate’s time—I hope I do not waste any of it. With regard to a couple of points the minister made, in particular that we are not prepared to change, I think the amendments proposed to be made to the bill are a significant change. His view is that you can free up the media and you can still have all the good things that go with it, and that everybody else around the globe has taken the view to pursue a completely open policy objective in respect of media law. That is not quite accurate.

The objects of the act relate very much not only to diversity of opinion but also to diversity of control. That also seems to have been in the mind of the Productivity Commission and in the mind of the ACCC, which I would consider to be far more expert than I am in making judgments about these matters. The Productivity Commission report of 3 March 2000, in ‘Key Messages’ on page 2, says:

Diversity of sources of information and opinion is most likely to be served by diversity in ownership of media companies and by competition.

There are two aspects to that, and I will deal with the second one first in respect of competition.

If you removed the cross-media ownership rules in this country without some form of limitation, you would open up a position whereby you would restrict further the competition that is already rather restricted at the moment. I do not want to reflect on News Corp or Rupert Murdoch, but the fact of the matter is he is a very significant global media player who has a financial capacity way in excess of anyone else in the game here to do certain things that would lead to—and I say this, hopefully, from a very objective point view—a further depletion of competition within this industry. That is why, despite the fact that some people might not like it, we are going to have to have some form of cross-media restriction.

It is not only because of what the Productivity Commission raises. If you go further to page 3 of the report, they say:

The Trade Practices Act 1974 is unable to deal effectively with cross-media mergers and mergers between ‘old’ and ‘new’ media which would affect concentration and diversity in the ‘market for ideas’...

They go on to say that there needs to be a specific public interest test. We know that is a somewhat difficult road to go down. They further say:
Cross-media rules prevent mergers among ‘old’ media and ‘new’ media companies, and will impose increasingly severe constraints on them ...

They continue:

The cross-media rules should be removed once a more competitive—

this has nothing to do with diversity of opinion—

media environment is established, that is, when:

- the media-specific public interest test is in place;
- foreign investment is permitted under normal guidelines ...

They then make a reference to the ban on the entry of new television stations being removed.

When we talk about restrictions in the Australian media, I know that the minister will argue, and has argued, very strongly that we maintain the ban on the entry of new television stations—and for good reason. From a competitive point of view, I would suggest that it is equally arguable to maintain some form of cross-media ownership restriction for the purpose of enhancing competition. The ACCC themselves, when addressing questions of market concentration in a general sense, have a set of guidelines that they apply as a measure of whether they believe a merger or takeover occurring in any form of business in this country will develop a market concentration in some respects above 40 per cent, which would cause them concern. I think that is a reasonable rule. In the interests of consumers in this country, it is important that we keep competition, both in normal business arrangements and particularly in media, because of the social and cultural values that it can deliver to the public of Australia.

Minister, I did not say that we will revisit the process in two years time. I said that, in the context of the changing face of the media industry, whether the bill passes tonight or not, I think we will be revisiting the process. Even some of the amendments suggest that a review will be conducted in some parts. We will have to revisit media laws in five years and maybe in 10 years because of the changes that will occur. I reiterate that my position is not about diversity of opinion, simply because there are other measures that you can employ to ensure that that can occur. In part, that is what the minimum voices test is about. That is what the single newspaper amendments are about. But there is a question about competition and it is a very serious question. Other than by agreeing to Senator Harradine’s amendment, there is nothing before the chamber that can achieve that outcome and can deliver something with some flexibility to allow people to develop a more competitive footing within the media industry. The government has not brought forward anything, and therefore we are required to vote for something that ensures that some competition will be maintained within the media laws of this country into the future.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.25 p.m.)—I certainly did not intend to misrepresent Senator Murphy’s position in relation to having to revisit these issues on an ongoing basis. I think that is a fair comment. But I think it is also true to say that other countries are identifying these issues as current challenges and are freeing up the rules to the point where they allow mergers between television and print right now, as long as they have adequate safeguards in place. If you read the Productivity Commission report, as one would expect that is a long and honourable tradition. Competition is almost the be-all and end-all for them. They do not have any sympathy really for the moratorium. They are not interested in the fact that people might have spent $1 billion or anything else. Their position is
really to say, ‘Unless and until you get rid of that and we really flex the place up, it is premature to worry about taking off cross-media or anything else.’ Their starting point is that competition is what you need. They do not look at issues of diversity of opinion. I think you quoted them as saying that diversity of opinion—

Senator Murphy—it did cross their minds at some point in time, if you read the key message.

Senator ALSTON—Yes. You could probably find a passing reference, but that is not their focus; their focus is on competition. That is why they can assert that diversity of opinion is more likely if you have more owners. Again, that is in the interests of promoting competition. If you are interested in diversity of opinion and you are worried that this might somehow shrink it, you have to actually point to what views you think are likely to be taken out of the marketplace. If you had only one television station, for example, and you argued that it was in the hands of some ideological zealot, and you had closed down all the radio stations, you might say, ‘Where’s the alternative?’ While we are funding the ABC and SBS, I think there is a pretty fair chance that almost every alternative view is going to be available from just those two, let alone from a bunch of other players. When you have three separately owned television stations in each market then, even on the numbers test, you are going to have a multiplicity of voices that is greater than they would end up with in the US and the UK. The UK say that three in any one market is sufficient, plus the BBC. They call it the three plus one rule. We are basically talking about five plus two in a number of areas. So it is not as if we are simply throwing away all cross-media constraints.

Senator Murphy—After the Poms won the rugby I am in no mind to follow the Poms.

Senator ALSTON—I am not suggesting you do; I am saying we can do a lot better than them—like beating them in the World Cup in a few months time. But we can also improve on their media model. I am saying that there is a country with a population three times our size and they think that three per market, plus one—the BBC—is sufficient. We can do almost twice as well as that. The ACCC’s view of the world is that if you simply discarded all the rules and went for the pure competition approach then you might put diversity of opinion at risk. But that is not what we are proposing here. As Senator Murphy pointed out, not only are we retaining the two out of three rule, editorial separation, local news requirements, minimum voices and the single newspaper rule; these are all significant limitations on competition. Two out of three—

Senator Murphy—I am not arguing about diversity of opinion; I am arguing about competition.

Senator ALSTON—Yes, and I am saying that competition is not the be-all and end-all; otherwise, you would not have a Trade Practices Act. There are always limits on these concepts. I certainly respect the way in which Senator Harradine has given very serious attention to these issues and has been prepared to explore all the possibilities. I certainly acknowledge that he has had this particular proposition in mind for quite a long time. As for others, I have to say that we have seen a lot of things come and go over recent times. Senator Harradine put this one on the record several months back, so clearly I do not think anyone will be saying that this was a last-minute, passing thought.

Having said that, I think I also have to make plain to what extent this really does go
to the heart of flexing up the cross-media rules, not just here but in other countries. The idea that you cannot allow a combination of print and television, when people like Senator Cherry are arguing that radio does not matter anyway—

Senator Jacinta Collins—He didn’t say that.

Senator ALSTON—You were not here; I do not think you would know—is tantamount to saying that you might as well not make any significant changes to the cross-media rules. All the changes we have proposed, which Senator Harradine himself says are improvements, have to be seen in that context. You do not need all of those things if you effectively retain the overwhelming thrust of the current cross-media rules. Unless you are relaxing those, you do not need all these other improvements, as we might see them. That is what they are intended to do: to achieve a balance that protects that diversity of opinion and, to some extent, the competition issues that have already been canvassed.

I would simply conclude by saying that much and all as I respect that people have seen this as a crucial issue so does the government; it does go to the heart of the legislation. It simply would not achieve any of the objectives that not only our government but also governments around the world are increasingly recognising as desirable—not proprietor driven or commercially driven but desirable—if you want to move away from this cost-cutting mode that leads regional players and others to cut back on news services. What I think I said, despite what Senator Mackay may have thought I said, on Meet the Press was that the people who are really pleading with us on this issue are the smaller players. There is a whole raft of them, and they all desperately want to have the straight-jackets removed so that they can expand

their operations. If they do, it seems to me that that would be very much in the national interest.

Senator HARRADINE (Tasmania) (6.32 p.m.)—I will be very brief because I do not want to take up the time of the Senate; I know we are under a great deal of pressure. Senator Cherry asked me why I did not include the regionals in this area. The answer is simple: the major challenge is by the major media moguls and their being able to capture the television market and the newspaper market. I thought that was the key area in this debate on diversity.

I remind Senator Alston that 16 years ago I made a speech about the then broadcasting legislation. The minister will remember that, because he came in as a senator the year before, from memory. On that occasion I referred to a statement made by Mr Davidson in 1956, when he was the Postmaster-General, in which he talked about television licences. He said:

Television stations are in a position to exercise a constant and cumulative effect on public taste and standards of conduct, and, because of the influence they can bring to bear on the community, the business interests of licensees must at all times be subordinated to the overriding principle that the possession of a licence is, indeed, as the Royal Commission said, a public trust for the benefit of all members of our society.

And I said in my contribution to the second reading debate on 25 March 2003:

Those who own or run media organisations are in a position of privilege and influence. They are members of an unelected elite which is not effectively accountable to the Australian people. It is our job as elected legislators to ensure not only that there are reasonable parameters set for the running of successful media businesses but, much more importantly, that these parameters serve the Australian people.

That has been my view over a period of time, and Mr Davidson’s comments about the pub-
lic trust issue have been seared into my mind ever since. I say to the minister that it is not me who is talking about this need to ensure diversity and to ensure that there is not less diversity; it is the Productivity Commission. I remind the Senate of what the Productivity Commission said—I have said it before and I will not say it again. Whether the major media moguls being able, under the bill, to buy the major newspapers, particularly in capital cities—and radio stations, as far as that is concerned—is in the public interest is a matter for prudential consideration. I have looked at this issue and studied the reach of both the television industry organisations and the major newspapers, and I came to the decision that this bill needed amendment to ensure that there was no attack on the diversity that was mentioned as being absolutely essential by the Productivity Commission.

Question put:

That the amendments (Senator Harradine’s) be agreed to.

The committee divided. [6.42 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………….. 37
Noes………….. 32
Majority……….. 5

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G. *
Campbell, G. Cherry, J.C.
Collins, J.M.A. Conroy, S.M.
Crossin, P.M. Denman, K.J.
Evans, C.V. Forshaw, M.G.
Greig, B. Harradine, B.
Harris, L. Hogg, J.J.
Hutchins, S.P. Kirk, L.
Lees, M.H. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. McLachlan, J.E.
Moore, C. Murphy, S.M.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Sherry, N.J.
Stephens, U. Webber, R.
Wong, P. 

NOES

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

PAIRS

Carr, K.J. Hill, R.M.
Cook, P.F.S. Payne, M.A.
Faulkner, J.P. Troeth, J.M.

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (6.46 p.m.)—by leave—I move Democrat amendment (1) on sheet 3000:

(1) Schedule 1, page 37 (after line 8), after item 8, insert:

8AA At the end of the Bill

Add:

219 Public Broadcasters

(1) The Minister must, by 1 July 2005, ensure that each of the five radio networks provided by the Australian Broadcasting Corporation are transmitted to population centres with a population of more than 10,000 where spectrum is available.

(2) The Parliament shall appropriate funds for this purpose.

220 Review of Regional Broadcasting

The Authority shall, by July 1 2005, conduct a review of the provision of
local news and information provided by radio stations in non-metropolitan areas to determine appropriate changes to licence conditions to ensure that the provision of local news and information to promote object 3(1)(g).

This amendment has two parts. The first part seeks to ensure that five ABC radio networks are transmitted to population centres with a population of over 10,000 and are funded accordingly. The government’s offer to fund the expansion of NewsRadio broadcasts to regional Australia has prompted this amendment and these remarks. NewsRadio is behind Triple J and Classic FM. Triple J outrates NewsRadio nationally by about three to one and attracts around two-thirds of the ABC’s listening audience in the under-40s market. Classic FM also outrates NewsRadio in every capital city, and that is why the ABC gave top priority for a network extension to Triple J for the 1.2 million Australians who currently cannot get it. At $3 million a year, this would be a tiny investment in Australia’s younger people and it is doubly important with the closure of the ABC’s Fly TV youth network.

It would be a poor outcome for media diversity if the government were able to swing its media package through the Senate on the promise of extending ABC NewsRadio and not the ABC’s other two, and more popular, networks. So, while it is important to expand NewsRadio’s coverage to the 3.4 million Australians who cannot receive it, media diversity, especially for young people, will not be met in regional Australia unless Triple J is also extended.

The second part of the amendment requires the Australian Broadcasting Authority to review regional broadcasting by 1 July 2005. The ABA has recently completed an inquiry into regional news delivery following the closure of several regional news services. Most regions now have just one regional news broadcast, with the network saying it is not economic for them all to offer it. The ABA largely acknowledged this but criticised the decline in local information since aggregation 15 years ago.

Progress reported.

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

Consideration resumed from 23 June.

**The TEMPORARY CHAIRMAN (Senator Brandis)**—The question is that the bill, as amended, be agreed to.

**Senator Faulkner**—Mr Temporary Chairman, could I ask you please to inform the committee which amendments you are going to call on when the committee stage debate commences.

**The TEMPORARY CHAIRMAN**—I am advised by the Clerk that the amendments currently before the Senate are amendments (13), (14), (17) to (22), (27), (28), (42), (43), (49) to (51), (53) to (56) and (58) to (60) standing in the name of the government.

**Senator Faulkner**—Mr Temporary Chairman, I understand that these amendments have been moved and were postponed at an earlier stage of this committee debate. I just want to be clear on their status, that they have been moved.

**The TEMPORARY CHAIRMAN**—Yes, Senator Faulkner, I am so advised by the Clerk.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (6.52 p.m.)—by leave—I move government amendments (1) to (6) on sheet RA241:

(1) Schedule 1, item 24, page 9 (line 28), omit “person.”., substitute “person; and”.
(2) Schedule 1, item 24, page 9 (after line 28), at the end of subsection (2), add:

(d) if one or more warrants were issued under section 34D as a result of the previous requests—a statement of:

(i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and

(ii) if any of those warrants authorised the detention of the person—the period for which the person has been detained in connection with each such warrant before the draft request is given to the Minister.

(3) Schedule 1, item 24, page 11 (before line 30), before subsection (4), insert:

(3D) If, before the Director-General seeks the Minister’s consent to the request (the proposed request), the person has been detained under this Division in connection with one or more warrants (the earlier warrants) issued under section 34D, and the proposed request is for a warrant meeting the requirement in paragraph 34D(2)(b):

(a) the Minister must take account of those facts in deciding whether to consent; and

(b) the Minister may consent only if the Minister is satisfied that the issue of the warrant to be requested is justified by information that is additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister’s consent to the request for the issue of the warrant requested; and

(ii) the person is not being detained under this Division in connection with one of the earlier warrants.

This subsection has effect in addition to subsection (1).

(4) Schedule 1, item 24, page 12 (after line 21), after subsection (1), insert:

(1A) If the person has already been detained under this Division in connection with one or more warrants (the earlier warrants) issued under this section, and the warrant requested is to meet the requirement in paragraph (2)(b):

(a) the issuing authority must take account of those facts in deciding whether to issue the warrant requested; and

(b) the issuing authority may issue the warrant requested only if the authority is satisfied that:

(i) the issue of that warrant is justified by information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister’s consent to the request for the issue of the warrant requested; and

(ii) the person is not being detained under this Division in connection with one of the earlier warrants.

This subsection has effect in addition to subsection (1).

(5) Schedule 1, item 24, page 21 (after line 25), at the end of Subdivision B, add:

34HC Person may not be detained for more than 168 hours continuously

A person may not be detained under this Division for a continuous period of more than 168 hours.

(6) Schedule 1, item 24, page 30 (after line 26), after section 34Q, insert:

34QA Reporting by Inspector-General on multiple warrants

(1) This section imposes requirements on the Inspector-General of Intelligence and Security if:
(a) a person is detained under this Division in connection with a warrant issued under section 34D; and

(b) one or more other warrants (the later warrants) meeting the requirement in paragraph 34D(2)(b) are issued later under that section in relation to the person.

(2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34C(2) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34C(3D)(b).

Note: Paragraph 34C(3D)(b) describes information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the last warrant that:

(a) was issued under section 34D before the seeking of the Minister’s consent to the request proposed in the draft request; and

(b) was a warrant in connection with which the person was detained under this Division.

(3) The Inspector-General must report on the outcome of the inspection in his or her annual report for the year in which he or she carries out the examination. For this purpose, annual report means a report under section 35 of the Inspector-General of Intelligence and Security Act 1986.

We have had quite extensive debate on these amendments and I would like to address them in the context of the previous debate we have had on the questioning regime. There has been discussion with the opposition on government amendments (1) to (6). The government has moved amendments (1) to (5) to provide for the issuing of a warrant to allow for a total of 24 hours of questioning in eight-hour blocks over a maximum period of seven days—that is, 168 hours. This replaces the current provisions in the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] which passed the other place that provided for the possibility of rolling warrants over the 168-hour period.

During debate on these amendments, the question arose as to whether at the end of the 168-hour period there is the capacity to seek a further warrant or warrants in relation to a person who has been the subject of a previous warrant under the bill. It has always been the government’s position that there may be circumstances where subsequent warrants may be necessary. This does not mean that a warrant can effectively be rolled over. Once the warrant period has ended, a new warrant would need to be sought and issued to permit a further period of detention, and the strict requirements for seeking a warrant—and the requirements for the issue of a warrant under the bill—will need to be satisfied again. This means that the minister and the issuing authority—which is a federal judge or a federal magistrate—must consider that the requirements of the bill have been made out. This means that there must be a break between the ending of one warrant and the commencement of another.

The government has always been clear on this point. In fact, the government clearly rejected the recommendation from the Senate Legal and Constitutional References Committee which would have prevented the granting of a further warrant for the same person within seven days of the end of the second warrant period—in effect, a seven-day immunity period. The government has always made it emphatically clear that it
could not agree to any such immunity and that the public would not tolerate that kind of red tape, which could put public safety at risk. Any such immunity could impede investigations in urgent circumstances and could potentially allow terrorists immunity for a period of up to seven days. Any such immunity could potentially play directly into the hands of terrorists.

These types of inflexible and arbitrary time limits are the perfect way to prevent our intelligence agencies from doing their important work and would potentially allow those being questioned to manipulate and frustrate the questioning process. If our agencies can make a case for a subsequent warrant to conduct further questioning, they should not be prevented from doing so, particularly in the circumstances envisaged by this bill—that is, obtaining the intelligence necessary for preventing potential terrorist activity. Notwithstanding that the government maintains that the effect of the legislation is clear, the government is now moving amendments to further detail this matter. It is doing so on the basis of the opposition’s public undertakings that it will support the passage of this bill.

The government does not believe that any amendment is strictly necessary. However, to put this matter beyond doubt, the government is moving amendments that will make clear, on the face of the legislation, that a person may not be detained for a continuous period of more than 168 hours. A request for consent to issue a warrant must include, in addition to a statement of particulars and outcomes of all previous requests for the issue of a warrant under section 34D, details of the duration of detention and questioning under those warrants. In deciding whether to consent to the making of a request for a subsequent warrant, the minister must (1) take into account the fact of the issue of the previous warrant and (2) only consent to the making of the request if the minister is satisfied that a subsequent warrant is justified on the basis of information additional to or materially different from the information available to the Director-General of ASIO at the time the director-general sought the previous warrant. In considering a request for a subsequent warrant, the issuing authority must (1) take into account the fact of the issuing of the previous warrant and (2) be satisfied that issuing the requested warrant is justified on the basis of information additional to or materially different from the information available to the Director-General of ASIO at the time the director-general sought the previous warrant.

The issuing authority further may only issue that warrant if the person is not currently being detained under an existing warrant. The combined effect of these changes is that it makes express, on the face of the legislation, that due consideration must be given to the existence of the previous warrant and that the existing high threshold for the issuing of a further warrant is assessed having regard to the fact that a warrant has previously been issued in relation to that person. It makes a specific test in relation to second or subsequent warrants. The amendments make clear that both the Attorney-General and the issuing authority must be satisfied that a subsequent warrant is justified because of additional information or materially different information that was not available to the director-general at the time the previous warrant was requested.

In this respect, we should not forget the role of the Inspector-General of Intelligence and Security, who has the power to review all files relating to any of ASIO’s cases, including current cases, and make determinations about compliance with relevant legislation. The inspector-general’s oversight role is further strengthened by government amendment (6), which imposes a clear requirement on the inspector-general to inspect copies of
requests for subsequent warrants. Government amendment (5) is also consistent with the principle that a person cannot be detained for a continuous period of more than 168 hours but does not prevent a further warrant being issued after the person has been released. The explanatory memorandum makes it clear that this means that a person must be released if the questioning period ends and that the maximum time during which a person may be continually detained under one warrant cannot exceed 168 hours.

I have outlined the reasons behind amendments (1) to (5). I mentioned government amendment (6), which relates to review by the inspector-general. The government is also proposing to include a new provision that will strengthen the Inspector-General of Intelligence and Security’s oversight role in relation to new warrants. Government amendment (6) imposes a new requirement on the inspector-general to inspect copies of requests for subsequent warrants. Under the IGIS Act, the inspector-general may inquire into any matter that relates to ASIO’s compliance with the law and the propriety of particular activities of ASIO. The IGIS may conduct such additional inspections of ASIO as he considers appropriate to give effect to the objects of the IGIS Act. The inspector-general already has an extensive role under the bill, including the power to inspect any warrant requested under the bill and the power to attend the questioning of a person under a warrant.

As a result of the proposed amendments, the inspector-general must consider whether the request for a subsequent warrant includes information that is additional to or materially different from information that formed the basis for the previous warrant request. The amendments also require the inspector-general to report on the outcome of the inspection in his or her annual report, an unclassified version of which is tabled in parliament. Under the IGIS Act, the Prime Minister is obligated to provide the Leader of the Opposition with a copy of the report, including any classified components of the report that cannot be tabled in parliament.

Those aspects are dealt with in government amendments (1) to (6), which have come about as a result of discussions with the opposition. Those amendments have been circulated and the explanatory memorandum for them has also been circulated. The previous government amendments which were postponed have, as I have said, been the subject of extensive debate. We now believe that with these amendments we have a balance between security interests and the interests of the individual.

Senator BROWN (Tasmania) (7.03 p.m.)—Well, we do not believe that at all, nor does the International Covenant on Civil and Political Rights, to which Australia is a signatory. It says that citizens may not be held under arbitrary detention without access to a judicial body, and that does not mean a quasi-judicial functionary such as the judge in secret that is prescribed under this legislation. Here we see a change simply from rolling warrants to serial warrants. This was the situation as I understood it when Senator Nettle and I were questioning Senator Ellison last week. What is important is that, because of that questioning, the government has had to spell out what the situation is. What I think is unfortunate is that the opposition is agreeing to what the government has spelled out. This is clearly a situation in which a person who has been arrested, is innocent and has been held for seven days can then be immediately arrested again on the basis of information that has come from that questioning or from some other source in the meantime, on the basis that they may have more information that can be gathered.
There is the problem of immunity, as the government would have it, and I think the opposition will use this argument as well—that is, if you let a person out you cannot give them immunity, or it may be difficult to. There was a suggestion in what Senator Ellison said that they would then be free from rearrest for seven days and that this would be a period of immunity. The government has built that into its legislation anyway. It says that the person can be held for seven days but can only be interrogated for three. I would be surprised if that interrogation did not start immediately the person was held, because that is the period when they are most likely not to have legal advice available to them and therefore are most vulnerable to divulging information in a concentrated interrogation by an ASIO operative.

So they are questioned for three days in blocks of eight hours on each day, then they are held for four days, but in that period they are quarantined under this legislation. They cannot be questioned again. That is built into this legislation. The opposition and the government might tell me what they would do in that circumstance. There are four days where the person is held. These are innocent people, don’t forget. What is required from them is some piece of information. They are waiting there for four days before they can be released and rearrested. So four days pass. The only way of getting further information out of that person, even under the most extenuating circumstances, would be for ASIO to release the person then rearrest them and start questioning them again.

So this legislation is not well thought out. It is clumsy, illogical and internally inconsistent. I invite the government or the opposition to explain what to do to get around the problem that there is a four-day immunity period where information cannot be obtained from a person who has been questioned for the first three days. We now have a situation where the person can be released and immediately rearrested provided the provisos in these amendments are met, and I do not have much doubt that they will be. Again, the information upon which that arrest and detention is based is not contestable by the person, and their lawyer is not there to contest it either. Their lawyer does not have to be told, if he or she does arrive on the scene, why the person is being detained the first time or why they are being detained the second time.

This is draconian legislation. It has taken two or three days to fix up a problem between the government and the opposition, and yet we end up where the government began. The opposition is making no impact on the government in this circumstance. The Greens have uncovered a real problem for human rights, political rights and the legal rights involved in this process, but we are now exactly where we were last Thursday, when this problem arose. Apparently the opposition is going to concede that this system of serial warrants will be put in place, but now it has to be spelt out because Senator Nettle and I drew attention to this situation which was not spelt out. It is no less dangerous now, but at least the public will know, through this process, that the serial warrant situation is in place.

I can predict the argument we are going to get from the government—we have already heard part of it—and the opposition, but we are balancing here between the extraordinary difficulties of guarding against the threat of terrorism and the extraordinary dangers of eroding key, basic, fundamental and internationally and domestically recognised rights of the citizen. We are not talking about the person about to commit a terrorist act here; they can be arrested and put out of action. As the International Commission of Jurists spokesperson said, what we are concerned
about here is the known innocent person who is hauled in, put before an interrogator for three days, then held for four days and then has to be released but can be immediately rearrested under this clumsy arrangement that the government and the opposition have agreed upon. We will be opposing these amendments.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (7.10 p.m.)—I would like to deal with the technical issue that Senator Brown raises. I think it is section 34HB which prohibits anyone exercising authority under the warrant from questioning the person under the warrant; in other words, when the 24 hours of questioning is concluded the person is free to go. The minister, no doubt, will correct me if I have the wrong section, but I think that is the correct one. On the point in relation to seven days detention, although what Senator Brown said is technically not correct, I completely agree with the spirit of what was said, and that is why later on I will be proposing amendments to reduce the period of detention from seven days to three days. I look forward to the committee supporting those amendments.

I want to talk about the substantive issue that is before the chair at the moment. This goes back to a matter that was raised and debated last week in the committee stage. I am very pleased that now, with these new government amendments, this bill does not allow for rolling warrants. I have said from the very outset that fixing up this draconian piece of legislation, which was introduced into the parliament some 15 months ago, has been a tortuous process. It was almost the last straw when it appeared that there had been a reinsertion into the bill of a repeat warrant regime. It is true that it has taken some days to fix this breach of the government’s publicly stated position on maximum detention periods, but I am not ashamed of that. From the beginning, we have said that it is crucial to ensure those sorts of weaknesses in the bill are corrected.

I think senators would be aware that the issue of rolling warrants of more than seven days is a concept that appeared to have been ditched in June 2002, after the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD came down. That report contained a very important recommendation, recommendation 3. That recommendation was very clear. In its unanimous report the PJC recommended:

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended so that the maximum period of detention of a person is no more than 7 days (168 hours), and at the expiry of that period a person must be either charged or released.

I reminded this committee of that recommendation when debate on this issue was deferred last week. It is true that on 19 September last year the Attorney-General accepted that recommendation. After noting the government accepted recommendation 3, the Attorney directly stated:

The amendments provide for a maximum period of detention of 7 ... days (168 hours).

That recommendation was accepted. In fact the Attorney stated in parliament on 23 September 2002:

The maximum period of detention will be seven consecutive days, 168 hours—recommendation 3.

It is important to remember what the government was talking about. The government was explicitly referring to the period of detention, not the period of a warrant. In late 2002 the government proposed amendments to the bill, allowing for rolling 48-hour warrants adding up to a total period of seven days. The explanatory memorandum said:

In addition, if the person has already been detained under a warrant, the Minister must be satisfied that the additional warrant would not result in
the person being detained for a continuous period of more than 168 hours. The effect of this is to prevent a person being detained for a continuous period of more than 168 hours, or 7 days.

As I have said before to this committee, you can take only at face value what is said by the Attorney and by the government. The Attorney went to the annual dinner of the constitutional law section of the New South Wales Bar Association and said:

The maximum period for which a person can be detained will be seven days (168 consecutive hours). People will not be able to be detained indefinitely.

It is reasonable for senators and the community more broadly to take those words at face value. The opposition did. We found during the debate in the committee stage that there was a lack of clarity about the issue of rolling warrants. It had to be fixed up. I do not forget what Mr Marshall, ASIO’s legal adviser, said to the Senate Legal and Constitutional References Committee on 12 November. I understand that the minister has a difference in relation to the recommendations of that committee, but I take account of the evidence that was provided by officers. Mr Marshall said on that occasion on this issue:

I think that would be regarded basically as an abuse of process if the D-G, the Attorney-General, the issuing authority and the prescribed authority colluded to have someone released and then brought in, in order to avoid the thresholds that we currently have ... I think that it would be clearly regarded as an abuse of process if someone sought to do that for that very purpose, particularly bearing in mind that a collective series of warrants can go for a maximum of seven days. The expression in this legislation is meant to make clear that that is the maximum.

Senator Robert Ray—Wise words.

Senator FAULKNER—They were wise words from Mr Marshall, who I know has worked so hard on this bill. I am delighted to see the same advisers who have spent 15 months on the job with us again in the Senate committee this evening. But they were wise words and it is important to take account of them and the evidence provided by those who represent agencies like ASIO before parliamentary committees. I might come back later and make another contribution, because it is a very important debate and there will probably be more than one opportunity for me to speak on this important issue.

We have to consider the broad issue of what happens if a person raises an issue under questioning by ASIO that is a matter of public safety. I do not want to go through dramatic examples; I just raise the issue in the broad. What happens in that circumstance? We have to ask ourselves: is it appropriate for questions to be able to be asked under certain circumstances? That is a perfectly reasonable and proper question for us to be able to answer in a debate like this. We also have to ask whether it would be the intention in legislation like this that a person who has been questioned and detained under the provisions in this legislation can effectively inoculate themselves from any further questioning, be it for a matter of days or weeks or months or years. It is an important question and it has been raised already by Senator Brown in this debate in the committee stage.

The key issue here is to ensure that there is no capacity for rolling warrants, to ensure that with any additional warrant information must be just that: additional or materially different from anything known by ASIO when they got the first warrant, whenever it might have been. There basically needs to be fresh grounds if at any stage a new warrant is issued. Put simply, that means a person cannot be held in continuous detention by ASIO; there cannot be these so-called rolling warrants.
At present there are very significant safeguards surrounding the warrant and questioning process. They are, firstly, that ASIO must satisfy both the Attorney-General and a judge acting as the issuing authority that the warrant will substantially assist in the collection of intelligence in relation to a terrorism offence and that relying on other methods of collecting intelligence would be ineffective; secondly, that a person gets their lawyer of choice to represent them; thirdly, that a person retains every legal right to take action in the Federal Court in relation to their custody or any alleged abuses of a warrant; fourthly, that questioning is supervised by a prescribed authority who is also a senior judge or retired senior judge; fifthly, that the Inspector-General of Intelligence and Secretary may be present during questioning with the power to intervene in questioning; and of course other safeguards which I have spoken about before. But the final safeguard in this bill that I want to mention, which I believe is the grandaddy of them all, is the sunset clause that will kick in after three years.

Labor has insisted on these safeguards that were not present in this bill when it was first introduced into parliament. They were not there but they are there now, and I am glad we have also been able to put to rest the issue of rolling warrants. It was important, it was not clear and it had to be made clear so this bill could be acceptable to pass.

Senator GREIG (Western Australia) (7.25 p.m.)—I seek the clarification of the Minister for Justice and Customs on government amendment (4), schedule 1, item 24. We are dealing here with the issuing of subsequent warrants. The amendment introduced by the government under (b)(i) provides that:

... the issue of that warrant is justified by information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the last of the earlier warrants ...

I want to come back to the term ‘the last of the earlier warrants.’ I am open to being proved wrong here, but I foresee a situation where a person could be detained and questioned on a first occasion—let us call that occasion A—and they go through a detention and questioning period of perhaps up to seven days under scenario A and then they are released. Then a subsequent warrant is issued for a different reason so that this person is brought in for detention and questioning for an additional time, and let us call that questioning regime B. So it is now for a second period but for a different reason. At the end of that second period of detention, would it therefore be open for a further warrant to be issued for that person to be detained and questioned a third time on the basis of information gained by ASIO from the first detention, from detention A? My reading of this is that, in terms of the last of the earlier warrants, it would apply to the second detention, that is detention B, and not detention A, if you follow my reasoning.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.28 p.m.)—Senator Greig’s question is a good one and it can be answered in this way: if you are looking at, say, three warrants issued in a row, the third warrant would have to be looked at on information additional to or materially different from that which formed the basis for the granting of the second warrant. Senator Greig is saying that the third warrant could be issued on the same grounds as the first warrant so you only have to look back at the last warrant. That is not so because the second warrant has to be issued on grounds different from the first. So it means that cumulatively your grounds have to be changing all the time. It does not mean that the third warrant could be issued on the same grounds as the first. They would have to be
progressively different by the very nature of the way it is planned.

I can see what Senator Greig is saying: that you could issue a third warrant on the same grounds as the first warrant as long as they were different from the second. But remember this: the second would have to be different from the first and then the third would have to be different from the second. By virtue of the changing circumstances, it is the government’s view that the third could not be obtained on the same grounds as the first.

Senator ROBERT RAY (Victoria) (7.29 p.m.)—I would like to address that point before I go to some other issues. I think the point here, Senator Greig, is what is in the mind of the director-general at the time of issuing the warrant. So he has issued one warrant and the questioning period has occurred. You might then argue that there are two new streams of material. Then a second warrant is issued on one of those streams. You are asking whether the director-general can then get a third warrant on the other stream. But, you see, that was in his mind when he issued the first warrant. It was knowledge that he had. So he cannot in fact issue a third warrant on that particular matter because it was already in his mind when he issued the second. I think we can rule that particular one out.

I have not entered this debate generally, but I have followed it from afar. I want to make a few general points about the particular section of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] that we are considering at present. First of all, I recommend that members of the committee go and get a copy of the Joint Intelligence Committee report published 15 months ago. I want you to actually read through that report and tell me what is not now in this bill. Virtually everything that that committee came up with unanimously 15 months ago has at last been adopted in this bill. I take a bit of pride in that. The Joint Intelligence Committee was able to come up with a unanimous report—I think that is good. I recognise that it is not a libertine left organisation. Most members of the Joint Intelligence Committee have a pretty mature view of foreign affairs and defence issues, one would have to concede. In other words, they are all pretty right wing, including me. But that does not say that you would necessarily be in favour of draconian legislation. It does not necessarily follow that the two should go one after the other.

This bill has come a long way in 18 months. Yesterday, of course, we were accused—in one of the more excitable moments of this debate—of not having read the bill and, hence, of not being able to understand that rolling warrants were possible. I think we did read the bill; we just did not interpret it in that way. I think that is the fairest way of putting it. We took at face value comments by the Attorney-General and ASIO’s legal adviser and a range of other statements that you could not have rolling warrants. It was only when the minister, acting with all propriety here last Thursday morning, explained that you could that was a new interpretation of the bill. Even in reading the explanatory memorandum today, I still could not find reference to the legitimacy of rolling warrants. I still cannot. It was only the minister’s interpretation of that—which a court would eventually take into account—that allowed that problem to come to light, and it meant that it had to be dealt with over the last few days.

It was never intended to have rolling warrants, but the ground has shifted over the last few months. Originally, when the seven-day period came down, there were still four warrants required: the first one for 48 hours, the second and third for 48 hours and the fourth
one for only 24 hours. When all the other protections came into the bill, the government said: ‘Let’s not have those other three warrants. Let’s just have one warrant.’ That is a reasonably fair thing to do. But if it were in their minds then to be able to roll those warrants over and over again, why wouldn’t we have preferred 48-hour warrants? Of course we would have preferred them to seven-day warrants that could be rolled over one after the other. In all of this, it was never intended to immunise someone by just having one warrant issued against them. That was never the intention and I cannot understand how anyone could say that it was the intention. I do not believe in the moratorium period because, if the legislation is legitimate and if the motives are legitimate, a moratorium time is just an artificial device and, in urgent circumstances, it could lead to disaster. So I think you can put the moratorium aside.

What these particular amendments do—and they take us on a different path than the one we were on last Thursday—is specify what has to be taken into account for a second warrant. All the information that pertained to the first warrant has to be produced to the Attorney-General and to the issuing authority that hands out the warrant. In addition to that, it can only go on additional or materially different grounds. I think that is a very important thing that the government have picked up in their definition because it does change the nature of it—it does go to the question of immunisation. You could have circumstances—not very often but you could have them—where, at the 23-hour and 48-minute mark of questioning of one of these suspects, they cough up something entirely different to take the heat off themselves. Twelve minutes later, you cease the questioning and you cannot pursue it any further if no second warrant can be issued. That is an intolerable position, and I do not think we could tolerate it.

People say, ‘This is a wide open to abuse.’ I do not think they recognise the amount of hurdles here. We have got almost as many hurdles as the Grand National Steeplechase and I do not think we can put many more in. The first assumption the critics make of this is that the director-general is a crook and does not have any decency. The current director-general has proved exactly the opposite. He has proven to be a transparent director-general with a humanitarian outlook who has cooperated with every parliamentary committee under the sun. He has been very open in his briefing and has proved to be a person of great integrity. But the critics could say, ‘Maybe one day that will change,’ and so they are right to look for further protection. The further protection is that, normally, attorneys-general have some integrity in this country. If you go back over the last 20 years, you do not find many people reflecting on the integrity of attorneys-general. But even if this does not become a moral issue, it is a pretty doopey Attorney-General who would take a political risk and start getting warrants issued on invalid grounds. Why would they? Where is their motive for that, other than that they want to leave office very rapidly? It just stands against the logic of it.

But presume that at some stage we have a dubious director-general and an Attorney-General who is a bit weak. You have still then got to get past the authority that issues the warrants—a federal magistrate or a federal court judge. You do not know which one of those it is going to be. To get all three of those stars in alignment in your conspiracy theory is quite difficult. Then you get your fourth defence: you get a retired judge, who owes nobody anything, as the prescribed authority. Then you get your fifth defence: at any point the IGIS can just sit in on any of these interviews and supervise them by his
very presence. The sixth defence—at last, thank goodness—is that the person taken into the interview can have a solicitor to give them advice all the way through the process. But I say to Senator Brown, through you, Mr Chair: that did not satisfy me at all.

The one thing that really worried me about all this was how much of the classified material was entitled to be put before the issuing authority. So you put in the final piece of the jigsaw: you get IGIS to review every issuing of a second warrant. Under the IGIS Act, that person has access to all the material, all the current files, everything. Every time a second warrant goes out, IGIS will investigate it and make sure that it is fitted to the legislation, that it is additional material or materially different material and that all the other features have been abided by. The Inspector-General of Intelligence and Security will put that in his annual report. To me, that is the biggest safeguard in this whole process of second warrants. I am very pleased that the government has given thought to this. The government's view was that he could have done that anyway as it is already covered in other acts. However, to put it specifically in this act shows good bona fides. It means that people can be assured that every second warrant will be thoroughly examined.

The conspiracy theorists might say: 'It's in an annual report. How do we know that we will ever get to know about it?' Firstly, under section 35 of the IGIS Act, two versions of the annual report come out, one declassified and one classified. The declassified annual report is tabled in parliament. If you go back and look at IGIS reports, references are made to various disputes and issues. Some material is deleted from those reports on security grounds. For six years I have had the unique experience of being able to read classified and non-classified reports on a range of security agencies. On none of those occasions could I assert that material was deleted from a classified report into a declassified report for political reasons; it was always done for security reasons. Two or three years ago, with the chairman of the committee, David Jull, I even had the unique opportunity of looking at a couple of classified ASIO reports and the declassified reports so we could satisfy ourselves that there had been no change in policy. Guess what? Every deletion from the classified report could easily be justified. There was no tricking it up or political censorship. It was done for valid and good reasons. Another defence in all this is that the unclassified version goes to the Leader of the Opposition. When you put the whole picture together, what we have here in terms of a second warrant is a whole range of hurdles and protections which I think are very encouraging.

The government has added another clause so that no warrant can be issued whilst previous warrants are extant. That is a very good move because there is a concern that while someone is being held under one warrant, a process could go ahead and another warrant could be obtained. A few things have been said about that. Mention was made of eroding key rights. The implication is that in some ways we are just acting like expedient pragmatists not worrying about historic rights. That criticism does not bother me. I have lived with that all my political life. All my political life the Left of the Labor Party have accused me of being a pragmatist and of having no principles et cetera. You learn to adapt to that. I will tell you what: if you want to go back to the period 1988 to 1990 and look at the changes I made to the Migration Act and to things like ministerial discretion, you can tell me who is the principled person and who is the pragmatist.

The other thing that was said was that the ALP has just rolled over and the government is pretty happy. I did hear a rather cross At-
torney-General on AM yesterday. I did not get the impression that we were rolling quite as quickly as he might have liked, but that is a matter of opinion. It is easy to scaremonger on this bill. When the five security bills came down 12 to 18 months ago we were all deluged with emails and protests. We were accused of selling out and all those things. I have not heard from one of them since about those bills. Let me not deceive the committee: the ASIO bill is a further step to curtailing civil liberties. We have to say that. But what we are trying to balance off here are the rights of potential victims with the rights of citizens and others. Getting that balance right is absolutely essential and that is one of the reasons we have put a sunset clause in the bill. If in any way it leads to abuse or large numbers of warrants—and remember that the numbers of first and second warrants have to appear in the annual report so we will know how many have been issued—the sunset clause will go a long way towards keeping the government honest. The government knows that if it abuses this it will not get the legislation renewed in 36 months time. Where is the motive for a government to abuse these procedures? I really cannot see that.

However, as I said, we also have to think about the rights of citizens. The changes proposed by the government and, we admit, negotiated with the opposition at some length and with a fair bit of argy-bargy, represent the best possible outcome from an interpretation last Thursday that would have seen this bill sunk. I commend the amendments to the committee, especially amendment (6) that goes to the role of IGIS in this. That is the ultimate protection that will ensure that these new definitions are not abused.

Senator NETTLE (New South Wales) (7.43 p.m.)—I have a question for the minister in relation to government amendment (5) on sheet RA241. My question relates to a person not being able to be detained for a continuous period of more than 168 hours. While they can be re-arrested after that, in relation to that continuous 168 hours, the minister said one thing and Senator Faulkner, the opposition spokesman, said another in terms of whether that relates to one warrant or several warrants. Is it one warrant for the 168 hours or can a number of warrants constitute that continuous 168 hours?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.44 p.m.)—Senator Nettle is right to say that I was saying one thing and the minister was saying another. When I made my comments about warrants after 48 hours, I want to make it clear that I was actually referring to the PJC recommendation in relation to the seven days. It is really important that we understand that particular recommendation, which recommends:

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended so that the maximum period of detention of a person is no more than 7 days (168 hours), and at the expiry of that period a person must be either charged or released.

What the PJC effectively recommended was that, within that period of seven days, there be four warrants—the first warrant, one issued after 48 hours, one after another 48 hours and one after another 48 hours that would last effectively 24 hours until the expiry of the full period. That may well have confused you, Senator. It may have been my comments that led you to that misunderstanding. I think that is what you are asking.

Senator Nettle—I want to hear it from the minister.

Senator BROWN (Tasmania) (7.45 p.m.)—Senator Nettle, I am sure the minister is going to give a response to that. But, while he is considering that, I have a couple of
points here. I move an amendment to govern-
ment amendment (4):
After paragraph 34D(1A)(b), add:
; and (c) the issuing authority must advise the 
person that they have the right to 
seek a judicial review at every time 
a subsequent warrant is sought.
That would mean that if a person has been 
released, having been questioned, when they 
are rearrested they must be advised that they 
have a right to a judicial review. That is one 
of the recommendations that came from that 
unanimous decision by the Parliamentary 
Joint Committee on ASIO, ASIS and DSD 
last year.
Senator Ray says that most of the commit-
tee’s recommendations are now built into the 
legislation. That is not my reading of some 
very important components of that joint 
committee report. On this very matter, the 
Greens have put an amendment which is 
based on recommendation 3, which is that 
after seven days a person must be either 
charged or released. That is certainly not 
embodied in what we have before us at the 
moment. Recommendation 6 of that commit-
tee said:
... the Bill should be amended to allow these law-
yers to sit in on the entire proceeding of the pre-
scribed authority, and represent a person at any 
further hearings which seek to extend detention ...
There is no provision; it is not covered. A 
lawyer does not have to be present through-
out the entire proceedings. That should be 
the case, but it simply is not the case. That is 
of great concern. Recommendation 10 said 
that this bill should not apply to persons un-
der the age of 18, but we know that it does 
apply to 16- and 17-year-olds. Then there is 
the provision for a sunset clause, and we 
have not achieved that. A partial sunset 
clause is being looked at.
The amendment that I have just moved 
covers another recommendation which is not 
in this legislation but which I believe should 
be there. I put that earnestly to both the gov-
ernment and the opposition. I think it is an 
important amendment. We do not support 
serial warrants, but if there is to be a second, 
third or fourth warrant the person who is be-
ing rearrested should have access to a judi-
cial review of that decision. If you look at 
the legislation, the person is informed at 
regular periods during the period in which 
they are in detention that they have the right 
to a judicial review. It is very important that 
if they are arrested a second time they are 
told that they have a right to a judicial review 
at that stage. I would expect that that is 
something the committee will adopt.
I am sure other senators have today’s let-
ter from the President of the Law Council of 
Australia, Mr Ron Heinrich. It is a very well-
balanced letter; all who have read it will 
agree. I want to draw the committee’s atten-
tion to the second page of Mr Heinrich’s let-
ter, where he says:
... it is with some considerable alarm that it seems 
that the prospect of subsequent warrants authoris-
ing detention beyond a seven day limit will be a 
practical option open to ASIO under the Bill. 
Such an outcome, even with the need to traverse 
again the approval and authority process in the 
Bill, could well see the questioning regime revert 
to a detention regime. This prospect can not be 
supported by the Law Council of Australia.
It is strongly recommended that the Bill not be 
passed in its current form. It must always be re-
membered that the Bill applies to the questioning 
and consequent detention of a person not sus-
pected of any criminal behaviour. At a very 
minimum, the Law Council would submit that 
approvals and a warrant authorising the question-
ing of a person already subject to questioning 
under the regime established by the Bill should 
not be permitted on subsequent occasions unless 
in addition to the existing tests required to be 
satisfied—
and there are five points, of which the first is:
new information, not previously in the possession of security or police agencies at the time of the initial approval for questioning, is brought before the approving and authorising authorities ...

That is not quite what these amendments say. The amendments do not mention new information not previously in the possession of security or police. They say ‘new information that was not previously in the possession of the authorising authority’. I think that is a major difference. It does mean that ASIO and the police can have held back information on which a second warrant is issued.

Senator Robert Ray—The police are not mentioned anywhere.

Senator BROWN—Senator Ray says that it has nothing to do with the police. Without the police, there cannot be an arrest made here.

Senator Robert Ray—But it is not the information known to the police; it has nothing to do with the police. It is the Director-General of ASIO.

Senator BROWN—I am reading from the letter. Let us confine it, then, to Senator Ray’s contention that it is information that ASIO holds. My argument is not altered by that fact, nor is the Law Council’s. It does mean that ASIO can put forward some of the information that they require to get a warrant in the first instance and hold some back, and seven days later get a new warrant based on information they had at the time of the original warrant. That does not meet the criterion that the Law Council of Australia recommends. Secondly, the Law Council’s letter says:

- it is explained why the information was not reasonably available at the time when the initial period of questioning was approved and authorised—

that is not here. Thirdly:

- the information must raise an issue of a substantially different kind from that previously relied upon for the grant of approval and authority to question the person—

a tick on that one. Fourthly:

- the information must not have been derived from answers provided by the person as a result of the previous questioning undertaken under the regime established by the Bill—

that is not here. Fifthly:

- the subject matter was not substantively canvassed during the questioning which has previously taken place under the regime authorised by the Bill.

Again, that is not there. So four of the five criteria that the Law Council recommends here are not met by these amendments, which the opposition agrees with the government remedy the situation. They do not remedy the situation and that is why we oppose them.

Finally, in relation to me saying earlier that a person who is held for 24 hours could then have immunity for four days while they wait for release: Senator Faulkner, you are right about that—they would have to be released. So all ASIO has to do is hold them for 23 hours and then they can be held for a further four days.

Senator Robert Ray—They can be questioned for 23 hours.

Senator BROWN—Thank you, Senator Ray. They can be questioned for 23 hours over three days and then they can be held for a further four days. That is why we will be supporting the opposition’s amendment to bring the seven days back to three days. Our problem is that the opposition has already told the government that it is not going to stand by that amendment when the blowtorch is applied.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.54 p.m.)—by leave—I move oppo-
tion amendments (1) to (3) on sheet 2953 together and, further, an amendment to proposed government amendment (5) on sheet RA241, which is a consequential amendment.

(1) Schedule 1, item 24, page 10 (line 23), omit “168”, substitute “72”.
(2) Schedule 1, item 24, page 12 (line 21), omit “168”, substitute “72”.
(3) Schedule 1, item 24, page 16 (line 22), omit “168”, substitute “72”.

Section 34HC, omit “168” (wherever occurring), substitute “72”.

I thank the committee for leave to move the amendments and the consequential amendment together. I think one thing there is absolute agreement on in this chamber is that we do need to ensure that our response to the threat of terrorism is a strong and effective one and the spirit of contributions to this debate and the response is also consistent with democratic values and freedoms.

The opposition have consistently said, and strongly believe, that ASIO can do their job properly and gather vital intelligence without having to detain people for seven days. Labor believe that the regime, if it is to be established, must be broadly consistent with other questioning regimes that we see throughout the Commonwealth and also with those that we see in state law enforcement agencies such as royal commissions, the NCA, state crime commissions and the like. After all, why should ASIO have weaker powers to interview people in relation to terrorism offences than those bodies have in relation to corruption or corporate crime?

I have spoken about the safeguards that are so essential in relation to this bill. But with those safeguards in place, it is not only reasonable, it is appropriate that questioning for intelligence over possible terrorist activity is done by ASIO. I acknowledge that ASIO are the experts who should certainly know their brief and have the responsibility of dealing with these sorts of matters. For the sort of information that is being sought by ASIO, frankly, I would expect that either they are going to get their answers within a comparatively short period of time—a day or so of rigorous questioning—or it is unlikely that they will get them at all. Our view has been that the time limits should not be such that they would turn a questioning regime into a detention regime. We have to remember always, when we talk about all the provisions of this bill, that we may be speaking about people being questioned who are not suspected of having committed a criminal offence.

The time which applies to criminal suspects in Commonwealth criminal matters is four hours. There is the potential to roll that over with an extension for another eight hours. That is four hours plus eight hours solid questioning. Senators may remember that the original opposition amendments in relation to questioning were based on those time periods that I have mentioned.

In addition to those matters, the Commonwealth Crimes Act certainly envisages that there will be substantial down times and, at times, very substantial down times. Meal breaks are down times. Toilet breaks are down times. Breaks waiting for a lawyer or interpreter to arrive are down times. They are very good examples. It is very common for a person to be in a police station pursuant to these questioning provisions for the best part of a day or sometimes even into a second day. That is for a four-plus-eight-hour regime. We have previously proposed an alternative compulsory questioning regime which, in the most extreme circumstances, would allow for a person to be questioned for up to 20 hours. We made it clear that it ought to be 20 hours of actual questioning which, once breaks for rest, meals, legal advice and so forth were taken into account,
could add up to more than two days in custody in an exceptional case.

We do welcome the government’s changed approach on this matter and support the government’s proposal for questioning to be conducted if absolutely necessary over three separate eight-hour questioning periods. I repeat: previously the Senate had proposed, via opposition amendments, a total of 20 hours—four plus eight plus eight. That was the position that the Senate proposed, adopted and agreed to—it was rejected by the government, I might say—in December last year. The government’s proposal now is an additional four hours: eight plus eight plus eight hours—24 in total. So we welcome the government’s changed approach.

We assume that the protocols will provide for maximum periods of continuing questioning. We assume, obviously, that the limitation will be less than eight hours and again will provide for the appropriate meal breaks, the appropriate rest breaks and the other normal personal requirements that people have in this situation. But we do not believe that the maximum period of detention should be seven days. Given that the absolute time for a questioning session would be 24 hours, the opposition believes that it would be far more reasonable and far more appropriate to set the maximum time for detention at 72 hours. That period will allow for sufficient rest for the subject during questioning. It will also allow ASIO to croscheck and analyse any information that might be provided.

There is very little difference in what the opposition has proposed in relation to the length of questioning. It is a four-hour difference, and that is something that the Senate insisted on late last year. There is very little difference between that period of 20 hours that the Senate insisted on prior to Christmas and the 24-hour proposal now, but of course there is a significant difference in relation to the fact that those being questioned could be detained for up to seven days. We want to see that period reduced. We think the arguments for that are very strong. We want to see it reduced to three days. The purpose of these amendments before the chair is to ensure that that occurs.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.04 p.m.)—With respect to government amendment (5), Senator Nettle asked whether the time limit related to one or more warrants. I can confirm that that time limit of 168 hours relates to one warrant only. In relation to the Greens’ amendment to government amendment (4)—that is, that before a subsequent warrant is issued there should be advice given by the prescribed authority as to the right to judicial review—that is already in the process. I remind the committee that it is simply not necessary to have this. What you have is the granting of a warrant, that is expended and then you have the application, and that process is repeated all over again for the subsequent warrant. In that is the requirement that the prescribed authority advise the subject of the detention or interview of the judicial review. On the issuing of each warrant that is a requirement. I think that deals with the Greens’ amendment. Of course, as to the opposition amendments, we will just have to agree to disagree on the time limit. I think our respective positions are quite clearly known.

I mentioned at the outset that I thought that an explanatory memorandum had been circulated. We had earlier supplied it to senators but it has not been circulated in the chamber. Therefore, I table a further revised supplementary explanatory memorandum relating to government amendments (1) to (6). This memorandum was circulated earlier; it is not a new or additional explanatory memorandum.
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.06 p.m.)—With due respect, I think it is a new—

Senator Ellison—That’s why I provided it.

Senator FAULKNER—You may have provided it to senators informally but, as far as the record of this committee is concerned, this is the supplementary explanatory memorandum, is it not? It is just your terminology. When you said that this is not a new—

Senator Ellison—That is not additional to the one we circulated informally to people earlier.

Senator FAULKNER—Yes, but it has not been tabled.

Senator Ellison—No, it has not.

Senator FAULKNER—So in terms of the proceedings and the record of the chamber, it is in fact the first time that it has actually been provided for the chamber, whether senators have had an opportunity to see it or not. It is not a major point, but it has not been provided before.

Senator Ellison—I was explaining that one—

Senator FAULKNER—I understand, but the Hansard record may lead to some misunderstanding.

Senator BROWN (Tasmania) (8.07 p.m.)—Could the minister be kind enough to tell me which clause in the bill covers the requirement that, on the issuing of a warrant, the person must be told at the time that they have the right to a judicial review? I can see where every 24 hours that is the case, but I just cannot quite spot the clause. It is logical that it is there, but I cannot see it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.08 p.m.)—Section 34E, which has the heading ‘Prescribed authority must explain warrant’, states:

(1) When the person first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the person of the following:

It continues to subsection (e) and (f), which state:

(e) the person’s right to make a complaint orally or in writing:

(i) to the Inspector-General ...

(ii) to the Ombudsman ... in relation to the Australian Federal Police;

(f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant;

It outlines the remedies fairly clearly.

Senator BROWN (Tasmania) (8.09 p.m.)—That is the subclause I was looking for. I seek leave to withdraw my amendment to government amendment (4).

Leave granted.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that Senator Faulkner’s amendments be agreed to.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.10 p.m.)—Now that some of our amendments have been amended in relation to the time limit, that puts us in the position where our amendments have been amended, as I understand it, in a way that we are not happy with.

Senator Robert Ray—Which you can express in the House of Representatives.

Senator ELLISON—The fact is that the time limit has now been varied. Government amendments (14), (20) and (27) on sheet RA231 were in conflict with the opposition amendments that have now been passed.
These amendments have now been amended. They should be dealt with separately—

Senator Faulkner—Are you seeking leave to deal with those matters?

Senator Ellison—I am just outlining the situation at the moment, because we have here a bundle of government amendments, some of which have been amended and some of which have not. The opposition successfully moved to pass its amendments. Government amendments (14), (20) and (27) would now be amended accordingly. Perhaps they should be dealt with separately. I seek leave to move government amendments (13), (17) to (19), (21), (22), (28), (42), (43), (49) to (51), (53) to (56) and (58) to (60) on sheet RA231.

Leave granted.

Senator Ellison—I move:

(13) Schedule 1, item 24, page 10 (line 18), omit “produce; and”. substitute “produce.”.

(17) Schedule 1, item 24, page 11 (line 36) to page 12 (line 6), omit subsection (5).

(18) Schedule 1, item 24, page 12 (line 11), omit “and with subsection 34C(5) if relevant”.

(19) Schedule 1, item 24, page 12 (line 16), omit “offence; and”. substitute “offence.”.

(21) Schedule 1, item 24, page 12 (lines 33 to 35), omit “a specified period of not more than 48 hours starting when the person is brought before the authority”, substitute “the period (the questioning period) described in subsection (3)”.

(22) Schedule 1, item 24, page 13 (lines 1 to 7), omit subsection (3), substitute:

(3) The questioning period starts when the person is first brought before a prescribed authority under the warrant and ends at the first time one of the following events happens:

(a) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph (5)(a) to make of the person;

(b) section 34HB prohibits anyone exercising authority under the warrant from questioning the person under the warrant;

(c) the passage of 168 hours starting when the person was first brought before a prescribed authority under the warrant.

(28) Schedule 1, item 24, page 21 (after line 25), at the end of Subdivision B, add:

34HB End of questioning under warrant

(1) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 8 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 8 hours permits the questioning to continue for the purposes of this subsection.

(2) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 16 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 16 hours permits the questioning to continue for the purposes of this subsection.

(3) Anyone exercising authority under the warrant may request the prescribed authority to permit the questioning to continue for the purposes of subsection (1) or (2). The request may be made in the absence of:

(a) the person being questioned; and

(b) a legal adviser to that person; and

(c) a parent of that person; and

(d) a guardian of that person; and

(e) another person who meets the requirements of subsection 34NA(7) in relation to that person; and
(f) anyone the person being questioned is permitted by a direction under section 34F to contact.

(4) The prescribed authority may permit the questioning to continue for the purposes of subsection (1) or (2), but only if he or she is satisfied that:

(a) there are reasonable grounds for believing that permitting the continuation will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and

(b) persons exercising authority under the warrant conducted the questioning of the person properly and without delay in the period mentioned in that subsection.

(5) The prescribed authority may revoke the permission. Revocation of the permission does not affect the legality of anything done in relation to the person under the warrant before the revocation.

(6) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 24 hours.

Release from detention when further questioning is prohibited

(7) If the warrant meets the requirement in paragraph 34D(2)(b), the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34F(1)(f) that the person be released immediately from detention:

(a) at the end of the period mentioned in subsection (1) or (2), if the prescribed authority does not permit, for the purposes of that subsection, the continuation of questioning;

(b) immediately after revoking the permission, if the permission was given but later revoked;

(c) at the end of the period described in subsection (6).

Subsection 34F(2) does not prevent the prescribed authority from giving a direction in accordance with this subsection.

(42) Schedule 1, item 24, page 28 (after line 3), at the end of section 34NA, add:

(10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the operation of section 34HB.

(43) Schedule 1, item 24, page 29 (after line 5), after subsection (4), insert:

(4A) 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; and

(b) the person exercises, or purports to exercise, the authority by questioning another person; and

(c) the questioning contravenes section 34HB; and

(d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(49) Schedule 1, item 24, page 32 (lines 32 and 33), omit “(whether in connection with the warrant or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

(50) Schedule 1, item 24, page 33 (line 2), omit “any of those warrants”, substitute “the warrant”.

(51) Schedule 1, item 24, page 33 (lines 9 and 10), omit “any of those warrants”, substitute “the warrant”.

(53) Schedule 1, item 24, page 33 (line 33), omit “such a”, substitute “the”.

(54) Schedule 1, item 24, page 35 (lines 22 and 23), omit “(whether in connection with the warrant or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

CHAMBER
(55) Schedule 1, item 24, page 35 (line 26), omit “any of those warrants”, substitute “the warrant”.

(56) Schedule 1, item 24, page 35 (lines 32 and 33), omit “any of those warrants”, substitute “the warrant”.

(58) Schedule 1, item 24, page 36 (lines 4 and 5), omit “a warrant issued under section 34D”, substitute “the warrant”.

(59) Schedule 1, item 24, page 36 (lines 8 and 9), omit “(whether in connection with the warrant mentioned in paragraph (a) or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

(60) Schedule 1, item 24, page 36 (lines 16 and 17), omit “any of those warrants”, substitute “the warrant”.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (8.11 p.m.)—by leave—I move government amendments (14), (20) and (27) on sheet RA231:

(14) Schedule 1, item 24, page 10 (lines 19 to 23), omit paragraph (3)(d).

(20) Schedule 1, item 24, page 12 (lines 17 to 21), omit paragraph (c).

(27) Schedule 1, item 24, page 16 (lines 18 to 24), omit paragraphs (4)(a) and (aa), substitute:

(a) a person being detained after the end of the questioning period described in section 34D for the warrant; or

These amendments have now been amended by the opposition. The government makes the point that these have been amended in a form which is unacceptable to the government. This relates to the time limit—the period which we have spoken about—of seven days, which the government proposes. The opposition has proposed a different time limit. I have moved these amendments on the understanding that the government is still maintaining that the time limit should be different.

Question agreed to.

Senator Faulkner—Mr Temporary Chairman, were those amendments passed?

The TEMPORARY CHAIRMAN (Senator Chapman)—There were no voices against them. The amendments were carried.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)  (8.16 p.m.)—Minister, I think the committee believed it was voting to pass amended government amendments. What I think has probably happened is that, with the three amendments that have just been carried, those clauses will now be omitted from the bill. If so, I think we are better off recommitting the vote and getting it right. I am trying to seek some advice here just to be clear on this. This is what I am advised by the clerk. I think we—even the minister—all believe that we have passed amended government amendments, but we do need to clarify that we have done that as opposed to omitting the provisions from the bill. It is just a procedural issue, Mr Temporary Chairman, and probably one that we will leave with you to advise us on. That is why there were no noes. I think the spirit of the minister’s contribution—correct me if I am wrong, Minister—was that he believed he was moving amended government amendments. That is right, isn’t it?

Senator Ellison—Yes.

Senator Faulkner—So all we need to do is clarify that. I suspect, Mr Temporary Chairman, that you will be able to do that for us.

The TEMPORARY CHAIRMAN—That is certainly what happened as a result of the motion which I put. I think the issue is whether the amendments that you successfully moved, Senator Faulkner, actually deleted the government amendments or whether they amended them in terms of the time limits. I think that is the matter that the
government and the opposition do not seem to be clear about at the moment.

**Senator Faulkner (New South Wales—Leader of the Opposition in the Senate)** (8.19 p.m.)—We do need to solve this minor procedural tangle. I think this one has got past us all. Thankfully, the clerks have been very diligent here and are able to assist us.

**The Temporary Chairman**—And the chair.

**Senator Faulkner**—No, I deliberately said ‘the clerks’, Mr Temporary Chairman Chapman, but if you want the credit I will note that you were at the table when this happened and say no more. The situation is this: the opposition amendments did amend the three government provisions here. The government’s amendments delete the provisions. I think the spirit of what we are trying to do here is to pass the amended provisions. Can I suggest that the appropriate course of action here is for the minister to seek leave to recommit those amendments. The majority who clearly would negative the amendments will mean that the amended provisions will stand.

**The Temporary Chairman**—That is correct as I understand it.

**Senator Ellison (Western Australia—Minister for Justice and Customs)** (8.20 p.m.)—I draw to the committee’s attention that the only amendments that have to be recommitted are government amendments (14), (20) and (27). Therefore I seek leave to recommit government amendments (14), (20) and (27) and put those to a vote.

Leave granted.

**The Temporary Chairman**—The question is that the government amendments (14), (20) and (27) be agreed to.

**Question negatived.**

---

**Senator Brown**—Mr Temporary Chairman, I just want to point out that is a very clear case of a negative making a positive.

**Senator Faulkner (New South Wales—Leader of the Opposition in the Senate)** (8.21 p.m.)—I ask about the status of government amendments (1) to (6) on sheet RA241 and note for your benefit, Mr Temporary Chairman, that the opposition has moved a consequential amendment to amendment (5) on that sheet. So I just want to understand the status of that, please, because I think we have let that one slip through to the keeper too.

**The Temporary Chairman (Senator Chapman)**—As I understand it, amendments (1) to (6), including (5) as amended by the opposition, have been carried. That includes the opposition amendment.

**Senator Faulkner (New South Wales—Leader of the Opposition in the Senate)** (8.22 p.m.)—Thank you. I wanted to be clear that we did not have the same procedural problem with government amendment (5) on that sheet.

**Senator Brown (Tasmania)** (8.23 p.m.)—by leave—I move Greens’ amendment (1) on sheet 2978, as amended:

(1) Schedule 1, item 24, page 9 (before line 14), before section 34C, insert:

34CA Maximum period of detention

For the avoidance of doubt, where a person has been detained for a continuous period of 72 hours in accordance with any provision of this Division, at the expiration of that time the person must either be charged or released.

With the passage of events, this amendment becomes somewhat squeezed because it is saying that after the 72 hours of detention, which the committee is now allowing, the person must either be charged or released.
That is self-evident because, with the 72-hour provision under the new government amendments which we have just passed, the person would have to be released. That is, I think, the case. I ask the minister: what is to prevent a person being released and a warrant being issued so that as they are on their way home they are re-arrested and brought straight back in for the next regime? What is the minimum time between when a person can be released and re-arrested under the provisions as we now have them?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.24 p.m.)—As was indicated earlier with the government amendments that have been passed, you cannot issue a warrant with respect to a person whilst another is in existence with respect to the same person. You cannot have one overlapping another. Therefore, having regard to the process that you have to go through, it is envisaged that there would be a break between the two warrants. There is no time stipulated as to that minimum period of break, but what you do have, as I indicated earlier, is the whole process of the applying for and the issuing of a warrant to be gone through with the subsequent warrant. Of course, there are additional requirements that have been outlined by the government and the opposition as to under what circumstances that subsequent warrant may be issued. Of course, what we are saying is that there has to be additional information which was not in, or is at variance with, the information previously relied on by the issuing officer. That criterion has to be met before the subsequent warrant can be issued. The government says that by that very aspect there would have to be a gap between the two warrants. There is no minimum time that I can point to in relation to Senator Brown’s question.

Senator ROBERT RAY (Victoria) (8.26 p.m.)—To follow up Senator Brown’s point, I think Senator Brown understood that the issuing authority cannot issue one warrant until the other one has expired. The more pertinent question is: can the Director-General approach the Attorney-General while the previous warrant is extant? That affects the amount of timing between the two warrants. Clearly, if he cannot there are going to be a number of hours by the time the Director-General gets his case together, goes to the Attorney-General, the Attorney-General gives it proper consideration then authorises the Director-General to go to the issuing authority to issue a second warrant. We are in nearly all instances talking about six, eight or 10 hours and in some cases a couple of days. If it can all be done beforehand, and you just wait for the person to be released and then rush into an issuing authority, then Senator Brown’s point becomes a little more worrying because it could be that by the time he gets off the tram on the way home he is picked up again and taken back in.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.27 p.m.)—In relation to Senator Ray’s question, the Director-General of ASIO can apply for a warrant while the other one is still in existence, but of course the Attorney-General has to be satisfied and there are those subsequent steps that have to be gone through.

Senator BROWN (Tasmania) (8.27 p.m.)—Senator Ray brought up the point I was going to put next and we have established it. I do not think there is any point in debating it further. The serial warrants apply head to toe, so as you are walking out the door from your first detention you can be arrested and brought straight back in again because another warrant has been so close to being issued that it just took the time for the final authority to be given to it. If it is not out the door it is down the street or on the way home. The minister is right: a reading of this
will lead any person to believe that there is no minimum time. These are serial warrants. They cut across the submissions that we have had from the Law Council of Australia and they do make it possible to have a person put in serial detention for an unlimited period of time. The only thing ASIO has got to do is produce new information that convinces the issuing authority at the start of each subsequent arrest, and there is not a provision here that ASIO has to give all the information it has on the person at the outset. It can serially produce evidence. The issuing authority has to be convinced there is new evidence. There is no compulsion in this legislation which says ASIO has got to give up all its evidence on the first arrest.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.29 p.m.)—Government amendment (4) says:

(b) the issuing authority may issue the warrant requested only if the authority is satisfied that:

It talks about material which is additional material or materially different, and then it says:

(ii) the person is not being detained under this Division in connection with one of the earlier warrants.

So whilst it is under consideration and the person is in detention, the issuing authority has to not determine it because the person is in detention. Senator Brown, what you are saying is that he might say, ‘I will consider all this, but I will not make my decision until he gets out.’ Of course, that would be an abuse of process.

Senator BROWN (Tasmania) (8.31 p.m.)—I will give an example. A journalist, sitting at a table with five people, is under ASIO scrutiny. The journalist is seen taking down phone numbers and ASIO can apply to have that journalist brought in because they want to get the phone numbers and the details that are there of suspect No. 1. They put that forward in the warrant. When the period of questioning is over, they have got that information but they inadvertently or deliberately say, ‘But, wasn’t so and so else at that table?’ Yes, they were, and a second warrant can be issued to bring the person back on the basis of getting the information from the next person who was sitting at the table. ASIO does not have to say at the outset, ‘Look, all these five people were here and we want to get the warrant on the basis of getting information on all five of them.’ That is just a very simple example of how this can go wrong. It is not safe and it is open to abuse. In regard to the evidence upon which a request is made from ASIO, all of the evidence should be brought forward at the instigation of the first application for a warrant.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.32 p.m.)—I think Senator Brown has missed the point. He is assuming that ASIO at the outset knows that the people at the table have information which is relevant but they choose to issue a warrant only against the one person. I understand that you are saying that they issue the warrant against the one person and then, relying on the same information which was available to them, they issue another warrant against the same person to get further information about the other people at the table. Is that what I am understanding you to say?
Senator Brown—That is right.

Senator ELLISON—ASIO would have a problem because at the outset they had all that information—

Senator Robert Ray—Exactly.

Senator ELLISON—And that is the point that Senator Ray made in answering Senator Greig’s question. They could not do that and that, I think, is squarely dealt with in the government’s amendments. They cannot have those subsequent warrants issued and they are staggering it, if you like, to suit themselves when they had all that information at the very outset.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that Senator Brown’s amendment (1) on sheet 2978, as amended, be agreed to.

Question negatived.

Senator BROWN (Tasmania) (8.34 p.m.)—I move Australian Green amendment (1) on sheet 3006:

(1) Schedule 1, item 24, page 12 (after line 21), after subsection (1), insert:

(1A) Where the person in respect of whom a warrant is proposed to be issued in accordance with this Division is a journalist, a warrant must not be issued unless:

(a) there are reasonable grounds for believing that the warrant is essential to the collection of intelligence that is important in relation to a terrorism offence; and

(b) the intelligence cannot be collected by any other means; and

(c) it would not be contrary to the public interest to do so.

Note: A journalist is defined in the Broadcasting Services Act 1922 as a person engaged in the profession or practice of reporting for, photographing, editing, recording or making:

(a) television or radio programs; or

(b) datacasting content;

of a news, current affairs, information or documentary character.

This amendment relates specifically to journalists. I have some concern because, as I indicated a while ago, it is journalists in particular who are likely to be information gatherers at the edge; therefore, they are likely to be—more than the average person—subject to potential arrest and interrogation under the provisions of this legislation. I do not have any particular wish to single journalists out for special treatment. Of course, they ought to have the same rights as all other citizens, but they do perform a role which is particularly important in our democracy. It is the fourth estate. Their job is to gather information and to put it into the public arena. It is very dangerous ground on which we tread when they are made subject to legislation such as this, which makes them peculiarly vulnerable and which makes the relationship between them and a source of information of particular interest. The motion that the Greens have brought forward here is self-explanatory, and I will read it out:

Where the person in respect of whom a warrant is proposed to be issued in accordance with this Division is a journalist, a warrant must not be issued unless:

(a) there are reasonable grounds for believing that the warrant is essential to the collection of intelligence that is important in relation to a terrorism offence; and

(b) the intelligence cannot be collected by any other means; and

(c) it would not be contrary to the public interest to do so.

This introduces a public interest test and it says that you cannot arrest a journalist without having some good reason as to why you simply could not go and ask them for their
Information. The note says that a journalist is defined in the Broadcasting Services Act and so on. It is self-explanatory.

Committee members would have seen the opinion piece in today’s Age by editor Michael Gawenda. There has been strong representation to this committee from media interests and journalists’ interests. This amendment is not saying that journalists are absolved from the reach of ASIO under the legislation; it is putting in a special caveat which says that they have to think about it and they have to be on strong grounds before a journalist is hauled off the street and interrogated.

Senator ROBERT RAY (Victoria) (8.37 p.m.)—We really need to put our prejudices aside on this particular bill—not that that is easy—and look at it dispassionately, because Senator Brown has put this up seriously. Only a real cynic would say he is trying to ingratiate himself with the press gallery. We know that is not the case, because he has actually put an argument in favour of his case. He has also quoted the esteemed editor of the Age, which has certainly pushed me a bit further offside. It was not a very good tactic with me, Senator Brown. The two different hurdles that Senator Brown seeks to put into this bill apply to one occupation only. I am surprised he did not put in priests—and maybe doctors, lawyers, politicians and so on. This is really a case of all in or all out, I suspect—and you are all for all out, and I recognise that.

Senator Brown—That’s right.

Senator ROBERT RAY—We are in favour of all in. Senator Brown has used the word ‘essential’—so that is a different word that applies to any other citizen of Australia—and says that it would also be ‘contrary to the public interest’. Public interest is what you perceive it to be. That is what this chamber is about—we have differing views about what the public interest is. Senator Brown is saying that an authority issuing warrants can define public interest. Good luck on that. I do not know that they can.

Senator Brown—Or a court can.

Senator ROBERT RAY—You say a court can, but I am not sure a court can describe what the public interest is in these circumstances. However, this is a very cunning ploy, I have discovered. What is going to happen here is that the AJA membership is going to quadruple as every al-Qaeda and JI member this side of the black stump goes and does an arts media course or a sociology course at Wollongong University in two weeks and then joins the union. And we are going to have real difficulty getting to some of those. I use this test to put it simply: do I think Piers Akerman should have greater rights than me? No, I do not.

Senator BROWN (Tasmania) (8.39 p.m.)—Nevertheless, the debate needs to be entered into. It is of great concern to me. By the way, I note that Michael Gawenda, whom Senator Ray seems to hold at a relatively restricted level of esteem—

Senator Robert Ray—Only on these issues.

Senator BROWN—I note that he also said—I think in an earlier piece—that journalists should not get special treatment. We are not going to get this amendment through, but the point of it is to point out to the committee again that the Greens are opposed to this legislation. It cuts right across the relationship between priest and confessor. It cuts across the relationship between doctor and patient. It cuts right across the relationship everybody has with everybody else. This rides over a whole stack of professional relationships with the public in a way that we think is destructive, unnecessary and unwanted. The point of this amendment is to highlight that invasion of the relationship
between professionals—who are, in the main, extraordinarily committed Australian citizens and, for the few who are not, there are other laws that will apply.

Senator ROBERT RAY (Victoria) (8.41 p.m.)—I overlooked saying one thing. It will be the case, I suspect, that a journalist, or indeed a priest, who is subject to a warrant, fails to answer questions and is then charged under the act, will have a slightly better case to put than Senator Brown or I would as to why they failed to answer questions. I think they will have more of a defence than other citizens because that is one of the things they do. While we have the advantage of parliamentary privilege, they have a limited privilege in terms of their own professional ethics that say you cannot nominate sources et cetera. So at least at that stage, I think they will have a higher defence of their actions than the rest of the community. If they were, in fact, charged under this act for failing to answer questions, they would at least have a case to put to the judiciary.

Senator BROWN (Tasmania) (8.42 p.m.)—It raises the question of whether parliamentary privilege, and the relationship with a person whom you represent in this place, absolves you from the reach of this act. I do not think so.

Senator ROBERT RAY (Victoria) (8.42 p.m.)—Let me say that would be a matter for disputation. In certain circumstances, parliamentary privilege would override this act; in a lot of other circumstances, it would not. There is, of course, a higher duty than parliamentary privilege. If you, Senator Brown, have knowledge of information that is going to lead to a terrorist act, we would not need to issue a warrant with you, would we?

Senator Brown—You could come and see me.

Senator ROBERT RAY—We would not need to issue a warrant with you because you would assist the authorities, as I would.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.43 p.m.)—The particular proposal that has been moved by Senator Brown was raised by Mr Gawenda in the recent Senate committee hearings, as I think senators would be aware. That committee rejected unanimously—from memory—the proposal that journalists should be excluded from this regime. I think the serious point here is that this regime applies to everybody. It is true that journalists collect information, but so do lawyers, teachers, parliamentarians, counselors, nurses, doctors and many people who work in the IT area and handle huge amounts of information.

One thing about this particular bill is that it actually does not discriminate. That is one thing about this bill in its favour. The issue here is whether we make journalists a special class in relation to this legislation. No doubt in making speeches like this quite possibly senators who oppose such a provision will be criticised by the fourth estate—so be it. That is probably not new to any of us. I think that is the proper approach for us to consider. Are journalists or should journalists be a special class in relation to this legislation? It really boils down to that. Should the legislation discriminate in favour of one class of people? Should it discriminate—no, I do not think it should. It is a pretty ordinary piece of legislation, and that is one thing in its favour. The opposition cannot support this amendment. The Senate committee did not support this proposal and I do not believe that a self-respecting parliament can entertain it.

Senator BROWN (Tasmania) (8.46 p.m.)—In response to that, the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002
Senator GREIG (Western Australia) (8.47 p.m.)—At the base of Senator Brown’s amendment on sheet 3006 there is a note which says:

A journalist is defined in the Broadcasting Services Act 1922 as a person engaged in the profession or practice of reporting for, photographing, editing, recording or making:

(a) television or radio programs; or
(b) datacasting content;

of a news, current affairs, information or documentary character.

Was it your expectation or intention that that definition would be wedded to the amendment itself? Would this be a definition upon which future interpretations would be made?

It would seem to me that the courts might look more broadly at definitions of journalists rather than that which exists in the act.

My reading of it would be that you would not necessarily need to be remunerated or employed by the electronic or print media to be regarded as a journalist. You may be a freelance journalist, in which case you are just a citizen, a member of the public collecting information, but you could go by the by-name of a journalist. In that case it might be possible for future interpretations of your amendment to in fact exclude many people adventently or inadvertently for otherwise being a journalist but not as contained within the definition that you have provided.

Senator BROWN (Tasmania) (8.48 p.m.)—I am not going to pursue this far because the note, I think, has some deficiencies. I am not going to either try to fix it or to extend this debate. I notice the direction in which we are going.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.49 p.m.)—The government opposes clause 4 in the following terms:

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

The TEMPORARY CHAIRMAN—The question is that clause 4 stand as printed.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.49 p.m.)—I move:

(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.

Senator NETTLE (New South Wales) (8.50 p.m.)—When we debated these issues on Wednesday last week I raised the concern the Australian Greens had about the fact that the new sunset clause proposed in this legislation is different from that proposed originally. In the current form of the bill, as it was put in in December of last year, the sunset clause now would not cover the entire act. We mentioned before that there are some reasons for that in terms of the review mechanisms being able to continue beyond the questioning and detention regime. I asked questions on Wednesday of last week concerning this sunset clause, which allows ASIO to have additional powers outside of the questioning and detention regime, additional powers which enable them to carry out personal searches when entering premises which are the subject of a warrant. Clearly, in the way in which we are proceeding now and the way in which the votes are proceeding, it is the view of the opposition and the government that this additional power be afforded to ASIO agents in carrying out searches of premises.

[No. 2] discriminates against unnamed innocent Australians in the future. I think the self-respect, as far as we Greens are concerned, is in opposing it applying to those people.
On that issue, the other question that I raised last Wednesday was about the definition of the word ‘near’. We talk in this particular section 23 of the act that relates to personal searches by ASIO whereby searches can be carried out at or near the subject premises where the warrant is executed. I am wondering whether we could just get for the record a definition from the minister as to how he would define ‘near’ in this instance.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.52 p.m.)—I think Senator Nettle is referring to the phrase ‘near the premises’. In relation to the term ‘near’, there would need to be a proximate relationship between the person and the relevant premises—for example, in circumstances where the person has departed the premises or has arrived outside the premises while the search is being conducted. It would not extend to searches where there were no grounds to believe that the person and the subject premises were linked. In addition to these points, the scope of any search authority under the warrant would be further conditioned by the requirement in the proposed legislation that there be reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter—that is, the matter that is important in relation to security for which the warrant was sought. That describes the circumstances in which the term ‘near’ is used.

In relation to that point, Steven Marshall, legal adviser to the Director-General of Security, wrote to the secretary of the Senate Legal and Constitution Legislation Committee in December last year. He stated in that letter:

There are a number of existing provisions in Commonwealth legislation authorising the conduct of ordinary or frisk searches of persons who are at or near the premises specified in the warrant. As a non-exhaustive list, I note that such authority may be conferred under the following provisions.

Then he listed paragraph 3E(6)(b) of the Crimes Act 1914, paragraphs 198(4)(b) and 203(6)(b) of the Customs Act 1901, section 413(2) of the Environment Protection and Biodiversity Conservation Act 1999 and paragraph 107BA(4)(b) of the Excise Act 1901. They are cited as examples of where previous legislation has used similar phrases.

Senator NETTLE (New South Wales) (8.54 p.m.)—Minister, I am aware of the correspondence which you have just read into Hansard. Perhaps I can give the minister an example that we have used in several instances in relation to this particular clause, which is that of Lakemba mosque and the occasions on which there are a large number of people attending. I want to check the definition that the minister read out then of relationship, proximity and a reasonable belief that people may hold information or items. We have had this example before, and I am just checking that it fits the minister’s definition of ‘near’. Suppose there is a belief that somebody who is present on that occasion has a mobile phone that has been used in an activity that ASIO wants to investigate. How would the government therefore perceive those people who were at the premises and not necessarily within the premises? We have described this: often people who are at the premises are not necessarily at that exact location but are across the road or at the place next door because of the large number of people who attend when there is a big event going on in the mosque. I want to determine whether the minister believes that that would fit within the definition that he has just given of ‘near’, whereby there is a proximate relationship and a belief that people have the information.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.56 p.m.)—That is an operational judgment
which is exercised at the time, due to the circumstances that present themselves. I have outlined, as much as can be outlined, the use of the term ‘near the premises’. There has to be a proximate relationship between the person and the relevant premises. That is a fairly explicit explanation of the term ‘near’. A proximate relationship would mean that you are not just somebody walking by, a stranger to the premises who is walking down the street in the course of your normal business; the term ‘proximate relationship’ means something which has a connection. That is a judgment which has to be exercised on a reasonable basis by the officer concerned.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.57 p.m.)—I move government amendment (7) on sheet RA241:

(7) Schedule 1, item 27D, page 39 (line 3), omit “as soon as possible after the third anniversary”, substitute “within 30 months”.

There have been discussions with the opposition in relation to the question of a review. Government amendment (7) amends the bill to provide that the review of the operation, effectiveness and implications of the bill, to be conducted by the Parliamentary Joint Committee on ASIO, ASIS and DSD, must be completed within 30 months of the date of royal assent. This item replaces the existing reference to the review occurring as soon as possible after the third anniversary of the bill coming into effect. This will allow the review to be completed and considered six months prior to the sunset provisions for the detention and questioning regime come into effect. It gives the committee time to review the operation of the bill prior to any sunset provisions taking effect.

Senator ROBERT RAY (Victoria) (8.58 p.m.)—I will make a couple of brief comments. This is another classic case of where someone has not read the bill, because we managed to have the review starting a day after the sunset clause discharged the bill, which would not have been too wise in retrospect. It now means that, 24 months after the proclamation of this particular piece of legislation, the joint intelligence committee can review the legislation. My reason for rising at this stage is to say that that committee has to take that review very seriously. It has to look at every aspect of this legislation.

It has a lot of tools at its disposal now because every warrant or at least the numbers of warrants and second warrants have to be listed in annual reports. I expect that not only would ASIO have to come and give evidence to that committee—sometimes in public; sometimes in private—but also it would be a widely advertised inquiry where the general public and any affected person could come along and put their views to the committee. There is no doubt that IGIS would also greatly assist that committee. I think that has to be understood—by putting this particular section in the act you are not just going to get a whitewash committee report on this. It has to be a serious one, but it also has to be a fair one. I would like to think that I will still be on it in 2½ years time, but who knows? Sometimes I would rather not be. Nevertheless, it will require a very serious look and it does fit very well, I think, with the sunset clause. It gives the government plenty of opportunity, with a six-month period for the review to occur and report, to reintroduce the legislation and make what necessary amendments there might be.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.00 p.m.)—This is an important amendment, and of course it is an important amendment to an important provision. Division 3 will be sunsetted. These controversial provisions will cease to become law three
years after the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] receives royal assent. The opposition has suggested that, in assessing whether any or all of those provisions should become law again, we need to have a very effective review of how those provisions have worked. Obviously it is appropriate to do that before the provisions cease to exist. That is totally logical. This amendment of course means that the review to be conducted by the parliamentary joint committee on intelligence services will start earlier to enable those processes to occur.

Originally, the provision in the bill proposed to hold the review three years after proclamation—in other words, after the provisions ceased to be law. If that problem had not been picked up, the review would have happened after the bill had ceased to have effect. So, sloppy drafting would have left us in the untenable situation of ASIO having its new powers for three years and then those powers ceasing to exist before they were reviewed. It is a sensible amendment, it is an obvious amendment and it is one that needed to be made. This review is going to take place in a couple of years time.

For the opposition’s part, it has been reviewing this legislation now from the time this bill was introduced some 15 months ago. I think it is important to remember—and this is why this review is so important—that this bill started as a blueprint for the deprivation of a person’s liberty and legal rights. This bill, in my view, started as something that George Orwell would have written home about. The opposition has dragged the government from that draconian model to a bill that is far more measured; a bill that is loaded up with safeguards; a bill that is light-years away from the one first introduced into this parliament. When you think about some of those changes, it is quite dramatic.

This is what the review will have to address. It will now address the fact that we have a right to legal representation of choice; the fact that a judge or retired judge will be present as the prescribed authority for the whole time that questioning takes place under these provisions; the fact that there will be protocols governing these procedures and those protocols will be tabled in parliament; and the fact that, while 16- and 17-year-olds as well as adults will be subject to the provisions of the legislation, those 16- and 17-year-olds must be suspects. When the bill was first introduced the provisions would have applied to anyone at all under the age of 18 and, as you know, to strip searches for any child over the age of 10 years.

The review will also have to look at the issue of full legal rights for appeal to the courts, which have now been provided. It will look at the new amendments in relation to the Inspector-General of Intelligence and Security and the new obligations on the inspector-general to review any additional warrant that might be granted. There is no doubt that the review itself, along with the reporting mechanisms in relation to the number of requests for warrants and the number of warrants granted—the whole raft of statistical information that will be made available in the public arena—is obviously an important safeguard and something that is going to dramatically assist the conduct of this review.

In the view of the opposition, it remains a very important safeguard indeed and it is essential that it take place before these provisions cease to have effect in law three years after royal assent. I never resile from the fact that in relation to this legislation, as far as the opposition is concerned, this has been a balancing act. The government had the weights loaded on the draconian security measures predicated on the removal of legal rights. On the other side of the balance is the
important issue of ensuring that those who are being questioned under this regime are appropriately protected in terms of their rights and liberties.

It has been very difficult to get that balance right. In making that assessment, of course you have to take into account the new security environment. I suppose this is something that will exercise the minds of those who are conducting the review. We all know that terrorism is now a serious global risk. We know what happened on 11 September 2001. We know what happened on 12 October 2002. We know what terrorism in our region means as many Australians lost their lives in a dreadful and barbarous act in Bali. We have to be very clear about the challenge that we face in legislation like this.

Terrorists choose environments where the innocent gather. They choose to attack people on public transport, in buildings, on planes, in nightclubs and perhaps in sporting grounds. They target innocents. Terrorists seek out the vulnerable. While terrorists seek targets and prepare for acts of extreme violence, of course we in the parliament have a responsibility to ensure that our security and law enforcement services have appropriate powers to gather intelligence on those sorts of activities so terrorists can be thwarted. That is what is at the heart of this legislation—intelligence gathering in an increasingly dangerous environment.

Everyone knows that our heavy involvement in the Iraq war as part of the coalition of the willing has meant that the Australian government has had to increase security precautions around the country. Anyone who walks into this building any day of the week knows that that is the case. The Labor Party have always said that we do think that it is appropriate to provide enhanced powers to ASIO. We do think that it is appropriate that ASIO be given the tools to deal with the enhanced security environment, but we also say that the challenges for this parliament, which are certainly challenges that this opposition treats very seriously, are to ensure that with those enhanced powers go more than adequate and appropriate safeguards. That is the balance that we have tried to achieve in relation to this legislation.

Labor have stacked this bill with safeguards so that the parliament does not blow away the legal rights of Australians when we look at enhancing the powers of ASIO. Unfortunately, when this bill was originally introduced so many civil liberties, so many hard-won rights, so many freedoms that Australians take for granted would have been affected in this legislation. The Labor Party, my colleagues in the federal parliamentary Labor Party, have worked tirelessly, even as late as these last few days, to improve this legislation and to ensure that we are able to deal with the issue of rolling warrants that has recently been raised. That is something that, with the benefit of the report from IGIS, obviously the review will look at.

I am absolutely delighted that we no longer have to worry about rolling warrants. I am absolutely delighted because while the Labor Party are not opposed to a person being the subject of more than one warrant we are against the grounds of that warrant being reused by ASIO to justify custody for longer than seven days. If ever an additional warrant is to be issued, absolutely appropriate and strong safeguards must be in place. They are the principles that have driven the Labor Party in relation to this and that is why I am delighted that we no longer have a situation to face where there might have been a capacity for indefinite detention. After all, when this bill was first introduced, there was an absolute risk that a person could have been detained indefinitely incommunicado. That is the sort of legislation that this parliament should never pass.
We now have a situation where, apart from all the safeguards I have mentioned, if there is an additional warrant then that warrant will have to be about new and materially different matter from that for the previous warrant, and that is very important. As senators know, it is also essential that there are all those other hurdles, in relation to the director-general, the minister, the issuing authority, the prescribed authority, the legal representation and the Inspector-General of Intelligence and Security, which are essential safeguards. This committee of the Senate should be very proud that it has been able to change this bill in such a positive way.

Senator BROWN (Tasmania) (9.15 p.m.)—I think the bill is a disgrace for a government that believes in protecting the civil rights of Australians, but I think that the opposition has a lot to be ashamed about as well. Senator Faulkner says so many liberties, so many freedoms and so many hard-won rights have been safeguarded by Labor. But it is liberties, freedoms and hard-won rights which have been eroded by Labor in this process. From what I have seen on the public record, while Senator Faulkner may have felt the pain of engaging in the balancing act between the competing important matters that we have been discussing, after that balancing act we must all fear the reverse double somersault. We are not finished with this legislation yet, but the Greens will continue to fight for the principles that we have espoused during the debate.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.17 p.m.)—I move:

That this bill be now read a third time.

Senator NETTLE (New South Wales) (9.18 p.m.)—We—the Senate, not the Greens—are about to pass into law what is perhaps the most draconian piece of legislation this parliament has ever seen. It is a piece of legislation that, even in its amended form now, allows innocent people to be taken off the street, to be interrogated for seven days continuously and then rearrested. It allows these people to be questioned, sometimes with no lawyer present—questioning can begin without a lawyer being present. The onus of proof has been reversed. And this is all allowed to happen to people who are only 16 years old. That is the piece of legislation that the Senate is now being asked to vote on. I think it is pertinent that senators take a moment to realise the seriousness of this legislation and the record of this type of legislation introduced in other countries that has been used to repress the activities of social justice campaigners, trade unionists and student activists on a whole range of different issues. That is the bill that the government and opposition are seeking to support in the Senate right now. The Greens oppose it absolutely.

Senator GREIG (Western Australia) (9.19 p.m.)—I think the one key thing that really is worth commenting on is the mood that we are currently experiencing in the chamber. There is a spirit of good cooperation; there is a palpable feeling that the anger, frustration, confusion and tension that we had experienced in this debate earlier has been diffused. Where I would differ from Senator Faulkner is that I would say that that is not because the Labor Party, the opposition, has brought the bill light-years from where it was but because the Senate has. Thank God for the Senate and the Senate processes, particularly on this legislation. The Senate has represented the people, it has worked through the committee system, and
it—and only it—has put the brake on unfettered and outrageous power from the government.

We have before us legislation that, when passed, will allow people to be taken from their homes or from the streets and questioned by ASIO for a period of over seven days. There is no automatic right for that person to contact their family members or employer or a lawyer. This detention and questioning is on the say-so of an anonymous judge for reasons that our spy agencies discuss with the anonymous judge in secret. While there is a right to legal advice, legal aid and an interpreter where that might be warranted, it is a limited right and it can be negated.

During the questioning, the detained person will be required to prove that they do not have the information that ASIO says they have. This is a radical departure from established legal principle and it is a departure from natural justice in the way that it reverses the onus of proof. But perhaps most alarmingly, this legislation applies to non-suspects—that is, people not suspected of any involvement with terrorism as such; it applies to any and all Australians. That is where we depart significantly from comparable legislation in the United States, Canada and Britain.

The difference between our jurisdiction and those in the international jurisdictions have a charter or a bill of rights and we do not, to our detriment. We remain the only Western country without a charter or bill of rights. Perhaps the strongest argument we have yet had in this place, where we have discussed and debated the ASIO legislation in the absence or vacuum of a bill of rights, is this legislation itself, in terms of pointing yet again to the strong need for one. Yes, the legislation will still apply to Australians as young as 16, albeit in slightly different circumstances; and, yes, failing to cooperate with ASIO or to answer questions can result in imprisonment of up to five years.

I will acknowledge, however, that in its original form, the bill would have created a regime considerably worse than the one we have before us. It would have provided that, amongst other things, ASIO could detain people incommunicado for a period of 48 hours, which then could have been extended up to a week. ASIO could then redetain that person immediately upon their release, giving rise to the potential for indefinite detention. That has now changed. Thank God for the Senate. The person would bear the burden of proving that they did not have the information sought by ASIO. That is still in the bill and is something we Democrats regret.

The right to legal advice could have been denied during the first 48 hours of detention in certain circumstances, and after 48 hours a person would only have had access to a legal adviser approved by the Attorney-General if they could afford to pay for one. Moreover, the person would not have been permitted to communicate privately with a legal adviser. Much of that has now changed. Police powers would have been invested in an intelligence agency—that is, ASIO—the employees of which have their identities protected, thereby raising serious accountability concerns.

Of course, the most disturbing aspects, some of which I have touched on here, have been removed or amended. That has been possible because of community concern, appropriate committee processes, the scrutiny of the Senate and the cooperation, ultimately, of cross-party support, which sees the amended legislation in the form that we now have before us. While we Democrats still feel strongly about opposing the third reading of the bill—for our principle, fundamen-
nal concern is that it reverses the onus of proof and applies to nonsuspects—there is no question that the bill is significantly different from the original and has been thoroughly, if not fully, amended by the Senate. It is not, I think, an opportunity for either the government or the opposition to claim to have been the winner out of this; it has been the Senate that has been the winner.

Question put:
That the bill be now read a third time.

The Senate divided.  [9.29 p.m.]
(The Deputy President—Senator J.J. Hogg)

Ayes......... 44
Noes......... 8
Majority...... 36

AYES
Barnett, G.  Bishop, T.M.
Bolkus, N.  Brandis, G.H.
Buckland, G.  Campbell, G.
Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Conroy, S.M.  Crossin, P.M.
Denman, K.J.  Eggleston, A.
Ellison, C.M.  Faulkner, J.P.
Forshaw, M.G.  Harradine, B.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kemp, C.R.  Kirk, L.
Knowles, S.C.  Ludwig, J.W.
Mackay, S.M.  Marshall, G.
Mason, B.J.  McGauran, J.J.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.
Vastone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.

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.

* denotes teller

Question agreed to.
Bill read a third time.

ADJOURNMENT
The DEPUTY PRESIDENT—Order!
Pursuant to order, I propose the question:
That the Senate do now adjourn.

Tasmania: Meander River Dam

Senator BARNETT (Tasmania)  (9.33 p.m.)—I stand to speak in favour of and to support and acknowledge the hard work and contribution of the Tasmanian Farmers and Graziers Association and the Meander Valley Council, together with the Meander Dam Action Committee. In particular, I acknowledge the work of the last three days in this place in support of the Meander dam. I acknowledge specifically Brendan Thompson, the Acting President of the TFGA; Ian Whyte, the Natural Resource Management Consultant of the TFGA; Mark Shelton, the Mayor of the Meander Valley Council; Jenny Dornauf, from the Meander Dam Action Committee; and Wayne Johnston, the son of Neil Johnston, who farms on the Meander River just downstream from the proposed Meander dam. I have been honoured over the last three days to represent the Tasmanian Liberal Senate team in leading that delegation to meet with the relevant federal ministers and to provide advice and consideration to Dr David Kemp with respect to the environmental merits of the Meander dam. The Meander dam is a project that, under the Environment Protection and Biodiversity Conservation Act, requires federal government approval and specifically the approval of Dr David Kemp as the Minister for the Environment and Heritage, and that is entirely appropriate and sensible.

With regard to the history of the project, it has the full support of the Tasmanian government; the Tasmanian opposition, which is led by Rene Hidding; and the vast majority
of the Tasmanian people. The state government wanted to support the dam and put it through its planning approvals process but unfortunately it failed before the Resource Management Planning Appeal Tribunal. The case that the state government put to the tribunal was inadequate. That is very disappointing and it certainly has been recognised by the state government. They subsequently passed enabling legislation and are now preparing a submission to the federal government to ensure that it is passed.

On behalf of the Tasmanian Liberal Senate team I have expressed considerable concern in the public arena and directly in correspondence with the relevant minister in Tasmania, Bryan Green, with respect to the fact that we need a comprehensive, professional submission by the Tasmanian government which is convincing, which leaves no stone unturned and which is unimpeachable in its presentation. I do not mind being criticised by Bryan Green and others for my support for the dam or on behalf of the Liberal Senate team. Nobody supports the dam more than I do.

My family farmed for 40 years on the Meander River, just 20 kilometres west of Launceston. I have a lot of happy memories of the Meander River and the farm, of fishing and so forth. Let me say this about the Meander River: it is a river of lost opportunities. In the winter it floods; every year it floods. In the summer, it dries up—even this year. Again, this is evidence of a total inability to irrigate from the Meander River. It simply is a bare trickle in the summertime. There is a sound case, in my view, for storing the excess water and the winter flows for release during the summer months to maintain the environmental flows and to provide water for irrigation. I think this can be of enormous benefit—economically, socially and environmentally—for the Tasmanian community, economy and environment. I would just like to outline some of the reasons for this and give an outline of the proposed dam. The dam will create a 360 hectare lake and store 43,000 megalitres of water, of which up to 24,000 megalitres would be available for irrigation. The dam will include a minihydro scheme, which is from Hydro Tasmania—a very important organisation in our state which is injecting some $4 million into the cost of building the dam—and which will produce enough power to power up a town the size of Deloraine in the Meander Valley. The dam will cost some $27 million, including $3.5 million—nearly $4 million—for the hydro scheme as indicated.

Let me just mention some of the benefits of the dam. The environmental benefits will be that the river will be guaranteed a minimum flow, even in the midsummer, to sustain the important ecological processes that are important in that river, instead of the river almost stopping—becoming a bare trickle—in the summertime, so that environmental flow will be maintained. That is good for the environment. The community benefits will include a reduction in the severity of flooding, year-round improvement in water quality, and enhanced recreation and tourism opportunities. Let us look at the economic benefits. The additional water for irrigation each year will lead to an increased farm income of $14.8 million per annum at full water uptake. There will be total benefits, including flow-on benefits, of $53 million per annum to the Tasmanian economy. There will be an increase in employment of 77 full-time on-farm jobs and 79 other full-time jobs. There will be projected capital investment of $12.7 million in on-farm infrastructure and production of 10,000 megawatts of electricity per annum.

Let us be quite up front about the issues associated with the dam. There are some important issues related to it. Firstly, there is the threatened plant species: *Epacris aff. ex-
A management plan is being developed with a view to ensuring that populations of this plant located along the Meander and Mersey Rivers remain healthy and viable. Secondly, there is a threatened animal species: the spotted-tail quoll. A management plan with mitigation measures is being developed with a view to conserving populations of this species. Thirdly, there is the issue of financial viability. Expressions of interest have been received from seven consortia of private investors keen to be involved in funding, designing, building and operating the dam. Fourthly, on-farm water storage is an option in some cases but is not practical for farms which would benefit most from irrigation, because these farms are generally on flatter land. Fifthly, there is the issue of salinity. Evaluations of soil types in the Meander Valley and farming strategies that can be used have concluded that increased irrigation need not cause salinity. This is an issue that is very relevant in mainland Australia. It is not so relevant in the Meander Valley where the research has been done on this issue. It is all right to stand here and say, ‘Let’s support the dam,’ but what happens if there is no dam? If there is no dam built, both environmental flows and the security of irrigation water supplies will be compromised. They will dissipate. A compromised irrigation water supply will effectively discourage on-farm investment. This will have flow-on effects to investment in processing facilities and will reduce employment.

With regard to the submission that has been presented to the relevant federal ministers, including Dr David Kemp, in the last three days, let me just congratulate the delegation that came to Canberra. I have mentioned them earlier in my speech. Their professionalism and the comprehensive nature of their submission is outstanding. I give them full marks for that. I would like to refer to a number of case studies in the back of this excellent professional submission. The first case study is from Wayne Johnston, who presented extremely well. He is a very grassroots operator and says it exactly the way it is. Wayne says that in the financial year 2000-03 his turnover was approximately $500,000. Wayne estimates that, without irrigation, turnover would fall to about $300,000 per year. With irrigation, Wayne estimates that turnover could be raised to about $700,000 per year.

There are a number of other case studies. I do not have time to go through all of them. Don Badcock knew my family very well for many years. He is a vegetable farmer at Hagley. Another one is David Berne, a dairy farmer at Meander. Bonlac Foods has expressed strong support for the dam. Tasmanian Alkaloids has expressed support. Simplot has expressed support and John Tabor, manager of the Meander Valley Enterprise Centre at Deloraine, has expressed support. So there is full support. Terry Roles, the racecourse trainer at Deloraine has expressed support. (Time expired)

Taxation: Friendly Societies

**Senator MURRAY (Western Australia)** (9.44 p.m.)—In previous adjournment speeches I have outlined my concern at the loss of hundreds of millions of dollars in revenue as a result of the loose application of the tax mutuality principle to super clubs and others. The mutuality principle provides that, where a number of persons contribute to a common fund that is created and managed as a common interest, any excess earnings that are generated from the use of the fund are not, for the purposes of taxation, to be considered income. It is a wonderful tax concession for community organisations; it is a very costly abuse and rort in the hands of otherwise commercial enterprises. For six years I have been campaigning for reform. I have got nowhere because this government is in
the pocket of the clubs. It fears their political power. It is because this government supports these sorts of rorts that the rest of us have to pay more tax than we should.

The Pharmacy Guild heard of my work in this area and acquainted me with the same problem in their industry. I am obviously no expert on pharmacies, so they have assisted me with some of the material I use in this speech and I have relied on them for industry knowledge. Why do community pharmacies owned by friendly societies pay less tax than other community pharmacies? They do so because they are considered to be mutual bodies, and under this arrangement they pay no tax on income earned from sales—that is, non-Pharmaceutical Benefits Scheme sales—made to customers who have signed up as their members. What a racket! Customers sign up as members so that the businesses do not have to pay tax. Under the regulations that apply to friendly societies, their pharmacies are able to utilise the mutuality principle in trading with these so-called members so that all non-PBS receipts from retail transactions are excluded for the purpose of determining their assessable income. Tax is paid at the relevant corporate tax rate only on amounts received from the Commonwealth for the supply of pharmaceutical benefits, whether to members or non-members, and for transactions with non-members. Other profit from trading with so-called members is tax free. That means no tax at all on private script sales and on all over-the-counter sales to these so-called members.

Yet what is the real difference between the way this membership scheme for friendly societies operates and the various loyalty clubs available in other pharmacies and other businesses? There is no difference, except that these other pharmacies and businesses pay full tax on all income received from all sales whether they are to members of the club or not. For an annual subscription of something like $66 per family or $39.60 single, any member of the public can walk in off the street and be deemed to be a friendly society member, whose purchase transactions with the pharmacy, apart from those involving PBS purchases, are then non-taxable in the hands of the pharmacy. There is no requirement for public records to be maintained of friendly society membership lists or for members to be kept informed of the financial status of the company. There is no approval process for the admission of new members. As friendly society members, customers are eligible to obtain the benefits that the membership brings, such as special discounted prices. Customers who are members of loyalty clubs in other pharmacies also receive benefits including special prices. It is a useful marketing tool but it does not mean any reduced taxation obligation for the business. Has the Taxation Office bothered to audit the friendly societies and their membership systems? I think not.

The ACCC recently conducted an inquiry into this issue. Its main finding was that, while this tax benefit did not give friendly societies’ pharmacies a competitive advantage, it nevertheless agreed that they did have a tax advantage. Frankly, if you have a tax advantage you have a competitive advantage, so I have not understood that; anyway that was its finding. Its report incorporated a table showing that, in the case of a friendly society pharmacy making a net profit of $100,000, the application of the mutuality principle would reduce the taxable income by $25,000 to $75,000. At the corporate tax rate of 30 per cent, the amount of tax payable would therefore be $22,500, rather than $30,000. The report states:

… this equates to a $7,500 benefit under the mutuality principle.

The friendly society dispensaries businesses date back to the late 19th and early 20th centuries. They were formed to supply pharma-
ceutical products and other benefits to their members who, for the most part, were from disadvantaged groups. This was at a time when there was no Pharmaceutical Benefits Scheme in place to provide equal access to essential medicines. Life has moved on. These are now commercial enterprises and should be taxed accordingly. They have complex and sophisticated corporate structures. They participate in aggressive marketing campaigns for ‘non-therapeutic’ stock, such as French perfumes and expensive cosmetics, and they appear to be no different from any ordinary commercial venture for profit on a large scale.

The Friendly Society Medical Association Ltd, FSMA, trading as the National Pharmacies group of pharmacies, is one such example. This group states in its statutory accounts that it is a friendly society. At the same time it describes itself as being the largest retail pharmacy chain in Australia, owning 44 pharmacies in total—31 in South Australia, 12 in Victoria and one in New South Wales—and with further expansion earmarked, especially in Victoria. FSMA reported a turnover for the 2001 financial year of $153 million and had net assets of over $43 million. Its stated net profit was $3.87 million. One FSMA-owned pharmacy in South Australia is believed to have an annual turnover of approximately $19 million. The Victorian Friendly Society, Australian Unity, has 17 pharmacies operating throughout the Melbourne metropolitan area. I am told increasing numbers of these pharmacies are located in the wealthy eastern suburbs.

According to the Australian Friendly Societies Pharmacies Association, as of March 2002 there were 120 pharmacies owned by friendly societies nationally, and two groups account for 50 per cent of these. So that is 120 businesses not paying their fair share of tax. Friendly societies’ pharmacies are rapidly expanding, with over 57 of the total 120 being owned in Victoria alone. Of these, 17 opened in the last three years. Why wouldn’t you open if you are going to get this tax lurk? As numbers continue to increase, so will the amount of lost tax to the government. National Pharmacies has over the years developed a structural and competitive advantage over other community pharmacies. As a large sophisticated corporate structure, it has been able to set up its own wholesaling operation and buy in large quantities direct from manufacturers, which gives it purchasing power over other community pharmacies.

The tax benefit that National Pharmacies has enjoyed over the years has assisted its pharmacies to develop into high-turnover retail outlets and, in particular, has enabled National Pharmacies to expand its numbers. It is tantamount to giving a large supermarket chain a tax advantage over a corner grocery store. Do National Pharmacies meet the mutuality criteria or not? What view do Treasury and the Australian Taxation Office take? The ATO should report on this matter and Treasury should take a look at it. More specifically, the ATO should tell us whether friendly societies’ pharmacies are Clayton’s mutuals and receive a tax benefit to which they should not be or should no longer be entitled. My view is that they are companies trading as ordinary retail businesses, actively promoting their services to the general public. I do not have a quarrel with the work they do and the job they do—they are good retailers—but they should pay tax at the normal corporate rate on all their business transactions, just as all those super clubs in New South Wales and other parts of this country should.

Indigenous People: Wages

Senator CHERRY (Queensland) (9.52 p.m.)—I rise to speak on the issue of economic justice for the Indigenous people of
Queensland. For 10 years damning evidence has been accumulating about how successive governments in Queensland controlled millions of dollars of Aboriginal savings and trust funds, evidence gathered from critical audit reports, Public Service inquiries and complaints by government officers themselves relating to the misuse of these monies.

For 30 years former workers and their families have been struggling for their missing, underpaid and unpaid wages. These were the skilled stockmen, drovers and cooks whose labour built our outback; skilled tradesmen and women whose labour built and ran the missions and settlements to which so many were transported against their will. Only in the 1970s did they find out the terrible cost of government management of their wages and savings; only then could they start to demand answers of those who controlled their labour and controlled their lives. They and generations before them had endured a lifetime of poverty on the promise that their money would be kept safely for them. What had happened to the decades of savings to which they had been refused full access? What had happened to child endowment and pensions never fully paid to them? Where are these stolen wages?

These questions are as relevant today as they were then. This happened to thousands of people across the state, not only on communities but those who had braved it out in towns, cities and suburbs. Imagine if, after working many years, you finally saw your bankbook and, instead of a comfortable nest egg to reward your hard labour, you found there was little left. The authorities in charge of that money then tell you they do not know what happened to it and there is nothing you can do. To add insult to injury, the Queensland government, acknowledging the mistakes of earlier governments, offers a puny $2,000 or $4,000 in ‘compensation’, telling you it is a generous gesture of reconciliation.

The Beattie government has categorically refused to discuss either the quantum or the conditions of the current settlement offer, which has been scorned as an insult and a pittance by many whose poverty is so dire that they will nonetheless accept it. Yet the same government has managed to find $150 million for compensation for farmers to prevent them clearing native vegetation. One economic injustice, denying farmers the right to rape and pillage the land, is paid for. The more serious injustice, a generation of stolen wages, is acknowledged only by a token gesture. This is not history. This is the current reality for many Queensland Indigenous people. Endemic and intergenerational poverty has been caused by these practices and a level of financial security any other hardworking Australian reasonably expected was never on offer to these people or their families. And yet they were and are blamed for their poverty.

I am pleased to report to the Senate that the stolen wages has been recognised as a legitimate workers’ issue by trade unions and community groups in at least two states and nationally by the ACTU. In the week over May Day this year and representing a coalition of Indigenous organisations in Queensland, Palm Island Councillor Alfred Lacey travelled to Melbourne at the invitation of union group Australia Asia Worker Links and spoke at a number of meetings and rallies which involved key people in the fight for workers’ justice.

During one of the busiest weeks of the year around trade halls across the country, unionists took the time to hear this story and offer what help they could. Armed with the knowledge of support from a few informed and high-profile people such as Human Rights and Equal Opportunity Commissioner
Bill Jonas, a resolution of support from the Queensland Council of Unions and his own life story, Mr Lacey met and marched with national presidents and secretaries, organisers and supporters. Australian Metal Workers Union health and safety officers listened to his story and demanded to know why they had not known about this issue before. Maritime Union of Australia National President John Higgins and Victorian Assistant Secretary Dave Cushion offered their full support to this campaign and Victorian Trades Hall Council Secretary Leigh Hubbard, along with ACTU National President Sharan Burrow, have willingly committed themselves, their organisations and their resources to this issue following the example set by Queensland Council of Unions Secretary Grace Grace and her executive in supporting this issue for what it is and means to these Indigenous working people.

The QCU, the Victorian Trades Hall Council, the ACTU, the AAWL, the MUA, the CFMEU, the CEPU, the AMWU, the AMIEU, the NTEU and a growing number of other unions with wonderful acronyms along with the Australians for Native Title and Reconciliation in Victoria, Queensland and nationally, have lent their full support to these workers and with that support a full and national public awareness campaign will be launched in early August right across Australia.

They are doing this in the belief that Australians have both a right and a responsibility to know of these things and that these workers have the right to be respected for their contribution to this nation as a whole, first and foremost in the way any other worker expects to be recognised, which is to be properly paid, and the records should indicate what they are owed. Unions and community groups have offered resolutions, ideas, moral and financial support because they know this issue has not and is not going to go away until these workers’ entitlements are recognised and just reparations are put into place by the Queensland government and by other governments around Australia.

They recognise these workers are still living with the legacy of their days, weeks and years of enforced labour, along with the knowledge that their wages were held in trust by the government, the money went missing, and they are still owed. There is a danger that the Queensland government’s current offer for reparation sets a benchmark for workers in other states who had moneys which were rightfully theirs held in trusts by other governments at the time, a concern shared by my New South Wales colleague Senator Aden Ridgeway.

Calls for a national report on this issue were initiated earlier this year by Justice Marcus Einfeld with the objective of detailing the controls over Indigenous wages and savings in every state. The report, which will need and expect senators’ support, will also investigate other financial controls concerning the taking of money which rightly belonged to Indigenous people—child endowment in particular but also war pay and other pensions and securities made available to and left in the control of other Australians without a second thought.

Previous governments throughout the country have consistently failed our Indigenous people who contributed enormously to this country’s prosperity today. We cannot and should not ignore this issue any longer. We must pursue this national investigation with vigour; indeed preliminary research reveals financial confiscation occurred across every state and territory in Australia. The Democrats, for our part, are determined to push this agenda, and to stand with the Indigenous people of Queensland and other states in pursuing economic justice. We will continue speaking out on this matter again.
and again until justice for these Indigenous workers, to their satisfaction, is delivered by governments, starting with the Queensland government.

Queensland Department of Families
Hamilton Senior Citizens Centre

Senator SANTORO (Queensland) (10.00 p.m.)—The tragic circumstances that are unfolding in Queensland in relation to gross abuse of young children by, it seems, one particular foster family, are an indictment of the state government’s mishandling of a vital area in which it has a primary duty of care. That is sad. It is not something about which one would want to make a partisan point, and tonight I am not seeking to do that. I have chosen to speak on this topic tonight because what has been revealed is shockingly horrible even if, as one must hope and pray, it is an isolated instance.

The overwhelming majority of foster families are fine Australians with a commitment to caring that would put most people to shame. They deserve our gratitude and our applause as well as our support. As a community, as these fine foster parents understand clearly, we hold our children in trust for the future. They are literally the future of our country. Abuse of any kind, particularly abuse of a sexual nature, is abhorrent and cannot be tolerated. In the particular case in Queensland of which I speak, the situation is made worse by the fact that the state government, when it gets found out, just says, ‘Well, if there’s anything wrong, we’ll fix it.’ But they do not do that. As I noted in a speech on the Queensland budget just last week, the Queensland government has committed no new frontline staff to that key family services area. This is despite its own admission that reports of suspected abuse are growing at around eight per cent a year.

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. We cannot afford another Beattie solution—the smoke and mirrors solution. We have to establish what the extent of the problem is. We must tally up the extent of the abuse. We must find out how it occurred. We must discover how the problem has grown. Child abuse will occur in any set of circumstances and under any government—I admit that. That is reprehensible and regrettable, but unavoidable, fact of life. The problem now is that under the Beattie government an endemic situation seems to be getting out of control. And it is crystal clear that, in the circumstances now alleged, a very serious investigation is required. This may not require a royal commission, but if that is what it takes that is what I am suggesting here tonight.

The Queensland Minister for Families, Judy Spence, who represents the seat of Mt Gravatt in the Queensland legislature, has now ordered an immediate audit of the state’s 2,000 foster carers. She is, in time-honoured fashion of governments that are more interested in photo opportunities than in meeting their real responsibilities, shutting the stable door after the horse has bolted. According to the evidence that has so far come to light, the Queensland Department of Families has repeatedly been told of evidence of continuing sexual abuse of foster children by the family concerned. It is alleged that two girls under 10 contracted venereal diseases while with the family in 1994 but were not removed from their care. In fact, we are told, no children were removed despite authorities admitting that the family should not be responsible for children.

Finally, authorities removed 16 children from the care of the family at two houses north-west of Brisbane on 30 May this year.
According to the *Courier-Mail*, Department of Families documents show officers knew of abuse dating back to 1990 but failed to act. If this is the case, and a properly constituted inquiry would certainly establish this—unless the Crime and Misconduct Commission, which is already investigating, does so first—then the state has completely failed in its duty of care. No-one in the present Queensland government can possibly claim they did not know of the widespread community and departmental disquiet over the capacity or the lack of capacity of the Department of Families in relation to children in state care or whose cases were under state administration.

In the House of Representatives on 13 May this year, my colleague the member for Petrie, Ms Gambaro, had a lot to say about the dismal failure of the Beattie Labor government in Queensland to properly administer the Department of Families, either under the previous state minister, Anna Bligh, or the present minister, Judy Spence. Ms Gambaro told the House of Representatives that, as participants at a recent COAG meeting had acknowledged, child abuse remains a major problem in the Australian community; it was one of the most difficult areas for the states and territories to administer. But as Ms Gambaro also said, this is no reason to condone the Queensland government’s failure to commit funds and resources to the area of child protection. Child protection funding in Queensland fell from $84.4 million in 1998-99 to $59.5 million in 2001-02. Yet this year, GST revenue is expected to provide Queensland with an extra $400 million it would not have received without the new tax system.

Figures recently tabled in the Queensland parliament also show that, since 1998, only one out of 913 convicted sexual offenders in Queensland had received the maximum 14-year jail sentence, and two had received seven-year sentences. Last December, Minister Spence was forced to admit that more than one in four family service officers were temporary or relief staff. For years there have been reports of major problems in family services. Yet all Ms Spence could say when confronted with the backlog of 8,396 children awaiting state help was, ‘Look, we’ll get 15 computer experts to come in and help us with the paperwork.’ Ms Gambaro noted in her speech last month that this was not good enough. I underline her comment here tonight in the light of the appalling circumstances that have now come to public attention.

No-one can say that the reports that reached the public, even though untested by the rules of evidence or it seems having benefited from actual investigation, had not been immensely disturbing for a number of years. The time line, as we know, is instructive. In August 1988, five children were fostered by the family after a court order that they be removed from their natural parents amid suspicions of sexual abuse. In December 1992, a sexual assault on a girl in the care of the family is alleged. She remains in care. In October 1994, two girls under the age of 10 are found to have sexually transmitted diseases. They remain in care. In September 2000, four children remain in care despite documented concerns about high-level sexual abuse. In May 2003, 16 children are removed from care.

There is one last aspect of this sad case that needs to be canvassed so that it too is open for debate in this place. It is that the alleged abusers in this instance are Aboriginal people. As far as I am concerned, and I am sure as far as the vast majority of people are concerned, the Aboriginality of the alleged perpetrators of this gross abuse is beside the point. It is not relevant except in one
area: if it were to be found that these people were not thoroughly investigated because they were Aboriginal, then the state authorities have doubly betrayed Aboriginal Queenslanders by their inaction. And that too is a tragedy.

On a far happier note, tonight I also wish to mention the good work done on behalf of senior citizens by the Hamilton Senior Citizens Centre. The Hamilton Senior Citizens Club is home to some of the fittest senior citizens in our community. They can be found every Monday and Friday playing indoor bowls at the Hamilton Senior Citizens Hall on Kingsford Smith Drive on the Brisbane River. Bowlers from all Brisbane suburbs are welcome. Games are played from 9.30 a.m. to 12 noon and, in keeping with the type of people that are playing, it costs players only $1 for the four games played, and they get free tea and biscuits. Occasionally interclub bowls are organised where other clubs visit Hamilton and Hamilton will visit other clubs.

The senior citizens hall at Hamilton is a Rotary sponsored project. It grew out of a 1967 survey by Dr Bruce Spork, the then community service director of Hamilton Rotary, to establish community needs. In 1968, an inaugural committee of the district old people’s welfare committee was formed and they established the Hamilton Senior Citizens Club. Mr Frank Spork became president of the welfare council in 1969 and, with Lily Spork and Erwin Spork, was largely responsible for acquiring the land and erecting the premises. The building was financed by the fundraising activities of club members with assistance from Hamilton Rotary, Eagle Farm Lions Club and local businesses—with large subsidies from the state and the Commonwealth governments.

The present committee, comprising President Norman Wilson, Treasurer Athol McLennan, Secretary Ron Gray and committee members Agnes Dahl and Pat Darch, are certainly doing as much as ever and the club is thriving. Athol McLennan is a former president of the club. Other former presidents are Cliff Allnutt and Mal Percival, who served with distinction. Agnes Dahl has been on the management committee at Hamilton Senior Citizens Club for more than 20 years. She is the only member representative on the committee, all the other members being Rotarians. She also organises the indoor bowls section of the club. In other words, she is a very busy lady. She is also in her mid-eighties—a time in most people’s lives when they are entitled to take it easy.

Agnes and her late husband, Cyril, both played a leading role in the senior citizens group since its formation in the early 1970s. Cyril passed away some years ago and since his death Agnes has worked continuously to keep the bowls section active despite a continuous fall in overall club membership numbers. It is people like Agnes who demonstrate the true strength of the human spirit. For that, I believe she deserves applause. And for her public service within her own community, she deserves to be recognised by the wider community.

I am sure that all people in this place would agree that Rotary is a wonderful organisation. At this point, I declare an interest here: I am a member of Hamilton Rotary Club and a proud one at that. Tonight I say congratulations and thanks to the Hamilton Rotary Club and to all those involved with the running of the Hamilton Senior Citizens Centre—a centre that does so much good for our elderly citizens.

**Senate adjourned at 10.08 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:
Aboriginal Land Commissioner—Report and explanatory statement by the Minister for Aboriginal and Torres Strait Islander Affairs—No. 64—Garrwa (Wearyan and Robinson Rivers beds and banks) land claim no. 178.

Military Superannuation and Benefits Scheme (MSBS) and Defence Force Retirement and Death Benefits Scheme (DFRDB)—Report on long-term costs carried out by the Australian Government Actuary using data to 30 June 2002.

Public Sector Superannuation Scheme (PSS) and Commonwealth Superannuation Scheme (CSS)—Report on the long-term cost of the Public Sector Superannuation Scheme and the Commonwealth Superannuation Scheme prepared by Mercer Human Resource Consulting Pty Ltd using data as at 30 June 2002.

Tabling

The following documents were tabled by the Clerk:


Christmas Island Act—Regulations 2003 No. 1 (Residential Tenancies Act 1987 (WA) (CI)).

Cocos (Keeling) Islands Act—Ordinance—No. 1 of 2003 (Local Government Act 1995 (WA) (CKI) Amendment Ordinance 2003 (No. 1)).


Fisheries Management Act—Regulations—Statutory Rules 2003 No. 112.


National Health and Medical Research Council Act—Guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research, endorsed 5 June 2003.


Passports Act—Regulations—Statutory Rules 2003 No. 120.

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act—Regulations—Statutory Rules 2003 No. 131.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Fuel: Ethanol Excise
(Question No. 1278)

Senator O’Brien asked the Minister representing the Treasurer, upon notice, on 19 March 2003:
(1) Did the Government give a commitment during the 2001 Federal election campaign to maintain the excise exemption for fuel ethanol.
(2) Did the Treasurer reaffirm this election commitment in a media statement published on 14 May 2002 in response to the report of the fuel taxation inquiry.
(3) Did the Government announce it would impose a fuel excise on fuel ethanol on 12 September 2002.
(4) Has the Government imposed an excise of 38.143 cents per litre on fuel ethanol since 17 September 2002.
(5) Is it not the case that the imposition of excise on ethanol is a clear breach of an election commitment and contradicts the Treasurer’s commitment on 14 May 2002.

Senator Minchin— The Treasurer has provided the following answer to the honourable senator’s question:
(1) Refer to the Government’s Biofuels for Cleaner Transport policy announced on 31 October 2001.
(2) Refer to the press release of 14 May 2002.
(3) and (4) Refer to the Prime Minister’s press release of 12 September 2002.
(5) No.

Manildra Group of Companies
(Question No. 1282)

Senator O’Brien asked the Minister representing the Treasurer, upon notice, on 19 March 2003:
What payments, subsidies, grants, gratuities or awards have been made to the Manildra group of companies, including but not necessarily limited to Manildra Energy Australia Pty Ltd, since March 1996.

Senator Minchin— The Treasurer has provided the following answer to the honourable senator’s question:
The Treasury does not possess any information relating to payments, subsidies, grants, gratuities or awards that have been made to the Manildra group of companies, including but not necessarily limited to Manildra Energy Australia Pty Ltd, since March 1996.