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

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (No. 1) 2002
AUSTRALIAN HERITAGE COUNCIL BILL 2002
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2002

Second Reading

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

That these bills be now read a second time.

Senator BROWN (Tasmania) (9.31 a.m.)—In the earlier debate on the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002 I outlined what is wrong with this legislation. I could not summarise it better than Tom Uren, a former minister in a number of Labor governments, who has taken an enormous interest in the Australian environment, not least a key role in protecting some of the natural areas around Sydney Harbour in recent years. In today’s Canberra Times Tom Uren says about the legislation before us:

As every year passes the threat to our environment grows, not only in our own country but to the planet. Australia needs a legislative body that stands above party politics. The AHC is such an authority.

The nation has the Australian Broadcasting Corporation as an independent body in relation to broadcasting and communications. We have the Reserve Bank on monetary matters and the economy. It is imperative that we have an independent authority on heritage and environment issues.

The Information and Research Service of the Parliamentary Library, describing the opposition to the bill, indicates that the Government intends to transfer major aspects of the commission’s authority to the minister. The research council concludes: “The new council will have considerably less freedom of independent action than the AHC”—the existing Australian Heritage Council. Further on, Tom Uren says:

The now Emeritus Professor David Yencken—who was Chairman of the Australian Heritage Commission—gave evidence in 2001 before the Senate Environment Committee... He spoke on a joint submission by seven former commissioners, including five former chairs of the commission.

Professor Yencken said that the proposed bill contained some positive elements but noted obvious deficiencies. He said that the maintenance and continued development of the National Estate would be jeopardised by the change. Responsibility for listing should rest with the council as it now does with the commission and the council should retain all the powers of the existing commission.

I have advocated to senators that Parliament can strengthen the commission’s powers but the ministerial control would suffocate it.

And there is the rub. This legislation effectively transfers the powers of the existing Australian Heritage Commission to the minister. It gives the minister a veto. It puts the negative hand of politics, as practised over
recent decades, as overriding the independent authority of the Australian Heritage Commission. There are senators who, quite rightly, point out that the commission does not have sufficient powers. That is why we should build up those powers, but not at the expense of clobbering them by transferring the ultimate authority of what is listed and what is not listed as Australian heritage to the minister of the day, who then comes under the pressure of corporate and other sectional interests and a political decision is made, rather than a decision on the environmental and heritage merits.

On behalf of the Australian Greens, I will be moving a number of amendments to include a greenhouse trigger in the environment protection legislation, to include a trigger for land clearing—and that means forest destruction—and to replace the amendments made by the government and the Democrats some years ago which removed logging of Australian forests from the purview of this legislation, because it should be one of the central issues. Instead, the minister’s authority nationally was removed; the government’s authority to intervene on logging of heirloom and iconic forests and wildlife in Australia was removed. I will be making special efforts—and I hope the minister will listen to this—to find out what is happening with the listing of Recherche Bay in southern Tasmania, the site of the oldest intact European structure in Australia, which is imminently threatened by logging. (Time expired)

Senator LUNDY (Australian Capital Territory) (9.36 a.m.)—I rise today to recap Labor’s position, following several of my colleagues having spoken in the second reading debate on the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002. Australia’s heritage regime was put in place by the Whitlam government. It has served Australia well. Although most agree that it needs some updating, it is an exemplary scheme which has been recognised worldwide. The government has its sights set on reforming this heritage regime. In 2000, it brought in legislation which was later amended and we are now debating further amending bills in the Senate.

Labor is concerned that the government’s plans will wipe out the gains made in heritage protection since 1975 and set the clock effectively back to zero by dismantling the existing Register of the National Estate. About 12,000 items of heritage are currently protected, but only about 500 of those would be transferred directly to a replacement register. The rest would be caught in limbo and have no protection. Labor is also concerned that independent decision making about heritage will be replaced by a politicised system that allows the minister to make the decision. The Heritage Commission is the existing decision making body, and it is proposed that it will be replaced by an advisory heritage council—effectively transferring power from an independent body into the hands of the minister.

The government amended the current heritage bills to address some but certainly not all of the concerns raised about its original plans for a new regime during the Senate Environment, Communications, Information Technology and the Arts References Committee inquiry into the bills. Whilst this new version has satisfied some of the detractors of the 2000 version of the bill—including the International Council on Monuments and Sites and the Aboriginal and Torres Strait Islander Commission—the Australian Conservation Foundation and a group of former chairs of the Australian Heritage Commission, as well as former Labor colleague Tom Uren, are indeed strongly opposed to it. I note, Senator Brown, that I too was going to
make reference to the article published today in the Canberra Times by Tom Uren stating very clearly his views on the future of the Heritage Commission and his vehement opposition to the changes proposed to it under this legislation.

The bills use the existing Environment Protection and Biodiversity Conservation Act framework to establish a national scheme for heritage assets and replace the Heritage Commission with a heritage council. There are three bills in the package: the Environment and Heritage Legislation Amendment Bill (No. 1) 2002; the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002, which repeals the Australian Heritage Commission Act 1975; and the Australian Heritage Council Bill 2002, which has the purpose of creating the proposed successor to the commission.

In conclusion I would like to make reference to my colleague in the other place Mr Kelvin Thomson and his presentation in that chamber about Labor’s primary concerns about these bills. Firstly, the present Heritage Commission has a broad range of functions, and its replacement, the Australian Heritage Council, will be an advisory body only. As I said before, this will represent a transfer of power from an independent body to, effectively, a minister’s office and a very political body. Secondly, the definition of actions which trigger heritage consideration has been narrowed, deleting matters such as the provision of grants and the granting of authorisations. Thirdly, the decision to list places presently lies with the Australian Heritage Commission. The government proposes to transfer this previously independent, technical, merits based decision to the minister.

Fourthly, the government is proposing to reduce the heritage protection provided from what is known as ‘a place and its associated values’ to just ‘the values of the place’. Fifthly, the government has not honoured its commitment to transfer Commonwealth places on the existing Register of the National Estate to the new Commonwealth Heritage List. This failure could have important adverse consequences for the future of Commonwealth assets around Australia, such as the Georges River in Sydney and Point Cook and Point Nepean in Victoria. I will refer to some of those matters during the committee stages of the debate. Finally, the Australian Communications Authority has to consider the impacts on the environment regarding communications facilities where a place on the Register of the National Estate is affected. The Commonwealth proposes to remove this provision.

With all of these issues on Labor’s mind, we will be moving a series of amendments to each of the bills in the committee stages of this debate. As my colleagues previously have made very clear, unless Labor’s amendments—which will have the effect of maintaining the Heritage Commission with its current powers—are accepted, Labor will not be supporting these bills.

Senator LEES (South Australia) (9.42 a.m.)—This package of bills that we are debating—at last—today is a major step forward in the protection and conservation of places of heritage significance across Australia. Perhaps most importantly, it provides real recognition for the value of Indigenous heritage and culture. I will be moving a series of amendments that strengthen the package as we get into the committee stages. I will go through those in detail and respond to some of the comments that have already been made here this morning when we get into the committee stages of the bills. What is important is that the government has accepted these amendments, and they do considerably strengthen this legislation that is before us today.
This package has had a long history. It goes back to the days of Labor government—indeed, it formally began the process in 1996 when the Australian Heritage Commission embarked on a consultative process aimed at developing a national heritage strategy that actually worked. What I do have to emphasise here is that it was a Labor government that put all of this in place—that actually acknowledged that the existing system did not work—and put in place a consultative process that has involved all those groups and organisations with any interest in this issue. I also note, in light of the opposition’s continuing opposition to the bills, that the basis for the national heritage listing policy is an intergovernmental agreement signed in 1997 by all state and territory governments, as well as the Commonwealth and the Local Government Association. So this is not just something that the current government has thought up and, on a whim, introduced into this place.

What has driven all of these concerns and all of this action is the fact that, for too long, environment and heritage legislation in Australia has been piecemeal and toothless. There were a lot of good intentions, but on the ground the laws were useless if you actually wanted to protect places, species and matters of Commonwealth interest from what you could describe as the eternal enthusiasm of developers and those who want to take down the old and replace it with the new. That did not just include private developers; it also has included state and local governments. There were no third-party provisions under environmental law. The resources minister could make decisions without regard for the environment minister’s advice. Marine species were largely unprotected. Action was almost impossible if the environment issue was not on Commonwealth land, et cetera, et cetera.

A lot of these problems were dealt with by the passage of the Environment Protection and Biodiversity Conservation Act 1999. Under the EPBC Act—and I must add that over 500 amendments were made to the government’s original bill while I was leader of the Democrats—it is the environment minister who gets to make the decision, not the resources minister, and matters of national environmental interest now apply to all Commonwealth land. Third parties can take, and in a number of cases have taken already, successful action to protect the environment when the government has not done the job properly. In other words, individuals now have standing in court. Under this act, they can put their case for the protection of a particular area, species or issue and they have standing and the right to be heard. They have been heard. There have been a number of cases where successful action has led to significant penalties and, in one case, imprisonment.

The Heritage Council bills are the next step. The old heritage legislation—the Australian Heritage Commission Act 1975—was effectively a feelgood piece of legislation, and previous speakers have acknowledged this today. Many thousands of places were entered onto the Register, or the temporary register, of the National Estate but then were forgotten. The old act gave very little protection to places listed on the register. For the first time, this new package of bills draws heritage into the EPBC legislation and, as a consequence, they become an integral part of the national environmental protection system. They establish a Commonwealth Heritage List which imposes far greater requirements on the Commonwealth government’s heritage agencies that manage the government’s heritage portfolio. The bills establish a National Heritage List which imposes substantial responsibility on the Commonwealth government for the management of places that are entered onto the
The bills provide a new listing system to ensure heritage values are covered by a sixth trigger under the EPBC Act. The Commonwealth will have considerable power to protect the identified values of listed areas.

It is important to note that the legislation is designed to protect values, not areas. The criticism by Senator Lundy a moment ago—and I will work through this issue in the committee stage—is in fact a positive. It is in recognition of the fact that much of our cultural and national heritage is to be found on leasehold or private land. The intention is to enter into management agreements with existing landholders to protect values and not to acquire land for reservation, unless that is what the owner wants to happen.

Today, in my speech to the second reading debate, I am not going to spend too much time explaining why I am supportive of the package of bills, because I have been told by a number of those who are opposed to this legislation that I should not trust the government. I will work through the plethora of organisations and individuals who deal with these issues day by day. I will talk about their interests in seeing this legislation passed and their support for what is being done to protect our natural and built heritage and to make some real progress by putting these places in a far more secure position than they are in now. I will use this opportunity to go through a few comments from those organisations.

I will start with ATSIC because I understand there has been some confusion about where ATSIC stands on these bills. This morning ATSIC Commissioner Rodney Dillon, who has been delegated the responsibility of dealing with these important bills, told my staff that he welcomes this package of bills because it is a lot stronger than the current regime and that ATSIC is pleased with the minister’s recognition of the values of Indigenous heritage and culture. Mr Dillon believes, as many do—indeed, I do—that we can still improve things further, that this is a significant step forward and that it is better to take this step now and continue to work on any improvements in the future.

I have received a great deal of correspondence from the Australian Council of National Trusts. Their most recent briefing paper states:
The National Trust and all the groups that have a specific interest in heritage support the revised Bills.

The council outlined the main community benefits of the legislation as: enhanced protection of heritage places, especially heritage places of national significance, with potential benefits such as better environmental and social outcomes; greater opportunities for community input into heritage assessments and approvals; early triggering and a more certain process with explicit time lines ensuring community comment is considered sooner in the development process; all decisions will be transparent, and information will be available to the public; and national heritage listing will provide tourism benefits for regional Australia and Indigenous communities. Another letter from the Council of National Trusts emphasised:
The passage of these Bills is necessary in order to enable the Commonwealth to take its proper national role in the identification and protection of heritage places, and in the essential support for community education regarding the value of heritage to communities throughout the nation.

In a combined briefing paper from the World Wide Fund for Nature, the Humane Society and the Tasmanian Conservation Trust, the proposed new regime in this legislation was referred to as:
A substantial improvement on that which operates under the Australian Heritage Commission Act 1975 and constitutes a momentous step forward...
for the protection and conservation of places of heritage significance.

The same brief, which was written by the current adviser to the Democrats, emphasises the fact that the Australian Heritage Commission Act 1975 ‘contains a fatal flaw’—the current regime ‘provides very little statutory protection for places on the Register or Interim List’. For example, the brief points out that, under the current regime, there are no criminal or civil penalties for failing to comply with the act. In the new legislation there are serious penalties for failing to obtain proper approval for an activity that is likely to have a significant impact on the national heritage values of a national heritage place. The penalties include seven years in prison, up to $5½ million in fines for corporations and up to $550,000 fines for individuals.

I simply cannot understand the reasons for the intransigence of a number of senators. Despite listening to speeches on the second reading, I do not understand what it is that is deterring some senators from supporting this legislation. The Humane Society International, in its winter parliamentary briefing, said:

We view the proposed legislation to be an advance on existing laws to protect Australia’s natural and cultural heritage and urge all parties to give them their support.

The Australian Heritage Commission in their press release of 18 June 2003 stated that these bills represent ‘the largest advance in heritage protection in 25 years’. They added:

Not only are the existing arrangements maintained but there is, for the first time, a whole new suite of provisions ensuring rigorous statutory protection of national and Commonwealth heritage.

They go on to say:

The new heritage amendments will provide a far greater set of tools to protect heritage places compared to the ‘empty tool box’ of the existing Heritage Act.

In addition to the groups I have already mentioned, I will just list others that support this legislation. They are the Australian International Council on Monuments and Sites; the Institution of Engineers Heritage Committee; the Federation of Australian Historical Societies; the Australian Academy of the Humanities; the national heritage chairs and officials, who represent the state and territory Heritage Councils; the Royal Australian Institute of Architects; the Australasian Society for Historical Archaeology; the Australian Institute of Archaeology; the Property Council of Australia; Museums Australia; and Winda Mara Aboriginal Corporation. Just to discuss that last organisation, their spokesperson contacted my office recently urging us to support these bills, emphasising his disappointment that those senators who are opposing the bills have not consulted Indigenous people at community level.

Another important aspect to emphasise in today’s debate is that the passage of these bills will unlock one of this year’s budget measures, the new, distinctively Australian National Heritage Initiative, worth $13.3 million over four years. If these bills do not pass, that $13.3 million cannot be spent.

Preliminary identification of important national heritage themes will begin as soon as the legislation is enacted. The extent of heritage values associated with each theme will then be determined and owners and managers of relevant areas will be invited to have parts of their properties entered on the national list of heritage areas of national importance. Funding can then be made available to assist and support owners and managers in maintaining the heritage values of their particular listed areas.

Before I conclude today, I want to provide an example of how the current regime is fail-
ing. Had this legislation been in place a year or so ago—indeed, when it was last debated, which was late last year—a very significant piece of land in New South Wales would have been saved from development. This site is a 59-hectare heritage site at Castle Hill which is known as the Third Government Farm. The site was registered on the Australian Heritage Commission’s national heritage estate database on 25 March 1983. It was passed into the care of the New South Wales government and was listed in December 2000 on the New South Wales state heritage register as the Third Government Farm, listing No. 01448. However, the New South Wales listing is only for 19 hectares and a development company has now successfully tendered for a 100-hectare commercial, residential and retail development called Rouse Hill regional town centre. Unfortunately, construction is beginning. This is a very sad indictment of the current heritage listing regime. The fact that a site of such significance can fall through the many gaps between the state and territory and national heritage regimes is just one of the many reasons that change is necessary.

There are still some in this chamber who will argue that we should not be supporting this legislation because it does not go far enough, that we should hang out for bigger improvements or quite significant changes to the EPBC Act. But surely they should also recognise that what we have here today is a major step forward. Basically their argument boils down to whether or not we are going to take a small step—the heritage groups argue, and I argue, that it is a significant step, but at least those senators in their speeches on the second reading have acknowledged it is a small step in the right direction—or make no improvements whatsoever. As we make this very important step, I urge senators from all political parties to look again at the problems with the current regime, to look at the potential that this legislation has and at how well the EPBC Act is working to protect species and places and to agree that we should put in, as an additional trigger under the EPBC Act, Australia’s heritage.

Senator HUMPHRIES (Australian Capital Territory) (9.57 a.m.)—I rise today to strongly support the legislation which is before the house and to commend to the house what has been a very long and difficult process to take steps to enhance the legal regime in this country to protect our national collective heritage. Obviously our heritage is a vitally important part of making out who we are. Our heritage tells us who we were in the past and indeed who we are in the present. It is an important part of our development as a nation, our national development as a unique experience, and it is educated by our heritage. It is therefore incumbent on us to ensure that that heritage is properly protected.

The three bills which are before the Senate today meet the objectives of protecting our national heritage. The Environment and Heritage Legislation Amendment Bill (No. 1) 2002 establishes the Commonwealth’s responsibilities for the identification, protection and management of heritage places of national significance. Heritage sites identified will be registered on a National Heritage List which retains its statutory identity. They will include natural, historic and Indigenous places of outstanding national heritage value. The National Heritage List will create opportunities to celebrate, commemorate and safeguard places that recall significant themes in Australian history and will also protect features of our natural environment which are treasured and worth protecting.

Senator Lundy mentioned that there were presently some 12,000 places on the Register of the National Estate, established under the Australian Heritage Commission Act 1975. My advice is that there are presently in fact
more than 13,000 places on that register. I am also advised that the register will be retained in accordance with the commitment made by the government at the 2001 federal election. Under the legislation, a significant change in the decision-making process is effected. That change is that the minister will make decisions on additions to the National Heritage List on the advice of the Australian Heritage Council.

Senators have risen in this place to criticise the fact that the minister would under this regime retain that final decision-making power. I think it is important to recognise that decisions about the adding of names to a heritage list and the consequences of those decisions are matters of significant political gravity. It amazes me how often we hear from people in this place, who are practitioners in democracy, that there should be some process other than a democratic one to resolve particular issues. In other words, it amazes me when people suggest that people other than elected governments should make decisions on matters of great national consequence. The minister is the appropriate person to make those decisions at the end of the day. Yes, the minister must act taking full account of advice given to him or her by the Australian Heritage Council. I dare say that, without prescribing the minister’s discretion, the minister would rarely act outside the advice given to him or her by a body consisting of important and recognised experts in the field of heritage.

It has been the case in Australia’s history—including in its recent history—that matters of heritage listing have been intensely political matters. It has been a matter of record that those matters have carried with them enormous consequences—politically, socially and fiscally—and in those circumstances it seems to me only appropriate that an elected minister, a minister with the authority of a mandate from the people of Australia, should make final decisions about whether or not items are listed on the National Heritage List.

The bill also ensures that Commonwealth agencies have greater management responsibilities in relation to Commonwealth heritage places. It has amazed me, in looking at this legislation, that up until now simply inadequate protection has been provided and inadequate processes have been in place with respect to Commonwealth owned assets that might be included in a national list. I am very pleased to support this legislation because, as a heritage and environment minister in the ACT quite some years ago, I was involved early on in making sure that this process was kicked along. I supported the decision taken by the Council of Australian Governments in 1997 to support this process and to bring this process forward. I would have been surprised at that time had I known that the final debate on this legislation was still some six or seven years away.

Nonetheless, it is, in the process of debating this bill, worth looking at the extensive consultation which has characterised the development of this bill and which commends itself to us when we consider whether to pass the bill. The bill is the culmination of at least six years of community consultation and discussion. Not only was there the unanimous decision of Australian governments in 1997 to support the process which led to this legislation but also there was the 1998 National Heritage Convention convened by the Australian Heritage Commission. During 2000, as the legislation was being prepared, officials conducted 76 briefings in state and territory capitals and in many regional centres in a national briefing program. The National Cultural Heritage Forum, which included key stakeholder organisations such as the Australian Council of National Trusts, played a crucial role in getting this legislation to this stage. All of those organisations
can rightly say that they contributed to this outcome, and I think they could rightly say that the process reflected their input.

It is disappointing to see that, despite what would have to be one of the longest and most extensive processes of consultation yet undertaken on any piece of legislation—certainly a much longer process of consultation than that which accompanied the 1975 legislation—we see today considerable opposition from some opposite to this package of bills. It is also worth emphasising, as Senator Lees has done, that this legislation should be commended for not only what it does but what it replaces. The inadequacy of the present legislation is difficult to overstate. Yes, the 1975 legislation was an important landmark. Yes, it took the acknowledged of our national heritage to a level it had not been at previously. But to say that the present legislation in any way adequately serves the public interest in Australia is simply wrong.

There are inconsistencies today between the states’ and territories’ heritage legislation, which protects places of state or local significance, and the world heritage decrees, which protect places of world significance. The Australian Heritage Commission Act does not provide adequate legal protection for important heritage sites and, as Senator Lees has pointed out, there are no civil or criminal penalties provided for breaches of the provisions of the act under this present framework. That is very handsomely compensated for by significant penalties in the present bill, and we would be wise to ensure that that protection is in place as soon as possible so that the destruction of our natural and built environment, particularly as it affects issues of national significance, does not continue.

The Australian Heritage Commission has described this legislation as ‘the largest advancement in heritage protection in 25 years’, and so it is. Our heritage in all parts of the nation stands handsomely to benefit from it. Indeed, our heritage outside our nation also stands to benefit. It is significant that this legislation provides that not only can places be listed within Australia but also places can be listed outside Australia. Obviously, the capacity that flows from that is to enter into agreements and arrangements with other governments to ensure that areas are protected—places like Kokoda in Papua New Guinea, Lone Pine in Gallipoli and Changi war prison in Singapore. Senators may recall the debate recently about the future of the Changi war prison in Singapore. I would like to see the dialogue that goes on with the government of Singapore occur in the light of this legislation having been passed. That would be an appropriate acknowledgement of our view about the importance of that kind of heritage being protected and would provide some basis for the Australian government to properly negotiate with the government of Singapore and other governments to protect external sites of interest to Australians.

In the ACT’s case there are a number of places or properties already listed on the Register of the National Estate. They include places you might expect, such as the Australian War Memorial, Old Parliament House, the National Library, and indeed the building in which we are sitting today. More local institutions, such as the Sydney and Melbourne buildings, the Albert Hall and Dunroon House, are also included and they embody the important heritage from a local community perspective for the people of Canberra. It is a matter of regret that sometimes forces beyond our control can damage the integrity of the National Estate. The fires in Canberra on 18 January badly ravaged many parts of Canberra and destroyed the heritage listed Mount Stromlo Observatory.
Many of the alpine huts in the hinterland of the ACT were also damaged or destroyed and that has detracted from the heritage of this region. We cannot always control natural phenomena, but we can and we should ensure the legal and legislative framework for protection is as strong as it can be. As previous senators have noted, this legislation does precisely that.

This legislation deserves the support of members of this house. The community is the most significant beneficiary from this legislation, with improved protection of heritage places. While the bill retains current opportunities for community input to heritage assessments and approvals, a more certain process with unambiguous timelines will ensure that community comment is given greater consideration and is therefore more effective in the final outcome of decisions about heritage listings. All of these benefits and the overhaul of the heritage listing procedure make this bill one which will benefit the wider Australian community. Because the bill facilitates the process of selecting important places and things that we have inherited from previous generations and takes care of them, I think it deserves to be supported. I commend this legislation to the chamber.

Senator HARRIS (Queensland) (10.11 a.m.)—One Nation supports the Australian Heritage Council Bill 2002, or the concept of the bill. However, there are some concerns in relation to how it is proposed the council will function. Let me say, first of all, that our Australian heritage is a very important part of our society in terms of both its structure and the issues it represents—as other senators have said—not only in relation to buildings such as the War Memorial in Canberra but also in relation to other substantive buildings throughout the country. It is important that, when this legislation is being administered, equal weight is given to Indigenous heritage. What I am saying is that it is the duty of those who will make up this council to ensure that all sectors of our heritage are both considered and proportionally protected. Going back to some of the things that have happened in Queensland, like the destruction of buildings in Brisbane, nobody is saying that we should return to having demolitions at midnight, but we do need to have a balance between the rights of the people who own property and the rights of the general community and its willingness, and also concern, to protect some of that heritage. Equally, the government is responsible for ensuring that, with the passage of this bill, there is sufficient funding for those people who have private property that becomes the subject of a listing. Referring to the current legislation, section 23(2) of the Australian Heritage Commission Act states:

(2) The Commission shall not enter a place in the Register in accordance with subsection (1) unless:

(a) it has, by public notice:

(i) stated that it intends to enter the place in the Register;

(ii) given a description of the place sufficient to identify it;

(iii) notified persons of their right to make written objection to the entry of the place in the Register...

Public notification is under section 22(1) of the Australian Heritage Council Bill and section 22(1)(c) gives persons advised a reasonable opportunity to comment in writing on whether the place should be included in the register. I do not believe that those words are anywhere near strong enough. If you are the owner of a private property, it is your right to effect your ownership of that property in such a way as you see fit. However, if the Australian Heritage Council lists that property, there are quite serious implications for the owner. I believe that that person should
have the right to object to that listing, whereas what the legislation proposes merely allows that person to comment but not to actually object.

This leads me to the area of the legislation under which the Australian Heritage Council can enter into commercial agreements and commercial entities can sponsor the Australian Heritage Council. It may be well and good for corporate Australia to support heritage—and they do that in many ways—but the function of the Heritage Council should not be underwritten by any corporate entity. That could bring undesirable pressures on the people in that council. Yes, corporate entities could sponsor and support the preservation of heritage listed properties, but One Nation does not believe that it is in the public interest that they should fund the Australian Heritage Commission itself.

I will be putting this question to the minister: what surety does the public have that there will be community representation on the council? As we know, there is a requirement that people have certain academic qualifications to be on a government board. The proposed Heritage Council is not and should not be any different. Because of the capacity of this legislation to affect private property, it is important that we have some assurance from the minister that there will be a community representative on the council as well as those people with respective academic capabilities. Another area of concern for One Nation is the movement away from assessing a property’s intrinsic value—its overall value to the community—to an asset based valuation. That narrows the scope for the preservation of our heritage buildings.

Another issue that I would like to raise, and this issue has been raised by the Australian Conservation Foundation, relates to the proposed council. It is the opinion of the ACF that the proposed Australian Heritage Council should be ‘an independent statutory body, as is the present case with the Australian Heritage Commission’. This is very important because it places the council at arm’s length from government such that the council could carry out its assessment on the basis of being a truly independent statutory body. That is probably one of the greater concerns that I have in relation to the bill. In their briefing note of January 2002, the Australian Conservation Foundation said:

The Heritage Bills offer some improvements, for example in the provisions for increased management planning of heritage places and more appropriate penalties. However, with the weakening of the Australian Heritage Commission, question marks over the future of the Register of the National Estate and other concerns, the Heritage Bills as they stand represent a step backward for heritage protection. The Heritage Bills in their current form, should not be passed.

I reiterate that that is the position of the Australian Conservation Foundation. I carry the same concerns, and I clearly indicate to the minister and to the chamber that One Nation will support the bills but will be watching very closely their progression through the chamber.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.23 a.m.)—I also would like to speak on the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002. My colleague Senator Allison spoke on these bills some time back when the second reading debate first commenced. Given the timelag and some of the statements made since, and given other things that have occurred, I think it is appropriate for me to also make comments.

The passage of these bills is an example of why the Senate is important and a perfect
example of why the Prime Minister’s attempt to gut the Senate’s powers should be resisted at all costs. This legislation, through these three bills, clearly is in need of significant improvement and, without the Senate’s ability to have worthwhile power to make and insist on such amendments, we would not have the opportunity to significantly improve what is flawed legislation. It is also worth noting the context in which the bills come forward, which is the current regime they seek to amend. It has to be said that the current legislative regime for heritage protection is grossly inadequate.

I recognise the validity of some of the comments that people have made, including Senator Harris just now, about the independence of the Australian Heritage Commission and the importance of the listing process. I think Senator Lundy said that there are 12,000 sites currently protected. I would dispute that: there might be 12,000 sites listed, but any legal ability to protect them is pretty much zero. We saw just one example of that with the proposal to build a new, unnecessary and expensive detention centre on Christmas Island, which is listed as a heritage site. The only requirement under the existing act is for the minister to seek the opinion of the Heritage Commission. There is no requirement for the minister to pay any attention to that opinion, and there is no legal mechanism for that advice to be made public or to require in any way that the minister act in a way that preserves the heritage values of a site. That applies to all of the sites currently listed. So there is a major flaw in the existing legislation in that there is no real way to legally ensure the protection of the sites listed. That said, agreeing to change by allowing the passage of legislation which modifies but which nonetheless contains components that would significantly move things backwards is not a desirable outcome either.

Many people examining these bills have commented that they do contain some positives, but there are also some significant negatives. The Democrats have put in a lot of time over many months to try to address those negatives and to ensure that those concerns are addressed where possible, and that is why the bills need amendment. There is certainly no way that the Democrats would support these bills as they currently stand, because they would enable the enactment of some significant negatives. Again, it has to be emphasised that the existing commission can be as independent as it likes, but its powers to ensure protection are virtually zero. It can list sites but cannot do anything to ensure that they are protected, other than by political pressure. That is good as far as it goes, but it would be nice to have some legal mechanisms to enforce protection.

This is one of the reasons why the changes made under the Environment Protection and Biodiversity Conservation Act in 1999 were important: for the first time there was a mechanism for people to take legal action to require the government to work and act consistently with its own legislation. There are still many areas that can be improved in the federal environment protection act as well, but there is no doubt that, with the substantial amendments made by the Democrats in 1999, we took a significant step forward in terms of national environmental protection and national environmental legislation, compared with what existed previously. Of course, you can have the best legislation in the world and still not have it used to its value if the government of the day is not prepared to enforce its legislation. Unfortunately, that has been very much the case with the federal Environment Protection and Biodiversity Conservation Act: we have a government that has not used those powers to ensure protection of the environment. On the few occasions that it has, it has had to be
dragged, kicking and screaming, through the courts to do so. That is an indictment of the government and its willingness to ensure good environmental outcomes rather than an indictment of the legislation. There is certainly still significant room for improvement.

I need to mention a couple of things in relation to the legislation and to various amendments that have been circulated. A lot of amendments have been circulated by various senators, including some from the Democrats, and there are some still to be circulated. Can I say in advance, before we get the usual gratuitous comments about having insufficient time to examine them, that these amendments have been before the government in various forms for many months. We have simply been trying to work together constructively to get an agreed outcome. Regrettably, that has not been possible, so we will have to move those on the floor of the chamber to see what happens. At the end of the process we will make our decision as to whether the legislation has been sufficiently amended to make it worthy of support.

The problem of having to get the amendments circulated has been exacerbated by the government’s strange decision to bounce these bills up the list ahead of four other bills that are ready to go, that have had their amendments circulated and, in some cases, that are part way through debate. However, if the government wishes to act in that way, that is its decision. The Democrats have a strong record of working cooperatively in this chamber to try to ensure prompt debate of issues and sufficient notice for matters to be considered. If the government wishes to act outside of that then quite frankly it can wear the consequences.

This legislation has involved a lot of consultation with groups in the community. We have had the Senate inquiry and report and attempts to consult with the government to try to get a positive outcome. Most of that has been conducted by my colleague Senator Allison, who has responsibility for the heritage portfolio. I have been involved to a lesser extent towards the end of the process. In all my time here—both as a senator, which is getting on to six years, and before that as an adviser, going back to 1990—in over 13 years of being directly involved with issues, legislation and negotiations before the Senate, I have never seen a process carried out in such bad faith and so inappropriately. Whilst I will try to rise above that and consider the legislation on its merits, I think all ministers and the poor old Manager of Government Business, Senator Campbell, who has to try to get legislation through this place, should be aware of that fact. We all know that this chamber runs predominantly on cooperation and good faith. We have disagreements about issues all the time—that is to be expected—and we can play reasonably hard ball when necessary to try to get outcomes that we like, but all of that has to be done in good faith and with some trust.

Not only is this the worst example I have seen in 13 years, but I have not seen anything that even comes remotely close to the process that has been used for these bills. That makes it very difficult to remain cooperative, not just in relation to this legislation but in relation to everything else the government does in this place. I think it is appropriate for all ministers to keep that in mind. Once the Democrats get a message that we are not going to be treated with respect, that we are going to be jerked around and treated in bad faith, it is only reasonable to assume that is acceptable to the government as a whole and it will affect negotiations, discussions and agreements we have on virtually every issue. I would be very upset if it became necessary for us to approach discussions with the government with that in mind, because it would waste a lot of our
time as well as the Senate’s time and the government’s time. But, if that is the way the government thinks it is appropriate to behave, it becomes difficult to do anything else.

Part of the reason we need to ensure that agreements that are reached with the government are clear cut and nailed down is past experience. Obviously, when you get burnt once you become more cautious the second time around. We have had previous agreements with the government in this area—for example, the agreement about the use of the money for the Greenhouse Gas Abatement Program. That has now been changed significantly from what was originally agreed to and the money in part used on things outside of what was suggested at the time. We have seen the complete ignoring of what was agreed to with the energy credit scheme and what that would become. Commitments were given—to the Senate and not just in writing to us—about how genetic technology would be assessed and overseen that were then changed. There has been no appearance of a greenhouse trigger in the EPBC Act. We have the situation of how the EPBC Act is being administered—or not administered. And that is just in this portfolio area. That being the history of things, obviously we want to get commitments nailed down as much as possible.

I will not go into chapter and verse on why I am so annoyed about the process that has been followed by the minister in this regard—unless the government wants to go down that path, in which case we can have a discussion about that. Suffice to say, people may wish to talk about the actions of various staff on all sides, but I would suggest that anytime there is an issue or a difficulty one goes to the senator. Certainly, even in correspondence and discussions I have had, what has transpired has not panned out to what was understood.

There are still significant issues with the Indigenous heritage components of the legislation. Whilst it has been suggested that ATSIC supports the legislation, significant concerns have been raised recently. Whilst it may be the view of some that it is not going to get any better, so they may as well roll over and agree to it, the Democrats nonetheless believe it is important to persist to see if there is some opportunity to get improved Indigenous heritage protection. This is particularly the case given the lack of progress on the ATSIC legislation—the separate Indigenous heritage legislation that was debated in this place some time ago and withdrawn or not proceeded with. There is some confusion about whether the government still intends to proceed with that. Certainly there are some very strong indications that it does not intend to proceed with that legislation. If that is the case then I think it is not only reasonable but appropriate and responsible to try to use the opportunity through this legislation to get some of those issues raised. The Democrats will attempt to do that when we get to the committee stage.

We have circulated some amendments, and there are more to come. Clearly, with all the various amendments around and our lack of certainty about how the government will respond to many of these issues, we may need to carry out that process precisely and carefully. Unfortunately, that may take more time than would otherwise be the case. Again, if the government wishes to do business that way then that is the way that things have to be done. The government may like to think about not doing it again if it does not want time consumed that it would rather not have consumed.

In conclusion, it is worth saying, as I said at the start, that the existing heritage situation is unacceptable. There is no serious mechanism for ensuring the protection of heritage sites, and that is the starting point.
for the Democrats. We recognise some of the criticisms of the legislation. We agree with some of them and will attempt to address some of them, but at the end of the day we have to look at whether the final product is an advance on the current situation overall. It is pretty hard to go backwards from a situation when there is virtually no surety of protecting heritage sites. Nonetheless, some aspects of the legislation make a good attempt at doing that. So we will see how we go in the overall debate in the committee stage.

Australia’s heritage is an important issue, and I think that needs to be emphasised. Whilst this legislation has not got the attention and the publicity of some other bills around the place, that does not in any way suggest it is not an important issue. It is a significant issue, and we need to do better in protecting our heritage. Many Australians now regret the loss of heritage in the past and the continuing loss and destruction of some of our heritage. I think the older we as a nation get, the more valuable our heritage gets, so we are certainly looking for an outcome that protects that. It is an approach that the Democrats have pursued in the past with some success.

I mentioned the EPBC Act, but I should also mention the Sydney Harbour Federation Trust Act, which was put forward under the former Minister for the Environment and Heritage, Senator Hill, which I believe is one of the very significant and positive achievements of this government in relation to heritage and environmental protection—only for some small areas, such as our former Defence lands around Sydney Harbour, but they are areas that are certainly being far better protected and are now being properly dealt with, which was not happening before. The legislation was only passed with the support of the Democrats after significant amendment and properly constructed negotiations. The legislation was opposed at the time by the ALP, the Greens and, indeed, by Tom Uren, who has a long history with Sydney Harbour and a very positive one, but we made the judgment that the final outcome was sufficient to provide a strong likelihood of protection of those sites.

The negative, which would have occurred if the bills had not passed, is that there would have been no protection at all. The Department of Defence could have sold them off for exceedingly large amounts of money with no guarantee of protection for any of those areas. They are more valuable for their heritage than their environmental values, although some of the remnant bushland is important. But those heritage sites such as Cockatoo Island, Georges Heights, Middle Head and the military facilities there are incredibly significant in a heritage and historical sense. Not only have they now been guaranteed protection but also they are being managed, repaired, restored and made available to the public progressively over time.

Whilst there is always room for improvement, and there could be some criticisms about one or two things, those particular sites are now being protected as a result of legislation that was supported by the Democrats. The Democrats were essential to its passing. Despite some of the concerns at the time, which I understood, I think the judgment that we made then has been shown to be the correct one. The way things have panned out has ensured and seen a very significant improvement in the ongoing protection, preservation and use of those sites in a way that will maximise the chances of their being protected well into the future.

The contrast, of course, could not be more stark with the New South Wales Labor government’s treatment of harbour front lands, which has been nothing less than appalling. We are still seeing problems there with the quarantine station, for example, on North
Head. I think our record in the Democrats of being able to make these judgments on heritage protection is a very positive one, and balancing judgments about whether things overall are a step forward or not is an approach that we will take into this legislation. We have always been proud of and insisted on operating as a party independent of any interest groups and organisations, whether it is big business, unions or, frankly, even environment groups. We will consult with all of them and take on board their concerns. We often agree with their concerns. Nonetheless, we make our own decision independently about whether the final outcome is a step forward or not. That is what we will do in the committee stage, which will probably be a fairly full and thorough one.

Senator MURPHY (Tasmania) (10.43 a.m.)—I want to say a few words about the Environment and Heritage Legislation Amendment Bill (No. 1) 2002 and related bills. Obviously any step forward could be seen as a good step forward from the current state of play. This legislation has been around for a while. I have had some discussion with the government, and I have raised some matters with the government, about the legislation. I appreciate the promptness of the response that I received to some of those matters, some of which have been positive. If I can be biased from my own state’s point of view, I obviously looked at the legislation from the perspective of the development of a National Heritage List. From a Tasmanian perspective, because it is a state that has very significant heritage properties, I would be seeking to have those properties assessed and added to the list at an early stage.

Of course, there are a number of very important matters that this legislation has to deal with. I do have some concern with regard to the independence of and funding arrangements for the council. Those are matters that still concern me. I also have a concern, which I raised with the minister, with the quantum of the funding that is to be applied. Because this legislation was not implemented earlier, there has been a slippage in the funding that would have been used. Whilst the amount of money that is proposed is reasonable—I will be generous and describe it that way—in my view, it is insufficient.

The government has indicated positively the possibility of the reimplementation of a tax rebate for owners of private heritage, and that is a good step, but I think that a number of things still remain unclear. As I said, from my point of view, some of the principal matters with regard to the funding in particular and the independence of the council are still of concern to me. I will follow the debate. I have indicated to the minister that I am probably unable to support the legislation at this time, but I will listen to the debate and see what amendments are ultimately passed before I finally decide whether I will vote for the legislation.

Senator HILL (South Australia—Minister for Defence) (10.46 a.m.)—I thank honourable senators for their contributions to the debate on these heritage bills. I agree with at least two points made by Senator Bartlett a moment or two ago. The first was the importance of the issue. I am pleased that that is being recognised in terms of a national responsibility. Obviously, in relation to built heritage, the primary legislative protection has been through the states, but as our nation has evolved I think there has grown a wider recognition of a Commonwealth role and responsibility. Heritage is part of the identity of our nation. We all have an interest in ensuring that it is properly conserved. That will not occur without a level of legislative protection, it will not occur without beyond that an attitude of recognition, appreciation and conservation by the broader community and it will not occur without the various tiers
of government, industry and the broader community recognising that it is an expensive business and that the cost of proper conservation and presentation must be met by the nation as a whole. So this wider appreciation and recognition of the importance of this subject matter is important, and I am pleased that it is now being more widely recognised.

The second point I agreed with Senator Bartlett on was that the existing Commonwealth legislation is inadequate to protect our national heritage. That has been widely accepted and has led to a very long debate on how a contemporary Commonwealth regime might be developed and put in place. I can remember being part of that debate, now many years ago, as Commonwealth Minister for the Environment and Heritage, in consultation with the relevant state ministers, through ministerial councils, in consultation with the key non-government bodies in this area—the National Trust, ICOMOS and others—and in consultation with the broader community. There was wide recognition of the need for a contemporary national scheme. Despite the successes of the previous legislation in developing a national list, there was also wide recognition that the time had come for proper protection and that the existing legislation did not give such protection.

The parts of Senator Bartlett’s speech I disagreed with were the suggestions of bad faith. This government has tried for many years to get to this stage in relation to Commonwealth heritage legislation. Long and slow negotiation has taken place for some years. The government has been prepared to discuss and negotiate literally hundreds of proposed amendments over many months. The fact that agreement has not been reached on all issues does not make the case for bad faith; it simply indicates that, when the time for negotiation has been completed, there will still be issues where some parties across the chamber will hold different points of view. Such will always be the case. If consensus can be achieved out of a negotiation, that is a good thing. If it cannot, then that is part of the process as well. The issue then comes into this place for a vote and, ultimately, the numbers determine the position of the Senate.

I want to make a couple of general points. The Commonwealth government, through this legislation and in other ways, is improving the way that it protects our heritage. I particularly draw the Senate’s attention to the $52 million program, which we have called ‘Distinctively Australian’, that was announced in the recent budget. This program will help us recognise the places that make Australia unique, the places that provide the cultural identity of our nation and the places that provide a source of spiritual wellbeing. The Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002 underpin the Distinctively Australian program and will herald a major improvement in the way Australia identifies and protects its heritage places. The legislation will identify, conserve and protect places of national heritage significance, provide for the identification and management of Commonwealth heritage places and establish a new Australian Heritage Council.

The new heritage system will operate through a list of places of national heritage significance, which will be called the National Heritage List; the establishment of a new Commonwealth Heritage List; and the creation of an independent expert body to advise the minister on the listing and protection of heritage places, which, as I said, will be called the Australian Heritage Council. The new National Heritage List will comprise places or groups of places that are of
outstanding significance to the nation. As well as places in Australia, important places overseas—that is, important to Australia but located overseas, such as Anzac Cove in Turkey—will be included in the list. There will be a public nomination process and the minister may invite nominations of places within a specified theme, such as federation, Indigenous rock art, Australian eucalyptus, gold rushes et cetera.

A new expert body, the Australian Heritage Council, will assess nominated places against the listing criteria and advise the government on the heritage significance of places proposed for entry in the list. Public comments will be invited on proposed listings and the council will assess any comments received during this process. As with the current Australian Heritage Commission, the new council will have the ability to enter and remove heritage places from the Register of the National Estate. The Minister for the Environment and Heritage will make the final decision on entry on the National Heritage List. Gazettal of a place on the list may include a statement by the minister on management and funding arrangements. The proposed new arrangements, as I said previously, despite what has happened to date, we are attempting to work constructively on this piece of legislation. I think it is fairly problematic for the chamber to be considering legislation when not all the amendments are before it. Whilst the government would be aware of the content of most of these amendments, because they have had them in various forms—and indeed have been sufficiently pleased with early drafts of them that they have passed them on to other people—nonetheless we need to have the final version before the chamber before it can properly consider the entire piece of legislation. I think it would be undesirable and inappropriate for us to proceed at this stage without all of that material before us.

In summary, the new legislation will provide enhanced protection of heritage places, especially heritage places of national significance and Commonwealth heritage places, with potential benefits such as better environmental and social outcomes, and will provide greater certainty of Commonwealth and state roles, responsibilities and processes relating to the environment, particularly Commonwealth involvement in heritage issues. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.
as I understand the ordering of amendments and which ones come up first—would be appropriate to move early on in the debate, if not right at the start.

Given that there are other pieces of legislation that the Senate is ready to proceed on, which indeed were previously listed ahead of this legislation until last night, it would not hold up business in the Senate. In fact I would suggest, respectfully, to the government that it might actually help get things through a bit more quickly if we could operate in this way—but I guess I will leave that in the hands of the chamber to decide. At this stage, for those reasons, I suggest we come back to it later on today and I move:

That progress be reported.

Senator HILL (South Australia—Minister for Defence) (10.58 a.m.)—by leave—This really calls for a response. It goes to the point that Senator Bartlett, on behalf of the Australian Democrats, was making in relation to alleged bad faith. As I said, it has taken us six years to reach this point of debate in the chamber. During that period there has been long, arduous, detailed and complex negotiation over amendments, but such a process cannot go forever. All honourable senators knew it was the intention of the government to bring these bills on for debate at the beginning of this session of the parliament. It was hoped that they could have been dealt with towards the end of the last session, but that proved to be impossible. Certainly it is the view of the government that these matters should not be further delayed. In those circumstances, with great respect to Senator Bartlett, any individual or party which has not been able to prepare amendments, having had some years to do so, really cannot come in here and expect the chamber to adjourn its consideration to facilitate further time for their drafting requirements. I do not think that defines bad faith; I think that defines sensible process. We all have to operate within time constraints. Much more than reasonable time has been allowed to all honourable senators to reach the point we are at today.

Senator ALLISON (Victoria) (11.01 a.m.)—by leave—I indicate that our amendments have now reached us but we do not have a running sheet, which is going to make progress considerably difficult. The minister says there have been long, arduous, detailed discussions and negotiations ranging over some years. The very reason why, at this time, we should not be rushing into dealing with legislation when substantial amendments have only just been circulated is that it is hardly fair on senators—Senator Brown will no doubt speak for himself, but he has just seen these amendments. As Senator Bartlett indicated, the government knows the content of all these amendments and many of them are exactly the same as those circulated by Senator Lees. The government knows why that is the case. These amendments were drafted some time ago but rather than coming out under my name, they were circulated in Senator Lees’s name. It is not a case of us being tardy in giving instructions for these amendments; it is a process problem that the government needs to wear.

The amendments are different in some respects but similar in others. If we are forced to deal with these amendments now, I will need to deal with each amendment separately rather than take them in groups. No doubt it will take some time to sort out which amendments are the same, which are similar but not quite the same, and which are completely different. I urge the chamber not to go into this debate at this time. We do not need much longer, but we do need a running sheet to demonstrate how we will proceed. Given that we are halfway through a debate on an industrial relations bill and everybody is happy to proceed with that bill, it seems to
me to be not unreasonable for us to go on with that legislation before dealing with the heritage legislation.

It is not in our interests to go into this debate without being properly organised. That is all we are asking for. I think the government will find that this will take much longer if we do not proceed to the industrial relations bill than if we do. Quite frankly, I am not prepared to start debating the substantive issues on this legislation until I am comfortable that we have the organisation ready. Certainly a running sheet would be a bare minimum, I suggest, for such a complex bill with so many amendments and participating senators. I am strongly of the view that it would be unwise, both on the government's part and on our part, for us to proceed.

Senator LEES (South Australia) (11.04 a.m.)—by leave—I have to respond to comments made by Senator Allison and Senator Bartlett. It is now a matter of urgency that this legislation be passed. Yes, the negotiations have gone on for a considerable time—years. This legislation has been scrutinised by the many organisations which I mentioned in the second reading debate, in particular, the Australian Heritage Commission and the WWF. A long list of organisations have had input to these amendments and now I understand that Senator Allison is interested in moving amendments the same as those I will be moving. As I made clear to her last session, I am more than happy to have amendments moved in joint names if that would speed up the process of getting this bill before this chamber.

We rose from the last session in June believing that this would be the first legislation to be considered on Monday of this week. On inquiry, we were told that instead it would be brought on at 9.30 on Wednesday and that is now where we are at—9.30 on Wednesday morning. I am not sure where any confusion has arisen as to when this was going to be dealt with. As I said, we had hoped to have dealt with this last year, at the very latest during the last session, and here we have it dragging on again. That is the reason I stand here now with amendments ready to go to make sure this legislation gets through this chamber today.

I draw the attention of the chamber to the problems with the current listing under the Register of the National Estate. It is a required process that the Australian Heritage Commission look at the state of the nation's heritage. The annual report 2000-01 of the Australian Heritage Commission says:

Section 41(3) of the AHC Act requires the Commission to include in its annual report a description of the condition of the National Estate at the end of the reporting period. This chapter reports on the condition of the National Estate at 30 June 2001 ...

Some of the places on the list of known losses include Sheridan Flats, Lithgow, New South Wales, demolished; Central Railway Station, Wyalong, New South Wales, demolished; Calare, Cowra, New South Wales, demolished; Seamen's Union Building and Crane Building, Darling Harbour, New South Wales, demolished; Nissen Huts, St Leonards, New South Wales, demolished; and, Railway Hotel, Kalgoorlie, Western Australia, demolished. We must get this legislation through both houses of this parliament.

Their 2001-02 report includes Three Camp Hospital, Puckapunyal, Victoria, demolished; University Square Precinct, Carlton, Victoria, heritage significance destroyed by development; Simmons House, Moonta, South Australia, demolished; Cottage, 6 Commercial Road, Strathalbyn, South Australia, demolished; and Telecommunications and Hesketh House, Brisbane, Queensland, demolished. And so it goes on with other places in Tasmania, such as Four Mile Creek
Wildlife Sanctuary, George Town, loss of heritage values due to development. It is a matter of importance that we deal with this legislation, that we find no more reasons—no more excuses—and that we get on with this today.

Senator LUNDY (Australian Capital Territory) (11.08 a.m.)—by leave—Labor’s view on this is that to adjourn this debate now is really inappropriate. We think that the best way to proceed with this legislation is for the crossbenchers to find support for the Labor amendments. Senator Bartlett made it very clear in his second reading contribution that the negotiations with the government had created some difficulty in the preparation of some amendments and so forth, which we now have before us. Now the issue seems to be the absence of a running sheet. There is plenty to talk about with regard to the committee stage. Now that we have seen the Democrat amendments, it could indeed be possible to begin the debate in the committee stage with knowledge of the issues raised in the Democrat amendments and to get moving.

Senator HARRADINE (Tasmania) (11.09 a.m.)—by leave—I just want to say that I really think that, to be fair to all of us, there ought to be a running sheet before us before we get into the committee stage. We ought to have that at least. I must say this: yes, last week there was something about this legislation coming on on Wednesday, but there was absolutely nothing at all in the draft red yesterday to suggest that this was going to come on today. That decision was announced at the whips meeting last night. So I do appeal to honourable senators and to the government and the opposition: at least let us have a running sheet and then come to the debate. As far as I am concerned, that would be the minimum that I would request.

Senator HILL (South Australia—Minister for Defence) (11.10 a.m.)—by leave—It is obviously possible to proceed without a running sheet. On the other hand, Senator Harradine makes a valid point that it does ease process. I understand that a running sheet is about 20 minutes to half an hour away. I would be prepared—if it was the mind of others in this place—to agree that the matter return to the chamber in an hour’s time when everyone will have a running sheet and will have had a chance to have a look at it. It is not very often I agree with the Labor Party, but I do on this one. I would like to be getting on with the debate now—as I said, I have waited six years for this debate. But, as somebody else said in this place, it is necessary to maintain good faith and goodwill and, if there is a view around the chamber that the debate would progress in a more orderly fashion if there were a running sheet before us, I would be prepared to be a party to an outcome that would enable a short adjournment to await that running sheet.

Question agreed to.
Progress reported.

WORKPLACE RELATIONS AMENDMENT (TRANSMISSION OF BUSINESS) BILL 2002

In Committee

Consideration resumed from 12 August.

Bill—by leave—taken as a whole.

(Quorum formed)

The TEMPORARY CHAIRMAN (Senator Bolkus)—Opposition amendment (1) and Australian Democrat amendments Nos (1) and (2) are to be considered together.

Senator LUDWIG (Queensland) (11.17 a.m.)—The government continue to press workplace relations issues and to bring bad legislation before this chamber in relation to workplace relations. It is interesting to com-
pari Mr Reith, the former minister for employment and workplace relations, with Mr Abbott who has taken over that role. If I recollect correctly—and I am happy to be corrected—we heard from Mr Abbott that he was going to start a new process in industrial relations that would be more collaborative, more open and more engaging. But all we have found is that he is hamstrung by his own rhetoric. We have discovered that he has not been doing that at all. He has simply followed badly the poor line that Mr Reith started—one that was never going to progress industrial relations in a cooperative or a sensible way in this country.

Mr Abbott had the opportunity to break with the past and the path that Mr Reith had laid out. But unfortunately Mr Abbott did not—maybe he was unable to—consider a new direction in industrial relations apart from the direction Mr Reith had set. Mr Abbott has had opportunities to consult with former industrial relations spokesperson Mr McClelland, and now with Mr Emerson, to talk about a more cooperative way of dealing with industrial relations in this country. There is a need to ensure that a modern approach to industrial relations is maintained, one that progresses more than simply the negative aspects that we have heard from Mr Abbott in the last 18 months.

It is disappointing that all we have seen from Mr Abbott in the last six months—although it goes back even further than that—is the same rhetoric that Mr Reith followed. It leads to me to the conclusion that perhaps Mr Abbott is simply devoid of any new ideas to progress industrial relations in a way that is more sensible, more cooperative and more responsive to the needs of the workforce generally, and that he is simply following the line set by Mr Reith because he knows no way of dealing with workplace relations other than in an antagonistic and an offensive way. Perhaps that is a failing of Mr Abbott. I am not sure and I am not in a position, in this chamber, to be able to ask Mr Abbott, although I am sure a spokesperson on the other side will be able to assist in the debate when we come to it.

When you look at workplace relations and the issues Mr Abbott has been progressing, you look at these amendments and the previous bill and you ask: where is the innovation? Where are the positive benefits for workers? Where are the ways for employers to achieve outcomes? The answers to these questions have not been presented to this house. You have to go back to the industrial relations reforms of the Labor Party which were introduced in the early nineties and which still provide a path forward. The government has been trying—not always, I suspect, in the best way—to ensure that workplace relations were going to be progressed, but instead they remain hamstrung.

The TEMPORARY CHAIRMAN—Senator Murray, my understanding is that Democrat amendments (1) and (2) amount to the effect of opposition amendment (1). Do you seek to move those two amendments separately or would you like to pursue opposition amendment (1)?

Senator MURRAY (Western Australia) (11.22 a.m.)—Mr Temporary Chairman, it is probably appropriate that we deal with opposition amendment (1) as they have proposed it and then move accordingly. I want to make some general remarks before we get into the teeth of the debate.

I think it is important to restate a proposition that I put forward in my speech on the second reading, perhaps not quite in that language or as explicitly. It is my view that the parties engaged in this debate—the coalition, the Labor Party and the Democrats—all have a common interest in the transmission of business issue and all parties accept the importance of facilitating the sales of busi-
nesses whilst preserving the existing contractual obligations that are there for employees in a business that is to be sold either in part or as a whole. It is also my judgment that all parties have a view that it is useful in fact to adopt the government’s new view, which is to give the Industrial Relations Commission more powers in this area and more involvement in making determinations with regard to these matters. So really what we are arguing about is the best, fairest and best constructed way in which this should be done. Therefore, if there is a starting point which is accepted, it is a question then of resolving the approach that should be adopted.

One of the reasons that I think the government is probably right to revisit this area is the prevalence of agreements which now make it more complex for transmission of business to occur. Where under the previous legal framework in 1988 both agreements outside of awards and awards were all regarded as awards for purposes of the transmission of business, we now have a situation where agreements constructed without third party interference, namely without the Industrial Relations Commission in the case of Australian workplace agreements and in the case of certified agreements, are extremely prevalent. It was interesting to see just yesterday the minister issue a press release concerning trends in federal enterprise bargaining for the March quarter 2003. He puts these out every quarter, but what caught my eye is that at 31 March 2003 there were 9,693 federal enterprise wage agreements that were current, covering an estimated 1,567,000 employees.

Plainly, some of those agreements will be involved in transmission of business proceedings as a natural consequence of market activity. In some of those circumstances again there will be a need, or they will believe there is a need, for the incoming business to review and revise wages and conditions of their total work force, both old and new. It is our consistent view—it has been in the past and remains so at present—that the bias in the law should be to preserving contractual relationships and to trying to ensure that the conditions and terms which are present in an agreement are preserved to the benefit of those who have made that agreement. That applies whether it is a lease, an agreement with a supplier or an agreement with employees. Within those general remarks we place the context of this bill.

When we move to the amendment before us in the bill, frankly, we are concerned that we cannot assess the real benefit of the amendment suggested. As we understand it, at present an appeal is allowed under the existing legal framework of the act, and the new appeal provision as proposed in the legislation seems to us not to be necessary and in fact may have the consequence of restraining or reducing somewhat the present provisions, or narrowing it. That is our view, and I would appreciate hearing from the shadow minister a little more of her views on the appeals matter, and of course from the minister at the table with responsibility in this area.

**Senator Jacinta Collins (Victoria) (11.28 a.m.)—**I take the opportunity to speak more generally in relation to Labor’s amendments and then deal specifically with amendment (1). On the basis of Democrat amendments (1) and (2), we will be happy to rely on Democrat amendments (1) and (2) and not proceed with our amendment (1).

Going to general discussion in relation to the amendments, Labor’s amendments have the effect of deleting all the government’s amendments and replacing them with amendments that further protect employees’ entitlements in the event of business restructures. Senator Murray is correct that to various levels all parties have a commitment to
preserving protections of transmission of business. I suggest that the differences between us are probably differences in degree on those points.

These protections are primarily the role of the transmission of business provisions in industrial relations legislation to ensure that the sale or restructuring of a business does not have the effect of reducing employment conditions. Labor recognises that the sale and transfer of business is an important part of a vibrant economy. However, transmission of business legislation needs to ensure that such transfers honour existing employment rights and conditions. The current Workplace Relations Act retains provisions that are meant to ensure that awards and agreements continue to apply to successor businesses. However, the way these provisions have been interpreted has had the effect that they can easily be avoided. Labor’s amendments seek to once again give these provisions meaning by requiring that consideration be given to the true nature of transmissions of business.

In contrast, the government’s bill before us seeks to further undermine the existing Workplace Relations Act provisions by giving the commission the right to overturn collective agreements without the consent of employees in the event of the sale of the business or even if the sale of the business is merely likely. Labor’s amendments, on the other hand, strengthen the protection of employment conditions in the event of corporate restructures. This is necessary to ensure that businesses cannot avoid the transfer of employment awards and agreements simply by carefully structuring the sale of their business. Amendment (1), which we will not proceed with, sought to delete the government’s amendments that give employers the right to not only overturn agreements but appeal if the commission decided not to overturn them. We agree with the Democrats on the appeal issue. I understand that the Democrats’ amendments enable one provision in the bill which rectifies a typographical error, which we overlooked. That is one of the reasons we are preferring their path.

Labor amendments (2) and (4) ensure that both awards, amendment (2), and certified agreements, amendment (4), continue to operate when a business is transferred. The current provisions in the Workplace Relations Act are inadequate to deal with the myriad corporate structures and restructures that take place in our modern economy. The High Court case of PP Consultants that was discussed in the second reading debate evidenced this problem. This case was about an agency of a bank situated within a pharmacy in Byron Bay. When the bank activities transmitted, it was held not to be a transmission of business for the purposes of the Workplace Relations Act because the business in question was found to be a pharmacy rather than a bank. This had the effect of wiping out the entitlements of the relevant employees. Labor’s amendments (2) and (4) would protect employees’ award and collective agreement conditions of employment in similar situations in the future by clarifying that it is the transfer of business activities that needs to be considered, not merely whether there is a total transfer of the business.

Importantly, Labor’s amendments merely broaden the considerations of whether there has been a transmission of business, allowing the commission to consider a broader range of issues to decide whether or not there has been a transmission. We acknowledge that the commission should have the discretion to decide that a transmission may not have occurred in any particular case.

Our amendments (3) and (5) deal with the specific situation of ships sold to foreign operators to avoid domestic employment
obligations. Surely even government senators would notapprove of foreign workers taking Australian jobs at cut-price rates, which is exactly what such transmissions in the shipping industry are designed to do. This is an important issue for Australia’s shipping and freight industry and its workers. Our amendments take away much of the incentive for shipping companies to transfer ships to offshore ownership and to engage foreign crews. This issue was highlighted in last week’s High Court decision involving two CSL ships. That case was not strictly about the interpretation of transmission of business provisions but about the effect of a transmission of ships. That case arose when the MUA sought to include a new business as a respondent to its award. Our amendments (3) and (5) will mean that the Australian workers will not have to go to the High Court to preserve their employment conditions. Their conditions will be preserved automatically if a ship is taken offshore and brought back again—which, of course, means that shipowners will be less inclined to undertake such transfers in the first place.

That concludes my general discussion in relation to Labor’s amendments. As I have indicated, we are happy to defer to Democrat amendments (1) and (2) in favour of our amendment (1) and will do so when Senator Murray is in a position to move those amendments. I take this opportunity to inform the chamber that we have also revised our amendment (5), which dealt with another conflict in the running sheet between Labor’s amendments and those of the Democrats. That explains that revision for ease of the chamber, and we will come to that when we get to those amendments. If Senator Murray is now in a position to formally move his amendments (1) and (2), we will be happy to support them.

Senator MURRAY (Western Australia) (11.35 a.m.)—The Democrats oppose schedule 1 in the following terms:

1. Schedule 1, item 1, page 3 (lines 5 to 9), TO BE OPPOSED.

2. Schedule 1, item 2, page 3 (lines 10 to 23), TO BE OPPOSED.

I would note for the purposes of both the shadow minister and the minister at the table that we are opposing item (3) as well. I do so to be consistent, but I note the explanatory memorandum says:

Item 3 would correct a drafting error in the WR Act.

If that could be explained a little more fully, I would probably not be concerned to proceed with item (3). If the minister could explain that so we were dealing with all of those appeals matters at once, even though item (3) is not yet formally before the committee, that would be good. I turn back to the two items I have opposed. The government is repealing an existing paragraph which allows an appeal process, which we support, and adding to that appeal process through item (2). Since we seek to adjust other elements in the bill and since Labor amendments, as outlined by the shadow minister, affect the way in which an appeal would be carried out, our opinion on balance is that because there is an appeal provision we should leave it alone—which is effectively what these two amendments do. If there were no appeal provision, I would take an entirely different view. But there is an appeal provision in the act.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.37 a.m.)—The typo that amendment (3) addresses is very simply explained on page 3 of the bill. It says to omit (eea) and substitute (eaa). It is plainly a typo correcting a drafting error. Somebody hit the ‘E’ key instead of the ‘A’ key or vice versa.
Senator Murray—In that case we withdraw that item.

Senator IAN CAMPBELL—Thank you. The opposing of these items is in effect the opposing of the absolute guts of the bill. If you oppose these items then the bill has been gutted, and maybe that is the intention. We have identified the need to deliver to the employees certainty about appeal rights. We are convinced that the general appeal provisions are too restrictive and have in practice, since the passage of the workplace relations reforms of 1996, proved to be too restrictive when it comes to the transmission of business.

It has been made abundantly clear to us, and we thought to the Australian Democrats, that we need provisions within the legislation and a regulatory framework that cover all the parties who can be affected by the negotiations that would take place—the discussions or sorting out of a post-transmission clarification of a range of different employee—employer relationships that could occur after the transfer of a business, that is, the sale or merger of businesses or whatever, where you undertake a process to ensure the new enterprise has in place sound, quality relationships and agreements to cover the employment relationships—and that can ensure that that can happen in an efficient, effective and fair way. I would have thought, from reading what Senator Murray has said about these things in the past, that he and the Democrats would share that aspiration. I might quote from something that he said—it just says the Democrats but it is to do with workplace relations, so it was probably Senator Murray who said it; I have just got a nod and a wink. It says:

It seems self-evident that the IRC should have discretion in respect of transmission of employee conditions in business acquisitions, however, particularly when more than one certified agreement affects ‘old’, ‘transferred’ and ‘new’ employees in a business ... The Industrial Relations Commission needs to determine which agreement should prevail—provided, that is, that the Industrial Relations Commission continues to recognise that the intention behind the transmission of business provisions is, in the interests of fairness, to provide a protective mechanism for employees. The IRC must do this while taking into account the need to provide new or reformed businesses with necessary operational flexibility.

That could have been the second reading speech or the explanatory memorandum to this bill. It is very much in tune with the government’s thinking but in total conflict with the move that is before the Committee of the Whole at the moment, which is to oblige the rights of a class of important people to appeal to the AIRC if they cannot reach an outcome in relation to the agreements that were in place prior to the business moving from one owner to another, if they cannot reach agreement about what should occur under the new owner, and we believe that the provisions in this schedule—which would be knocked out by the Democrats—is actually anti-employee and in direct conflict with what Senator Murray said in that eloquent contribution to the debate on this very issue.

We believe that the general provisions do not provide employees with the opportunities that we think they should have. The new provisions that this bill puts in place will ensure that all the relevant parties can appeal to the AIRC. The very reason we are here with this legislation—which we think is a vast improvement on the legislation that was put forward in the last parliament, which obviously left the Notice Paper with the prorogation of the parliament—is that it really does create a much fairer system, particularly for employees. We are quite perplexed as to why this amendment would be here. If you want to stick with the general appeal provisions, it would defeat the purpose of this whole bill. I think everyone has agreed that
the Workplace Relations Act as it stands needs to be improved in this particular area.

There is agreement, as put by Senator Murray, that it needs to take into account ‘the need to provide new or reformed businesses with the necessary operational flexibility’ and provide ‘a protective mechanism for employees’. The amendment we are debating actually removes fairness for employees, so we are a bit perplexed. We hope Senator Murray will think carefully about the propositions we have put before him and that he accepts—with the graciousness he did with regard to removing his amendment (3) in relation to a typo—that we have thought this through and we have got it right: we have got balance, and it actually delivers more fairness for employees. This amendment removes appeal rights for employees. We are trying to give them rights, but this amendment takes them away. It is quite bizarre.

Senator MURRAY (Western Australia) (11.45 a.m.)—Sometimes when we deal with bills we get duty ministers who, frankly, are not across the field that is covered by the legislation. That is not the case with Senator Ian Campbell, because Senator Campbell in fact was at the forefront of the legislative debate on the 1996 act. The value of this discussion is that it is an informed discussion. Nevertheless, my response to Senator Campbell’s remarks would be that I think he is confusing two issues. One issue is whether the Industrial Relations Commission should have expanded powers and abilities in these areas because of the complexity of the issue that is before us—namely, the number of certified agreements that are out there that have resulted in a much more complex market than used to be the case. The Senate, by virtue of the amendments before it, is agreeing with that intention of the government. The Senate is not proposing that item 10, which I regard as being at the core of the bill, be done away with. The Senate is seeking to expand, through the amendments that are before it, the discretion of the AIRC. In fact, the Democrats are trying to take the government’s intentions further than they wanted. Labor’s approach and ours is to give the AIRC even more powers and criteria than it has at present.

I think you have to separate out the issues that we think are at the core of the bill, which is what the AIRC can do and the issue of appeal. I have had the benefit of a briefing from the minister’s advisers on this matter, and to date they have failed to persuade me that the existing section 45 is not sufficient for an objector. It is in the absence of the new provisions, as I understand the law, that an objector would rely on section 45(1)(b) or 45(1)(c), so it is not as if there is no appeal provision. I am quite happy to admit that I may not have got across all the intentions that the government might understand lie behind its proposal but, to date, I have not been persuaded by the papers before us, the original inquiry or the advice I have that these provisions as phrased are essential. I am inclined, on the precautionary principle, to stay with the appeal process that exists already and that works already. It is not as if transmission of business issues are not already handled—what the government is trying to do is make sure they are handled more efficiently and effectively.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.49 a.m.)—Hopefully, if I can convince Senator Murray of something now, it will save a lot of paperwork and toing-and-froing between the House of Representatives and the Senate. In Senator Murray’s comments in the Senate committee report on this legislation, he made the statement—using words that I think another great legislator in the guise of Abraham Lincoln did:
It seems self-evident to me that the AIRC should have discretion in respect of transmission of employee conditions. This amendment removes that discretion. The existing ordinary appeal rights—the general appeal provisions that Senator Murray thinks we should rely on—do not sufficiently reflect the unusual nature of proceedings about a transmission of certified agreement proceedings. The general provisions have the potential to deny appeal rights to those interested in these proceedings while giving appeal rights to those with no interest. The ordinary appeal rights are that any organisation or person bound by an order may appeal it and any organisation or person aggrieved by a refusal to make an order may appeal. The appeal rights proposed in this bill are that, in general, if a person made a submission at the hearings, they can lodge an appeal against the order. Where an order is made to the effect that a certified agreement not apply, either entirely or partially, this bill would give a right of appeal to the original applicant for the order and to any organisation or person who made submissions at the hearing into whether the order ought to be made. Where the commission refuses to make an order, only the applicant who sought the order may appeal. This reflects the beneficial nature of this legislation. If the AIRC refuses to make an order, the status quo is maintained. The agreement transmits and the employment conditions are protected. There is therefore no need for anyone other than the party who sought the order to have the ability to appeal the decision.

I hope that makes it a little bit clearer but, to restate the position: the cold, hard reality of an aye vote to this amendment will be that you are restricting the appeal rights of people who we believe should have them. The general provisions are not really adequate because, as I reiterate, the ordinary appeal rights are that any organisation or person bound by an order may appeal it and any organisation or person aggrieved by a refusal to make an order may appeal it.

That is restrictive. We are saying that the provisions as proposed in this bill guarantee fairness by ensuring that a range of people who are excluded by the general appeal provisions that I have now read out a couple of times will be given access to appeal rights and by ensuring that the AIRC will have the power to hear those appeals. An aye vote to this amendment will be detrimental to those people’s rights; by doing that you will be limiting the rights that the government seeks to give them.

Senator JACINTA COLLINS (Victoria) (11.53 a.m.)—Senator Ian Campbell, I am seeking clarity on the point about general provisions. Could you give us some examples of parties who have been excluded from the general provisions or parties who you foresee would be excluded? Precisely what parties, potentially, are we talking about?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.54 a.m.)—One very good example of that is, potentially, an incoming employer. If the AIRC refused to make a decision, the incoming employer would obviously have an interest in that. But, if you rely on the general provisions, obviously that interest cannot be represented before the AIRC. We think that is something the AIRC should be empowered to hear.

Senator MURRAY (Western Australia) (11.55 a.m.)—I appreciate the remarks made by the minister but, with respect to that particular point, later on we will seek an amendment to transpose ‘outgoing’ with ‘incoming’ employer, which would enable the incoming employer to be the applicant.

With the permission of the chamber, I need to deal with an earlier discourse so that we can correct matters. I glanced from my
sheet at the bill and referred to item 3; of course, amendment (3) on my sheet opposes item 4 of the bill and we ended up discussing item 3 of the bill. Minister, could you revisit item 4, which relates to the note I wanted explanation on; we were not opposing item 3 of the bill.

Senator Ian Campbell—I’m sorry.

Senator MURRAY—Do you see what we did?

Senator Ian Campbell—Yes.

Senator MURRAY—I probably should have been more alert, not alarmed. Minister, turning back to the substantial amendment, this is an area on which we remain unconvinced at this stage. I think we should hold with our position, because this matter is very much affected by the government’s attitude, subsequent to this debate, to the remainder of the amendments that go through. The remainder of the amendments may well affect, depending on how the government deal with them and whether they accept them or not, the sorts of persons that would be covered by an appeal provision. I have listened carefully to the views you have expressed, and I think we should still hold to our amendments as they are. But I would indicate that we, as the Democrats, are always open to any suggestions that may improve an appeal procedure.

Senator JACINTA COLLINS (Victoria) (11.57 a.m.)—I would take this opportunity to concur with Senator Murray: we remain unconvinced. I do not think that past inquiries into this bill have highlighted this issue or that any significant advantage has been demonstrated to date. We will remain open on the matter in the future.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.57 a.m.)—I want to add something, which I do hope Senator Murray will consider. I was asked by Senator Jacinta Collins to give examples of people who would be excluded if we were reliant on the existing general appeal provisions. Another very important group of people would be the incoming employees of the incoming employer—a potentially very big and important group of people. If the incoming employees of the incoming employer wanted to have their views known about the sorts of arrangements that would ensue in the new workplace, by relying on the general provisions and regardless of the subsequent amendment in relation to incoming employers, the successful vote on this amendment would have the effect of excluding incoming employees from appearing before the commission to put their case.

To use Senator Murray’s words, I think it is self-evident that there is a group of people whose voices you would want to have heard, in some cases, before the commission. Senator Murray’s amendment will stop those voices being heard. They are very important voices. They will be sharing a workplace and they will have a view about what other agreements are in place and what remunera-tive and other conditions apply in that same workplace. The effect of the Democrat amendment will be to remove the right of those people to have their voices heard.

Senator MURRAY (Western Australia) (12.00 p.m.)—The notion of incoming employees having a part to play in determinations which affect the sale of a business is a novel one for me, I must say—it takes me by surprise. If I reach back into my own business background, I never did consult my employees in any circumstance where I, as a business owner, business director or business executive, was seeking to buy a business. It makes it impossibly complicated to start discussing with employees the ways in which you conduct a sale. So it is a surprising concept for me. That does not mean to say I reject it out of hand. I am much more concerned with the incoming employer than
with the incoming employees in this respect. I think the key people are the incoming employer, the outgoing employees and the outgoing employer; perhaps that is the best way to put it. Minister, you have made a valiant effort. I think you should accept that, for the moment, the numbers are against you.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.01 p.m.)—I could see that coming. The commission will want to look at the agreements that are in place across the work force. That will include existing agreements with the old employer and the old employees who are transferring over. It will also include the agreements that are in place between the incoming employer and the incoming employees. What you are arguing, and what you are about to vote for, is saying: ‘We will have a look at the agreements that affect the incoming employees, but we will tell the commission that they have to stick a blindfold on in relation to the agreements which could affect another significant part of the new work force. Just ignore those agreements.’ You will go to the commission and say, ‘We want to resolve these issues so we can have harmonious workplace relations going forward,’ but what the Democrats are saying is that the commission has to ignore all of that. That is what you are about to vote for.

Senator MURRAY (Western Australia) (12.02 p.m.)—Minister, don’t take this as an accusation of misrepresenting the Senate, because it is not, but I just do not believe that is true. An incoming employer would place before the commission any arguments they have, which may include tabling the agreements of their own business. The incoming employer, as the applicant—which we propose to make sure can happen, through our amendments—would be able to argue the case and call witnesses to express that.

Perhaps your advisers in the box have an advantage over you and me. I have never appeared before an Industrial Relations Commission, so I am working on a common-sense understanding of the law. I do not think you have been a practitioner in that area either, but I do know that on the Labor side there are practitioners. Perhaps they can tell me whether my understanding of how the law would work is accurate. Surely the applicant presents such evidence as they regard as pertinent to the application and argues that case. That will include the agreements which pertain to their own employees as well as to the employees of the business, or part of the business, they are seeking to buy. I just cannot accept that your argument on that point is valid. I remind you again that our later amendments do refer to the incoming employer.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.04 p.m.)—I will put the case one more time to make it absolutely clear and so it is on the record. This is from the advisers. In the case of the AIRC refusing to make an order, the Democrat amendment would deny incoming employees a right of appeal—period.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that items 1 and 2 stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (12.04 p.m.)—I ask that we return to the earlier areas of concern. I am delighted to discover that I was not so foolish as to be trying to knock out (eaa), or item 3 in the bill. Could the minister confirm that item 4 genuinely is, as the explanatory memorandum says, a drafting error, in which case I suggest I should drop it.
Senator JACINTA COLLINS (Victoria)
(12.04 p.m.)—Senator Murray, you do not address item 3, so your amendments preserve the rectification of the drafting error. Your amendment (3), which seeks to oppose item 4, however, is dealt with in our amendment (2), where we seek to do the same but to insert, basically, a more stringent test on transmission. So, if you are happy to withdraw your amendment (3), it will be dealt with in our amendments (2) and (4), except that we are seeking to insert more into the bill.

Senator MURRAY (Western Australia)
(12.05 p.m.)—I should think everyone is as confused as possible by now. To be explicit, I will now drop amendment (3) on Democrat sheet 3035.

Senator JACINTA COLLINS (Victoria)
(12.07 p.m.)—by leave—I move:

(2) Schedule 1, item 4, page 3 (lines 26 to 31), omit the item, substitute:

4 At the end of section 149
Add:
(1B) For the purpose of determining whether an employer is a successor, assignee or transmitter of the business or part of the business within the meaning of paragraph (1)(d), the following factors must be considered:
(a) whether the activities performed by the employees in the business or part of the business of the alleged successor, assignee or transmitter, are substantially the same as the activities performed by the employees in the business or part of the business of the alleged successor, assignee or transmitter; and
(b) whether the relevant business activities of the employer who was a party to the industrial dispute are substantially the same as the activities performed by the employees in the business or part of the business of the alleged successor, assignee or transmitter.

The existence of either or both of these factors would tend to indicate that an employer is a successor, assignee or transmitter within the meaning of paragraph (1)(d).

(1C) For the purpose of determining whether to make an order that an award does not bind, or binds only to a limited extent, a successor, assignee or transmitter within the meaning of paragraph (1)(d), the Commission must consider:
(a) whether the successor, assignee or transmitter is already bound by another award; and
(b) whether the activities performed by the relevant employees in the business of the successor, assignee or transmitter can be separately identified in the business of the successor; and
(c) whether the relevant employees of the successor, assignee or transmitter would be disadvantaged if such an order were made; and
(d) the effect of such an order on the efficiency and productivity of the business.

(4) Schedule 1, items 6 to 9, page 4 (lines 1 to 12), omit the items, substitute:

6 At the end of section 170MB
Add:
(4) For the purpose of determining whether a new employer is a successor, assignee or transmitter of the whole or part of a business within the meaning of paragraph (1)(c) or (2)(c), the following factors must be considered:
(a) whether the activities performed by the employees in the business or part of the business of the previous employer are substantially the same as the activities performed by the employees in the business or part of
the business of the new employer; and

(b) whether the relevant business activities of the previous employer are substantially the same as the relevant business activities of the new employer.

The existence of either or both of these factors would tend to indicate that the new employer is a successor, assignee or transmitee within the meaning of paragraph (1)(c) or (2)(c).

Perhaps I should just repeat what I indicated in my more general remarks. Opposition amendments (2) and (4) ensure that both awards, which are covered by amendment (2), and certified agreements, which are covered by amendment (4), continue to operate when a business is transferred. We feel that the current provisions of the Workplace Relations Act are inadequate to deal with the more complex market that exists today, as was suggested earlier by Senator Murray. The High Court case of PP Consultants demonstrated this point significantly. We believe that our amendments (2) and (4) will help strengthen the provisions in the act to ensure that it is not easy for a business to simply construct itself in a way to avoid its obligations and will ensure that the terms and conditions of employment are transmitted.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.08 p.m.)—The government will not support the opposition amendments. As Senator Collins said, they seek to insert a test in the act that would identify when a business is transmitted. The government is of the view that the test laid down by the Federal Court is too expansive, focusing on the transfer of work rather than on the transfer of the business. This test creates uncertainty, instead of resolving it. This bill is all about trying to resolve that uncertainty. It invites protracted litigation about the identification and characterisation of the activities of a business. In 2000 the High Court ruled that this test was inappropriate for the private sector. From my limited reading of this, it is quite clear that the government accepts the High Court’s interpretation of the Federal Court’s view. Therefore, yet again, we would say that these amendments would defeat the very purpose of the bill, and that is probably why they are designed that way.

Senator MURRAY (Western Australia) (12.10 p.m.)—This just expands the basis on which the Industrial Relations Commission’s judgment shall be exercised. It says the commission ‘must consider these matters’. It does not say that it has to follow that. But I think it is an attempt to recognise that the High Court has said to the parliament of Australia that the law as presently expressed introduces considerable uncertainty and it would be better for the AIRC to be resolving these matters at source than for it to go all the way along the road to the High Court. Our opinion is that if the effect of Labor’s amendments is to ask the commission to consider factors then that is going in the right direction. If the government were to examine these amendments and make improvements to them, obviously we would look at that with interest. But, since you are not in a position to do that, we think the broad intention of Labor’s amendments, based on the High Court provisions and our understanding of them, is of valuable assistance to the law.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.11 p.m.)—I have to put this on the record because it seems that the Democrats have got totally the wrong end of the stick. These amendments overturn the High Court’s decision. The High Court’s decision created clarity, yet these amendments, moved for very obvious motives by the Australian Labor Party, seek to overturn that. They want
this to be tied up in legal knots. This is a ‘make work’ scheme for industrial lawyers. They want protracted litigation. We want the AIRC to be able to rule on these issues arising from the transmission of a business. The ALP seems to want the AIRC to spend hundreds of hours determining the issue as to whether a business has been transmitted. We are saying: take these transmission of business issues to the AIRC and get a ruling, get some fairness and move on. They want to spend days in the commission arguing about whether the business has been transmitted in the first place, which is the very legal quagmire which the High Court case in 2000 resolved. So, by supporting these amendments, the Democrats turn back to the uncertainty that existed prior to 2000. They overturn the High Court’s decision. So whoever has provided you with your briefing, Senator Murray, has got the argument back to front and upside down.

Senator MURRAY (Western Australia) (12.13 p.m.)—I do not think you should assume I am taking instructions. I do not operate on that basis and never have. Senator Ian Campbell—I do; I take expert advice.

Senator MURRAY—You may, but the government is in a different situation to us. We have to start with a basic philosophy, which I spelt out earlier. The Democrats have a view that, regardless of the nature of the contractual provisions, it is the obligation of the parliament to defend and preserve contractual relationships, whether with a landlord, a supplier or employees. There is jurisprudence and common law going back thousands of years which reinforce that principle. We do not wish to lightly see a certified agreement—which is only for three years and can then be renegotiated; it is not for ever and a day—which has been hammered out between an employer and employee, sometimes at great pains to both, lightly overturned. Our bias is towards the preservation of the contract.

What the High Court said was that it was not possible to formulate any general test to ascertain whether one employer has succeeded to the business or part of the business of another. The High Court disagreed with another court, which took an entirely different approach. So where you get court disagreements of this nature—when you get extremely capable, competent, experienced judges in different courts starting to disagree—the parliament has to recognise that it is an area where they need to intervene. The government has said that it will intervene but, astonishingly to me, seems to be proposing in debate—perhaps not in the legislation—that it wants to overturn a general bias which not only the parliament of Australia but also, as far as I know, parliaments throughout the English-speaking world have for the preservation of contractual obligations. You only overturn those if they are unconscionable or of such long duration that the circumstances and nature of events require you to overturn them.

It seems to me that the Labor amendment has then tried to say: ‘We recognise that general tests have been challenged. We recognise that you have greater complexity. We want to say to the Industrial Relations Commission that the following factors must be considered.’ It does not say that the following factors must prevail. It says that they must consider them. The reason they say that is that right at the heart of this is the preservation of an existing contractual agreement. I fought tooth and nail in this chamber, throughout the 1996-97 negotiations on the act and subsequently, to ensure that certified agreements and Australian workplace agreements had the force and power of law and could operate in terms of the original conception that we put forward—against, I
might say, great opposition from the Labor Party. I think that those contractual obligations need defending. That is why I am interested in Labor’s approach.

If the government could find a way to explain to me why I am wrong—which they have not to date either in their advice to me or in the minister’s comments—then I would accept that. But I have not arrived at a view on this lightly; I have arrived at it from a position of bias. I am happy to record, on the record, a position of bias. My bias is towards the preservation, wherever possible, of the integrity of agreements that have previously been made. However, that does not mean that the Australian Democrats and I do not accept that there are circumstances in which agreements should be set aside to facilitate a transmission of business. From what I understand, I do not think that the Labor Party take that view either. They recognise that there are circumstances when that should occur. We just wish to constrain them more than you do.

I think that, in the spirit of respecting each other’s arguments even when we disagree, Parliamentary Secretary, you should avoid thinking that I just accept whatever advice comes my way; I do not. I am operating from a belief system and a consistent position which the Democrats have taken. I am quite prepared and quite open to be persuaded otherwise, but I have not been to date. Therefore, in the chamber today I have to say to you that I agree with the Labor Party’s intention. You may subsequently bring these matters back, and we may have further discourse, but I cannot see why you would not want the Industrial Relations Commission to consider some of these matters—rephrase them, if you like, or reframe them, I do not care. I do not see that there is a problem with asking the commission to make sure that, in considering these matters, they consider these particular issues.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (12.19 p.m.)—What I said in relation to advice is that you have formed a view that this would uphold the High Court decision when in fact the opposite is true: it actually overturns it. It does not really matter how you got to the position—whether you were advised that or have formed that view independently—but if someone wrote me a note or gave me some research saying that this upholds the High Court’s ruling you could get up and say, ‘Senator Campbell, you’re wrong; you’ve been wrongly advised.’

The Labor Party’s intention is to defeat the purpose of this bill, and this amendment seeks to do that. They do not hide that; they are not interested in covering that up. What they would have occur, if this amendment is successful, and it looks as though it will be, is the AIRC spending its time analysing whether or not a transmission of business has taken place. What we want to do, and what this bill seeks to ensure, is for the IRC to have the jurisdiction to consider the matters that it already considers in relation to workplace awards—to consider those who are protected by the certified agreements. That is simply what we are seeking to do. You said in your words in the Senate committee report that it was self-evident that the AIRC should have discretion with respect to transmission of employee conditions.

**Senator Murray**—That’s right, and this doesn’t take it away.

**Senator IAN CAMPBELL**—No, all it does is ensure that the AIRC spends all of its time looking into whether or not a transmission has taken place—and, obviously, probably having a whole series of appeals about whether they even have jurisdiction—rather than looking into the issues that we want them to look at. We are giving it the power to
look at these agreements. The effect of it is that it is in contradiction of your stated philosophy and beliefs—many of which I share—that the AIRC should have this discretion. What you are doing is significantly hamstringing the commission, firstly, in relation to finding its jurisdiction in this area. That is what the Labor Party want to do, and the effect of these amendments is to do just that. It seems to be in conflict with one of the beliefs that you have set down in writing in the Senate report. But I respect the fact that you can have a set of beliefs, some of which can be in conflict with each other. That is clearly what you are grappling with at the moment.

Senator MURRAY (Western Australia) (12.22 p.m.)—I can only judge it on the face of what I have before me. Reading the specifics of the Labor Party amendment, it says that the commission must consider whether the activities performed by the employees in the business or part of the business of the employer who was a party to the industrial dispute are substantially the same as the activities performed by the employees. Paragraph (b) goes on to refer to whether the business activities are substantially the same. If you are in a transmission of business circumstance and you wish to overturn or set aside an existing contractual agreement, the issues of whether the nature of the work—and therefore the rewards and the terms and conditions enjoyed by the employees—should continue or should be set aside in place of something else have to relate to that issue. But it does not mean to say that they cannot be set aside in argument by a commissioner who takes other factors into account—that is, the old business might be in perilous circumstances and, in agreeing to the way in which the new business is to be reshaped, it would be better for everybody all round if a new agreement prevailed.

If the amendment said that the commission may not make a finding in contradiction of this, then I would have concern. But it does not say that—unless I am missing some words or other understandings. From my understanding of the various court cases—and I confess quite freely that I have not read the things top to bottom; I have only read summaries of them—it does make sure that they take into account matters, and it seems to me to need that sort of clarification.

Question agreed to.

Senator JACINTA COLLINS (Victoria) (12.25 p.m.)—by leave—I move:

(3) Schedule 1, page 3 (after line 31), after item 4, insert:

4A After section 149

Insert:

149A Persons bound by awards—ships

If:

(a) a ship is engaged in the coasting trade within the meaning of section 7 of the Navigation Act 1912; and

(b) the ship ceases to be engaged in the coasting trade; and

(c) at a later time, the ship operates under a continuing permit issued under section 286 of the Navigation Act 1912;

then, from the later time, an award which bound the employer of the seamen employed on the ship when the ship was engaged in the coasting trade binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit.

(R5) Schedule 1, page 8 (after line 9), after item 10, insert:

10A At the end of Division 6 of Part VIB

Add:
170MBBA Successor employers bound—ships

(1) This section applies where:

(a) a ship is engaged in the coasting trade within the meaning of section 7 of the Navigation Act 1912; and

(b) the ship ceases to be engaged in the coasting trade; and

(c) at a later time, the ship operates under a continuing permit issued under section 286 of the Navigation Act 1912.

(2) If:

(a) the employer of the seamen employed on the ship when the ship was engaged in the coasting trade was bound by a certified agreement when the ship was engaged in the coasting trade; and

(b) the application for certification of the agreement stated that it was made under Division 3;

then, from the later time:

(c) the certified agreement binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit; and

(d) a reference in this Part to the employer includes a reference to the employer referred to in paragraph (c).

(3) If:

(a) the employer of the seamen employed on the ship when the ship was engaged in the coasting trade was bound by a certified agreement when the ship was engaged in the coasting trade; and

(b) the application for certification of the agreement stated that it was made under Division 2;

then, from the later time:

(c) the certified agreement binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit, if that employer is a constitutional corporation or the Commonwealth; and

(d) a reference in this Part to the employer includes a reference to the employer referred to in paragraph (c).

Opposition amendments (3) and (R5) deal with the specific situation of ships sold to foreign operators to avoid domestic employment obligations. This is an important issue for the Australian shipping and freight industries and their workers. Our amendments take away much of the incentive for shipping companies to transfer ships to offshore ownership and engage foreign crews. Senator Campbell will be pleased to hear that this will assist in providing more certainty in that industry, as indeed I would argue our last amendments would assist in providing more certainty in terms of interpretation on when transmission should be regarded as having occurred.

This issue was also highlighted in last week's High Court decision involving two CSL ships. The case was not strictly about the interpretation of transmission of business provisions; it was about the effect of a transmission of ships. That case arose when the MUA sought to include the new business as a respondent to its awards. Our amendments (3) and (R5) will mean that Australian workers do not have to go to the High Court to preserve their employment conditions, thus providing more certainty. Their conditions will be preserved automatically if a ship is taken offshore and brought back again, which of course means that shipowners will be less inclined to undertake such transfers in the first place.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.26 p.m.)—These new sections as proposed by the ALP would make an
award or certified agreement binding on an employer who operates a ship that has switched from a coasting trade licence to a continuing voyage permit under the Navigation Act 1912. The government’s policy is that Australia should have an efficient and competitive shipping industry that supports Australian trade both at home and abroad. It seems clear that the only intent of the amendments is designed to help the Maritime Union of Australia maintain its internationally uncompetitive labour practices and we will therefore oppose them.

Senator MURRAY (Western Australia)  (12.27 p.m.)—We were talking earlier of contradictions of philosophy. It seems to me that the government have long accepted that it is quite proper for Australia to have internationally uncompetitive wages and conditions. It is part of the living standards and the quality of life that the government supports. Employees in Australia and in Australian enterprises do not have the wages and conditions of some Third World countries, so to be internationally uncompetitive I think is one of the burdens you face in a mature society of our sort. Throughout the OECD, terms and conditions could be termed internationally uncompetitive with Third World terms and conditions. I have always understood the difficulty that Australian shipowners face when they are trying to compete with foreign shipowners under foreign flags who employ the cheapest labour and have near-slave conditions. I think the government—both the past government and the present government—to their credit, have argued in the ILO for such slave conditions to be ended and have fought for better conditions.

Once again, I find this problematic to deal with. Certainly I understand the need for Australian employers to have the most competitive conditions they can, but we have here a terrible conflict. I cannot see why somebody who is allowed under law to be uncompetitive on the land of Australia should not be allowed to be uncompetitive on the sea of Australia. Somebody in a clothing factory in Melbourne—or even out-workers—has terms and conditions and wages which are far better than those in some of our neighbouring countries. We accept that. That is the price we thankfully pay for being a society which is more advanced.

I see this as a confirmation of existing policy, rather than undermining or going against existing policy. Unless you can persuade me to the contrary and show in what manner that is so—and I confess I have not asked the government for a briefing on this, nor have I delved deeply into it—on the face of what I have read, that is my understanding. The conflict we have is that our laws make us uncompetitive in certain respects because we choose to regard the terms and conditions which shall apply to Australian labour, in certain respects, to be uncompetitive internationally. Australians earn more money and have better conditions and that is the way it is.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer)  (12.31 p.m.)—I did not talk about pay and conditions; I talked about uncompetitive labour practices. There is absolutely no doubt in a maritime nation like Australia that, with our fantastic ports and our maritime history, we should not have a world-competitive maritime trade, that more and more cargo should not go on coastal ships and that Australia should not become more and more competitive by ensuring that we have the most efficient labour practices throughout our ships, our handling facilities and our stevedores. If you want to reinforce the tactics of the Maritime Union of Australia by supporting what could only be called the ‘MUA here to stay provisions’, which you are hoping to insert in this bill, then you actually stand against that amendment. Sena-
tor Murray has made it clear that the government have fought to ensure that bad workplace practices in this industry world wide are stamped out. We have never said, ‘Let’s employ Australians at slave rates,’ or put in those sorts of conditions. By standing against these amendments, we do not say that. That is an incredible thing to insinuate.

My words were quite clearly that we support an efficient and competitive shipping industry. You do not have a competitive shipping industry by having bad human relations onboard your ships; you have it by having very good workplace and human relations on your ships, with highly efficient, highly effective, well-trained, world-class seamen—the sorts of seamen Australia has put across the oceans for over 100 years. That is what we want. But what do the Labor Party want? They want to have a special ‘MUA here to stay provision’ in this law. They want to stand in the way of commerce and trade. They want to stand in the way of building Australia as a great maritime nation because they want it controlled hook, line and sinker—and noose—and noose—by the MUA. To make quite clear what these amendments do—by leave—I formally move:

Item 4A, heading to section 149A, before “Persons”, insert “MUA here to stay”—.

Item 10A, heading to section 170MBB, before “Successor”, insert “MUA here to stay”—.

Senator Murray (Western Australia)

We really have to return to the amendments before us. The government cannot have it both ways. I am the strongest supporter you could find—or perhaps not the strongest, but I am amongst the strongest supporters you could find—of certified agreements. I think that enterprise bargaining is what is required to ensure that you have a flexible and fair employment market. When you create an enterprise bargaining agreement, you create a certified agreement—that is, a contract between the employees and the employers established under the workplace relations law, which your policy and the Democrats’ policy all agree with, independent of a third-party construction. This says that, in any transmission of business which affects the shipping industry, you will be bound by the certified agreement.

Senator Ian Campbell—We are not talking about agreements; we are talking about awards in this amendment.

Senator Murray—Section 2(a) on the third page says: ‘If the employer of the seamen employed on the ship when the ship was engaged in the coasting trade was bound by a certified agreement,’ et cetera. It refers to a certified agreement. That is a three-year agreement determined by the employees who are concerned with the employer. It does not say anything about the MUA, although I recognise the reality is that the MUA run the show.

Senator Ian Campbell—They wrote the amendment—written and authorised.

Senator Murray—But the reality of that industry is that you have a monopoly on the employee side, you have an oligopoly on the employer side and on the landlord side you have another monopoly. For goodness sake! At every level of that industry are uncompetitive and constrained circumstances. But I am saying to you that in respect of the law, the policy and the principles which you and we espouse, certified agreements should bind the parties for the three years that apply.

Parliamentary Secretary, if you are saying to me that the construction of this could be better and that there are elements of it which could be better presented, I agree with you, but you cannot in argument seek to override your own policy and your own law—which the Democrats fully support—and that is: that certified agreements between employers and employees bind the parties and should
continue to bind the parties. To me it is really simple. If you want to aggressively tackle some of the construction of the amendment, I will be all ears; if you want to attack that principle that certified agreements should stand, then I am sorry, I have got a closed mind.

The TEMPORARY CHAIRMAN (Senator Cherry)—The question is that the amendments moved by Senator Ian Campbell to opposition amendments (3) and (R5) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the amendments moved by Senator Collins, amendments (3) and (R5), as amended, be agreed to.

Question agreed to.

Senator MURRAY (Western Australia) (12.38 p.m.)—I can see why Senator Collins is laughing there: I am standing up defending her own amendments—

Senator Jacinta Collins—It was the heading, Senator Murray. You have to have a sense of humour!

Senator MURRAY—There we are. Our amendment (4) on sheet 3035 seeks to expand the criteria to be considered within the expanded discretion that the government is offering under item 10, which, I should reinforce for the record, the Democrats support. We have asked that the commission not make an order unless:

(a) the parties to the certified agreement, including the new employer, agree; or

(b) where the majority of employees who are parties to the agreement do not agree to the variation, the Commission is satisfied that:

(i) that variation does not disadvantage employees in relation to their terms and conditions of employment; or

(ii) the variation is part of reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.

Then we refer to subsection 170LT(4). What we are trying to do here is ensure that the basis on which an existing certified agreement which may have a limited period still to run be set aside should clearly relate to existing provisions and existing intentions within the law. I therefore move:

(4) Schedule 1, item 10, page 5 (after line 12), after subsection 170MBA(2), insert:

(2A) The Commission shall not make an order under subsection 170MBA(2) unless:

(a) the parties to the certified agreement, including the new employer, agree; or

(b) where the majority of employees who are parties to the agreement do not agree to the variation, the Commission is satisfied that:

(i) that variation does not disadvantage employees in relation to their terms and conditions of employment; or

(ii) the variation is part of reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.

Note: See subsection 170LT(4) for an example of a case that is not contrary to the public interest.

(2B) In this section, a variation disadvantages employees in relation to their terms and conditions of employment if, on balance, its approval would result in a reduction in the overall terms and conditions of employment of those employees under the existing certified agreement.

Note: Section 170XA contains the no-disadvantage test.
In making an order under subsection 170MBA(2) the Commission must take into account:

(a) the proposed new terms and conditions that employees would be subject to and the effect of any loss of conditions; and

(b) the length of time remaining on the certified agreement.

Senator MURRAY (Western Australia) (12.41 p.m.)—I move amendment (5) on sheet 3035:

(5) Schedule 1, item 10, page 5 (line 22), omit “outgoing”, substitute “incoming”.

What is reflected here is our belief that the incoming employer is the one who needs to make the argument for setting aside or changing the certified agreement, not the outgoing employer. I can see that the outgoing employer has their interest in terms of a sale of the business either as a whole or in part, but it is the incoming employer who is saying that, unless you change the agreement, the sale will be uneconomic or difficult. So, as we see it, it is the outgoing employer’s obligation, not the outgoing employer’s obligation. I had a discussion with the government advisers in their briefing with me and I remain unconvinced by their arguments, but it may simply be that I have not fully grasped them. I would have thought it is the person buying the business, who needs to shape up a new business and move on to the future, who needs to have input into this area.

Senator JACINTA COLLINS (Victoria) (12.42 p.m.)—Labor support this amendment.

Senator JACINTA COLLINS (Victoria) (12.42 p.m.)—Labor oppose item 11 in the following terms:

(6) Schedule 1, item 11, page 8 (line 10) to page 9 (line 23), TO BE OPPOSED.

We oppose item 11 because it simply extends the operation of this bill to all Victorian workplaces. I am sure Senator Murray will realise the reason for this specific item is Victoria’s referral of powers to the Commonwealth in 1996, schedule 1A et cetera. Labor’s position on this is that, until the government gets serious about removing the ghetto that applies in relation to Victorian workers, we are not prepared to contemplate further fiddling with the current arrangements in the Commonwealth jurisdiction. We will oppose changes that simply seek to accommodate that ghetto and enable it to continue until such time as the government takes seriously the situation being put to it by the Victorian government about rectifying the terms and conditions of Victorian workers.

The TEMPORARY CHAIRMAN—The question is that item 11 stand as printed.

Question negatived.

Bill, as amended, agreed to.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.44 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MATTERS OF PUBLIC INTEREST

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

Australian Broadcasting Corporation

Senator SANTORO (Queensland) (12.45 p.m.)—As Australia’s national broadcaster operating on taxpayer money, the ABC has a great responsibility to the community to dis-
charge its statutory functions in a way that is fully consistent with the expectations of Australians about how our public institutions should behave. We on this side acknowledge that the ABC must exercise its functions independent of direction from the government of the day. However, being independent of government, as ‘our’ ABC is, does not mean that it can escape accountability for its decisions and its conduct. It proclaims loudly that it has no desire to evade those responsibilities, but unfortunately its actions prove that the intention is otherwise.

It is plain that the ABC management does not like to be questioned about the detail of its stewardship. Just as it regards audience complaints as a nuisance—and anyone who thinks that this is not the case should take the time to read the dismissive responses those judged to be from the great unwashed tend to get from them—it views questions about how and where it spends public money as beyond the pale. From the weeping and wailing and gnashing of teeth that goes on, from managing director Russell Balding downwards, you would think that the world as we know it has come to an end. The feelings of angst on the part of the larger of the two public broadcasters—and it is interesting to note that the other one, SBS, did not take this line or, for that matter, kill off its digital television development—were substantially increased by the ABC’s response of injured innocence to questions about bias and a lack of balance in its Iraq coverage.

On 26 May, in the Senate estimates hearing, I asked a number of questions on notice. The ABC has now responded to these—it had until 8 August to do so. I say it has responded to the questions but, coming into the chamber to make this speech, there is one still outstanding—fully five days after the generous 2½ plus months deadline. The missing answer concerns ABC expectations about what property sales would realise. It is interesting that, in the end, it was the issue of its Gore Hill holdings that the ABC’s management has had the most difficult time in answering. For the record, it was question on notice No. 37. I am sure fellow members of the estimates committee, especially Senator Mackay—a victim of the serial clumsiness of the foot-in-the-mouth member for Melbourne, a factional enemy—will be interested to see the answer when it eventually surfaces.

Before I go too deeply into the substance of the issue of the ABC, I want to make a clear statement about the outcome of one of the questions I asked on 26 May which the ABC management took on notice. I asked whether Ms Indira Naidoo, presenter of Feedback, was paid more than $250,000 for one day’s work a week. That was the information that I had before me. The ABC answered eventually—perhaps it took them some time to find the paperwork—that Ms Naidoo was paid in the vicinity of $80,000-plus, and other substantial expenses, for one day’s work a week and certain defined additional calls on her time. Most Australians would probably think even the lesser sum was on the generous side for a work schedule that, on the basis of the information the ABC management is prepared to share with the people, does not seem to be overly onerous. Nonetheless it is substantially less than the figure I cited at the estimates hearing. I stress at this point that I was asking a question at the estimates hearing, not making an accusation or stating that the information that I had been supplied with was fact. Having said this, I apologise to Ms Naidoo if, through asking that question, based on the information supplied to me, I caused her any offence.

That said, there are aspects of the ABC’s responses to my questions that are disappointing. Some of them are completely unacceptable. Frankly, some of them are repre-
hensible. Let me start with the issue that is of greatest significance in the context of the proper parliamentary examination of public expenditure. In response to my question about whether the government had maintained its funding in real terms since 1995-96, the ABC said that it was not and produced a spurious sequence of figures to back up this self-serving claim. As honourable senators know, it asserts that in real terms its funding has been reduced by some $5 million since 1995-96. There are many Australians who would say that $5 million is not a large sum in a funding stream of more than $740 million for 2003-04. But the important points are that the claim that the ABC’s funding has been reduced in real terms is wrong and that the ABC knows this. If it does not, it should or it should find some help to tell it so. After all, it does employ a great number of economists who could help out.

The ABC justifies its claim to have been short-changed by $5 million in real terms by citing the consumer price index. But the CPI measures the change in the prices of the goods and services that households buy—not businesses. The largest single element in the CPI is the cost of residential housing. Using the CPI to determine whether the ABC’s funding has or has not diminished in real terms is a real case of counting apples and then shouting that you are short of oranges. If we compare the 1995-96 and the 2003-04 prices of the goods and services that the ABC buys, we see increases of well under one per cent a year. In other words, the ABC requires $504.1 million in 2003-04 to maintain its 1995-96 funding levels in real terms. In fact, the ABC’s 2003-04 appropriation is $591.37 million, after excluding $151.21 million in transmission funding and loan funds that were not part of the ABC’s 1995-96 appropriation. By this far more appropriate calculation, far from having been reduced, the ABC’s funding has actually increased by 17.31 per cent in real terms between 1995-96 and 2003-04.

Because the ABC has been protected from the fiscal disciplines that have applied to other areas of public expenditure, it is doubly important that it be seen to discharge its charter to the full satisfaction of the people—the taxpayers. The community has every right to expect that the ABC will ensure news reporting and commentary do not display systematic bias and, for that matter, systemic imbalance. It is troubling to me, and I am sure to many Australians, that the ABC has chosen to respond to the examples of implied or to-be-inferred bias and a lack of balance by hiding behind word games and mere contrivances.

I will give one example to begin with that I believe amply demonstrates the serious underlying problem. I know of no-one—bar the ABC, regrettably—that does not believe Australia is an independent country that pursues its own national interests. On 11 March 2003, the ABC reported that Australia had decided to expel an Iraqi diplomat. The decision followed the receipt of information from the US which recommended that the diplomat be expelled. On AM—the transcript can be found on the ABC’s web site—Linda Mottram and Leigh Sales said the question about this decision was ‘whether or not Australia made the decision independently’. Having posed the question in that way, they then described the US request as ‘an order’ and, answering their own question, asked whether ‘other nations have also obeyed the US order’.

Now, it is true that the latte set, their chardonnay chums and assorted academics might scoff at that. But what that segment says is that, as far as the ABC is concerned, Australia is so far from being an independent and sovereign nation that it obeys US orders. What an insult. There was, of course, in this
instance, no US order, other than in the imagination of Ms Mottram. Nor does Australia ‘obey’ US orders—other than in Ms Mottram’s apparently very fertile imagination. To assume that it does, as Ms Mottram openly invites her audience to do, highlights the instinctive anti-Americanism and the institutionalised hostility to this government that has become part of AM’s stock in trade. But it is not only bias. It is sloppy and shoddy journalism, which should have no place at the ABC.

That the ABC’s so-called complaints process should look at an instance such as this one and not spot a serious problem that demands correction says all that needs to be said about how well that process works and how independent it really is. And just in case the ABC miss this point, I will spell it out for them: the process simply doesn’t work, and it isn’t independent. We will talk later on a motion to be moved by you, as I understand it, Mr Acting Deputy President Cherry.

Sloppy and shoddy journalism—the sort that perennially transmits the leftist coda of the media elite—is clearly evident too in the way the ABC fails to adhere to its own editorial policy to disclose the affiliation of those it interviews in the context of reporting and current affairs. The ABC, answering another of my questions it took on notice, claims that it sets a high standard of ensuring that, where the person being interviewed is associated with a particular point of view, that association is made clear. It doesn’t. Consider this: when the ABC wanted comment on the allocation of contracts for the reconstruction of Iraq, it went to the Washington based Economic Policy Institute. It found a Mr Max Sawicky there. And—surprise!—he told the ABC that the US administration systematically ignores the requirement for competitive bidding for defence contracts, including contracts such as those being let for the reconstruction of Iraq. What the ABC did not disclose in that instance, and what it has not disclosed on other occasions when it tapped into the on-air talent of the Economic Policy Institute, is that the institute is far from being an impartial source of information. It actively pursues an agenda that is profoundly hostile to the free market in all of its forms.

Let me outline one example: the institute sponsors a ‘Global Policy Network’ that lists what it regards as successes that should guide actions in developing countries. So let us not worry about the market reforms which have made Chile and Taiwan prosperous and which are being emulated in China itself. These are not successes at all, according to the Global Policy Network. For real success, we must look to places where market reforms have been prevented—to the sort of Neanderthal social and economic policies that have made Cuba a basket case and have starved millions in North Korea.

Does the ABC disclose this when it presents the views of the institute as authoritative comment? Of course it does not. What it does do is reserve what it calls ‘disclosure’ for use with sources of comment that it regards as right wing. I canvassed that particular issue quite heavily in the estimates hearings. It chooses the easy luxury of stereotyping those it dislikes, while presenting views with which it is sympathetic as if they were impartial and objective. To describe this as sloppy is to understate the seriousness of the conduct involved.

All this is bad enough. I come now, however, to conduct which, I submit, is frankly reprehensible. I refer specifically to an instruction, which the ABC has now disclosed, by which news and current affairs staff were specifically told, through an email sent by the National Editor, News and Current Affairs, John Cameron, on 12 March, not to refer to the Australian Defence Force personnel in combat in Iraq as ‘our troops’.
They are not ‘our troops’, say Mr Cameron and the ABC. And why is this? Because ‘the ABC does not own them’. I say that this is plain evidence that the ABC has again completely lost its way in the way it demands that the news be presented. The ABC—‘our ABC’, as it proudly likes to say—decrees that the young men and women serving this country, at risk to their own lives, are not ‘our troops’. The ABC has no difficulty—and certainly exhibits no hesitation—in referring to ‘our cities’, ‘our scientists’ and ‘our athletes’. But, by the curious and plainly offensive rule book of the ABC, Australian service men and women in a war zone are not part of us.

How is it possible that the ABC could decide to exile from our community those who have been ordered into harm’s way by lawful decision, on our behalf, in what the elected government has judged to be Australia’s national interest? How could the ABC senior management accept this? Were the Rats of Tobruk who stood up to Rommel and the Afrika Korps not ‘our troops’? Were the brave men who fought the Japanese to a standstill on the Kokoda Track not ‘our troops’? Were the Australians captured and incarcerated at Singapore not ‘our troops’?

There has to be an accounting for this. The ABC’s conduct in this instance is deeply offensive. It highlights a viciously pernicious form of political correctness. It is apparently—sadly, from my point of view, and I am sure from the point of view of a great many Australians—as ingrained as it is misconceived. In this view of the world, patriotism is no more than jingoism. Love of country is disparaged. Identification with those who risk their lives for our country is prohibited. This is broadcasting without moral compass, by an organisation that apparently no longer knows what it means to be Australia’s voice to the world.

Australians—who, unlike the ABC, regard Australia’s service men and women not merely as part of our community but as a part of it which we are especially proud of—deserve better from the ABC. In fact, I demand that they get better than this. The board of the ABC should apologise to Australia’s service men and women. It must clearly and unambiguously repudiate the instruction I have cited, which says—in the context of warfare in Iraq, but one must ask, ‘Where next?’—that Australian Defence Force personnel are not to be referred to as ‘our troops’. The board must clearly and unambiguously repudiate all that that instruction stands for. Until it does, the ABC will not be meeting the high standards which Australians not merely are owed but can quite properly expect.

There is a lot more that I could say and want to say about the substantial matters that stand revealed by the estimates examination of the ABC. I asked a lot of questions and I have received very few answers that are an acceptable accounting of circumstances and events by the ABC. These and other matters are things I shall address at a later time—perhaps no later than this afternoon.

Ingham, Mr Jack

Senator O’BRIEN (Tasmania) (12.59 p.m.)—Yesterday this nation farewelled a great Australian. St Andrew’s Cathedral in Sydney was packed to the rafters with the blue bloods of the racing industry, colourful racing identities, business leaders, politicians and mug punters, who gathered to pay their respects to Jack Ingham. They joined his brother Bob and the rest of the family to celebrate the life of a man who had few equals—of course his brother Bob would be one of those equals. Both Jack and Bob built their business and racing empires on a philosophy of aspiring for nothing short of perfection. Jack Ingham’s funeral came very
close, and credit must go to John Hexton for that. Jack was always proud of his family. He would have been very proud of their contribution to his funeral yesterday. Walter, Ben, Sue and Greg all showed great strength and love.

Jack and Bob Ingham together built two empires. They built a business empire from the legacy left to them by their father. The boys took over the family business in 1953, following the premature death of their father, Walter. Jack and Bob kicked off with 42 acres of bushland, youthful enthusiasm and respect for hard work. They set about building a business that now operates in all states of Australia and in New Zealand. This is a fully integrated poultry business that includes a highly sophisticated diagnostic and research capacity. There have never been half-measures as far as the brothers Jack and Bob are concerned. I recently had the opportunity to visit the Inghams chicken processing facility in Tasmania with the local federal member, Dick Adams. It is a state-of-the-art plant, but the manager, Les Hadley, in the true Ingham style, continues to look for ways of doing things better. Inghams also makes an important contribution to the development of a feed grain industry in my state. This company is not only providing regional jobs in Tasmania but also generating economic diversity.

The corporate successes of Jack and Bob Ingham are well recognised. They are tall poppies that no-one would seek to cut down. The reason is simple: Jack and Bob did not become part of the rich and famous; they continued to be Jack and Bob Ingham. There is a story that appeared on the AAP wire in October 1997 about the Inghams. It was headed ‘Chickens success shows no sign of stopping’ and it was written by Bronwyn Farr. I want to read part of the story because it captures the natures of the two brothers Ingham. It runs:

‘Good on ya, chickens’ yelled the punters as seemingly inseparable brothers Jack and Bob Ingham led triumphant Octagonal back to scale during that fairytale season when the champion galloper set racing alight.

It continued:

You got the impression from the broad grins on the faces of the pair ... that the accolades from the two bob punters meant more than their remarkable business achievements.

Those two-bob punters turned up in numbers yesterday and they sat side by side with Richard Pratt, John Singleton, Bart Cummings and Darren Beadman to say goodbye to Jack and to lend their support to Bob and the family. Only the Inghams could draw such a crowd.

There is another important dimension to the business Jack and Bob built that has been lost on some but not on the Inghams. Not only have Jack and Bob built a great business but in doing so they built a secure life for over 6,000 Australian families by giving them not just a job but a career. In building their business they have underpinned many regional economies. The poultry industry has an income multiplier converting $1 to $5 and an employment multiplier converting one job to five. Just as there has been a close bond between Bob and Jack and the racing community, there has been a close bond between Jack and Bob and those who work for them. Might I say that Bob Ingham speaks with great passion about all the people who work, and have worked, for him and his brother.

Jack and Bob Ingham also built a thoroughbred racing and breeding empire that has no equal in this hemisphere. The Woodlands Stud, with operations at Scone and Cootamundra, represents the largest bloodstock operation in the Southern Hemisphere. The Ingham brothers bought the Cootamundra stud from Transmedia, a company operated by Mike Willesee. As with their chicken business, the brothers have attracted top staff
to run their racing empire. The manager of the Cootamundra operation, Ray Kirkup, is a case in point. Ray built the stud for Mike Willesee and now runs it for Jack and Bob. The racing operation is now both a great operation and a solid business. It is operated out of four states and is overseen by trainer John Hawkes. Jack and Bob have built a racing empire that is an ideal marriage between business and pleasure. They have their stars like Lonhro but they also have enormous depth in their stables. They give all their horses a winning chance. To ask Bob Ingham for a tip is to get a list of all the horses carrying the cerise colours on that day.

On the question of tipping, Jack loved to tell a story about a call he received while in New Zealand buying horses. Jack and Bob had just finished a late dinner in their hotel when a breathless waitress wanted to speak urgently with Jack. She said that the Australian Prime Minister had just contacted the hotel. He was on hold and he needed to talk to Jack urgently. The Prime Minister was of course Bob Hawke, who just wanted Jack’s tips for the Sydney races the following day. That call certainly enhanced Jack’s status among the hotel staff for the rest of his stay. The word was that Jack played a key role in running the country. Jack has left a great legacy to thoroughbred breeding and racing, and I am sure it is a legacy which will build under Bob’s guidance.

There is another side to the Ingham brothers that is not widely known. They have been major supporters of their community, and I just want to give a couple of examples. The first is the Ingham Institute for Health and Medical Research at Liverpool Hospital and the second is an orthopaedic fellowship at the children’s hospital in Sydney. The business community, the racing fraternity and those two-bob punters have lost a great man in Jack Ingham. But the legacy he has left us all is without peer.

Aviation: Ansett Australia

Senator HARRIS (Queensland) (1.07 p.m.)—I rise today to speak on a matter of public interest relating to the demise of Ansett. I want to speak on that because it disturbed and shocked all of us when it happened. In September 2001 we lost Ansett, one of our major airlines. Yes, we were all shocked. However, we were told that it could not be helped, that it was one of those things that happen. The company had failed, but everything was above board and we just had to accept it. What did it mean to us—the ordinary people who used the airline? Importantly, it hurt the businessman most. Ansett had a big following amongst business travellers in our community. It hurt those of us who had always used Ansett to get to the country and those who had used Ansett to travel for holidays. Many of us remember when Reg Ansett bought Hayman Island, turned it into a holiday resort and made it known that Ansett was our holiday airline. Additionally—and this is important to all of us—the loss of Ansett opened the door on the control of fare levels. Are we now at the mercy of Qantas or one other to set fares without restraint?

It has happened; Ansett has gone and, from what we were told, perhaps good riddance. CASA, our trusted Civil Aviation Safety Authority, told us that Ansett was so dangerous and that, because of the dangerous way it operated, CASA had to suspend that entire fleet of Boeing 767 aircraft. That is what killed the airline—nothing else. It was that single act. It was not a matter of financial failure at all. Of course being deprived of the entire Easter holiday revenue was a major financial loss, as was being unable to fly its major passenger aircraft after Easter. Plus, the world was being told again and again that Ansett was dangerous—so dangerous that its approval to fly at all had been taken away. That must have been absolutely
terrifying to many would-be passengers. All of that brought the airline’s financial return to a $1.8 million loss per day. Yes, it was then failing financially. That had been well engineered. It puzzled some of us that only a week or so earlier CASA had told us—let me repeat that: CASA had told the Australian people—that Ansett was the second safest airline in the world. Yet at Easter, right on the biggest holiday travel time of the year, Ansett was too dangerous to be allowed to fly the thousands of passengers who had just booked on what they had been told was the second safest airline in the world. Surprising, wasn’t it?

When we look at Ansett’s history, we see years and years of safe passenger flying with absolutely no passenger fatalities. We see no serious incidents like the Qantas Flight 1 incident at Bangkok where 400 people were in great peril when the aircraft overran the runway, tore off the nose wheel and sat in the mud. Qantas did not even evacuate the passengers. They just sat there waiting for a fire that could have killed many of them. It was just luck that there was no fire. With the sheering off of the nose wheel, electrical wires had been cut, raising the danger of sparks. The smell of fuel and vapour was heavy in the air. The crew’s teamwork was appalling. The report by the ATSB, the Australian Transport Safety Bureau, as analysed in the book *The Evil, Premeditated Murder of an Airline*—and I ask how many senators have read it, because I believe it was provided to them—said that that was dangerous practice. That did not happen to Ansett—no passenger fatalities, no accidents. So why was Ansett all of a sudden so dangerous that it would not be allowed to operate? That puzzled many of us. CASA, our all-powerful air safety regulator, had declared that Ansett was dangerous. Did we have to accept it? The government did. They accepted it and appeared to ask no questions. Why was that?

Could anyone with a decent conscience allow such vast hurt? Sixty thousand people lost their livelihood in this incident. There were 29 suicides, and 2½ million people with fares or shares lost their savings. That was a vast loss to our Treasury. It is absolutely unthinkable.

Does that give you at least some cause for concern, something to make you ask, ‘How could that be?’ It did give some airline men great concern. The result was that they asked an experienced air adviser to investigate, and he did. As a result, he wrote the book, which I referred to before, entitled *The Evil, Premeditated Murder of an Airline*. It is the story of the worst fraud that has been inflicted by a government agency on Australians and an Australian company that was an icon—yes, inflicted upon all Australians, because we will all have to pay. We will have to make up for all the money lost in income taxes, the cost of people forced on to the dole and the cost of no return to the Treasury through company profits. It is a matter that has seriously harmed our community but perhaps worse is that it has taken the lives of a number of people—I am told 29 suicides, 29 fathers of families. Just think of those families, could you or I bear that? It has destroyed the livelihood of approximately 60,000 people whose businesses were associated with or relied on Ansett. It has robbed over 2½ million people of savings that they had made perhaps for the evenings of their lives, not to mention that last, lost holiday.

Time has allowed the matter to be researched and we now know that what we were told was wrong. Yes, indeed it was a crime of stupendous proportions and guess what? It was all done on, at best, dubious fact and, at worst, barefaced lies. Think about it. Were not some of you at least a little puzzled? The second safest airline in the world was suddenly too dangerous to fly but there were no accidents and no reason to
change. So why the change? Maybe somebody can tell me. Examine your own conscience: did you feel that there was something about this sudden change that did not ring true? Did you perhaps accept it because the government did and so why should you make a fuss? Just think about it. It is strange, isn’t it?

Does suspending the entire fleet of Ansett Boeings—the second safest airline in the world—not bespeak of a sudden desire on someone’s part to destroy the airline, irrespective of any justification? Let us look at the issue: CASA said Ansett was dangerous, but the facts published on the very web site of CASA itself plus the report of the Australian Transport Safety Bureau proved conclusively that Ansett was safer than Qantas. As I have said, we only have to look at the Bangkok example.

The last straw was when Mr Toller, the Director of CASA, so vociferously said that it was about the safety slides on an Ansett aircraft which was just out of heavy maintenance and which should have been monitored by CASA but was not. Again, read the details, which are very well set out in *The Evil, Premeditated Murder of an Airline*. The detail is all there, and an important factor is why CASA should have monitored that work. We should have been told about that. There are 15 examples of safety slides not working on the CASA web site, just in one year, and Qantas also figures in that list. There are many other items, which Ansett’s maintenance history shows to be pretty damn good, and they are all detailed in the book. Have a read of it.

When we were confounded because of the misleading tirade about those words—that is, that ‘Ansett is unsafe’—which came from the chief of our safety authority, who could argue with him? He was the very man we had put in charge of that crucial authority.

Perhaps I should say that he was allowed to remain in charge of that crucial authority, and there had been complaints. Investigations have shown that CASA is both dishonest and incompetent. Over the years CASA has repeatedly failed to do its job, even when presented with hard, undeniable evidence and it may have allowed bad and unsafe engineering to go undisciplined. CASA may have destroyed good aviation businesses for reasons absolutely contrary to its charter—for instance, for a reason as simple as a business owner who had the cheek to ask CASA to do its job because it was essential for aviation safety.

Such an example was shown on television only three or four weeks ago. The program *Insight* on SBS television gave the whole story. Instead of doing their job—an urgently needed job of investigation and clearing fuel contamination—CASA put the operator out of business. It was a very dangerous matter and CASA had allowed it to go on for years. It was just luck that no-one was killed. When you re-read section 7 of the book and when you review the *Insight* program, perhaps you will notice that the very man whom CASA put out of business was the man who did most of the work that finally led to finding the solution to that fuel contamination. Whilst the legitimate complainant and most strenuous investigator has been put out of business, the guilty party has been found and the danger eradicated, the guilty party has not even been prosecuted. If we look at it squarely, probably the fault was tracked down because the legitimate complainant—that persistent and sincere operator—pressed the issue until it was solved. So the issue was resolved by the person involved, not by CASA.

It is a vast account of damages done by CASA, which is a government agency, and allowed to go through by the government without a single question. Let me take up a
very important part of this whole story and
that is the crash involving the eight people
killed in the Spencer Gulf. Ultimately, that
was proven to be the result of a faulty crank-
shaft and yet that business again folded be-
cause of CASA. I commend the book to each
senator to read because it gives us an indica-
tion of how even some committee proceed-
ings can be misused. Again, all of that is set
out very clearly in this very good volume.

Tasmania: Shipbuilding Industry

Senator BARNETT (Tasmania) (1.22
p.m.)—I am very proud to stand here today
to highlight the important role the Australian
government played in securing for Tasma-
nian shipbuilder Incat a third order from the
US military for a fast catamaran. Incat
sought trade finance assistance from the Aus-
tralian government’s Export Finance and
Insurance Corporation, which recommended
to the government that Incat be provided
with a $52 million guarantee or bond to en-
able the sale of a fast catamaran, the HSV 2
Swift, to proceed.

Over the past six years EFIC has sup-
ported the export of Australian made vessels
valued at almost $1 billion. The chairman of
EFIC, Peter Young, was in attendance yest-
eryard at the launch of the HSV 2 Swift in
Hobart. Since 1996 the value of Australian
ship exports has averaged $600 million per
year. The guarantee by federal cabinet paved
the way for the latest sale of an Incat vessel
and assisted the company tremendously with
its future viability. I am delighted that Incat
has developed a first-class reputation with
the US military, with this being the third or-
der to date. It demonstrates tremendous trust
in the Tasmanian shipbuilder and augurs well
for the future.

I was the representative of the Tasmanian
Liberal Senate team at yesterday’s ceremo-
nial handover of the catamaran in Hobart.
Again I would like to pay special tribute to
the hard work of Senator Eric Abetz and
Senate President Paul Calvert in ensuring
Incat remained a major shipbuilder and ex-
porter in Australia. The Tasmanian Liberal
Senate team lobbied hard to ensure the Aus-
tralian government provided that $52 million
bond required to help clinch the US Navy
deal.

Senator Hutchins—What about the state
government?

Senator BARNETT—I am coming to
that. Like many companies, Incat has done it
tough in recent times because of a slump in
the Northern Hemisphere ferry market, and
this is why the federal guarantee was so im-
portant. I do acknowledge that the Tasma-
nian government played its part in providing
other loan assistance to the shipbuilder. I pay
tribute to Bob Clifford and Craig Clifford,
and their dedicated work force. Bob Clifford,
with his family and work force, established
this new enterprise from a fledgling trans-
Derwent ferry service when the bridge col-
lapsed on 5 January 1975. I also pay tribute
to Chris Bollinger, president of Bollinger
Incat USA, which is based in Louisiana. He
flew in for the special celebration and launch
yesterday. I met with Chris Bollinger and
thanked him for his contribution and his
commitment to the Australian and Tasmanian
shipbuilding industry.

I have made representations, including in
the last 24 hours, to the Australian govern-
ment, along with my Liberal Senate col-
leagues, to explore future use by the Aus-
tralian military of Incat vessels. For example,
the Australian Navy leased an Incat vessel,
Jervis Bay, during the East Timor crisis. I
would also like to particularly commend the
work force whose expertise and commitment
have made all this possible. Yesterday’s
launch was a special occasion and I would
like to pay tribute to the master of ceremo-
nies, Commander Dean Chase, Naval War-

fare Development Command, US Navy; and His Excellency Sir Guy Green, the Governor of Tasmania. The guest speakers included Rear Admiral Paul Ryan, Commander of Mine Warfare Command, US Navy. The benediction was delivered by Father David O’Neill, the Royal Australian Navy chaplain.

The Australian government was represented by the Minister for Trade, the Hon. Mark Vaile, who gave a presentation and speech on the commitment by the Australian government to the shipbuilder and the shipbuilding industry and the work that is required to support such an industry. I thank the minister for his commitment and for taking time out of his busy schedule to be part of the celebration and launch in Hobart yesterday. The decision by federal cabinet is another milestone in the provision of special assistance for the Tasmanian economy, which is hampered by its island status and small economies of scale. I gather from hints by the Prime Minister in Tasmania last weekend that in time there may be more special assistance. I find that heartening news, if I read him correctly.

The list I have here of measures we have already taken is by no means exhaustive but let me say it dwarfs anything I saw coming Tasmania’s way from the Hawke and Keating governments between 1983 and 1996. All the federal Labor government did in that period was cut federal funding to Tasmania and cynically use the state as a vehicle for green votes in the large mainland urban centres like Melbourne and Sydney. Just ask Graham Richardson and Barry Cohen. In contrast I would like to list measures taken by the Howard coalition government, which I am proud to be associated with. The first measure is the Tasmanian Freight Equalisation Scheme. This is now worth $80 million a year. It benefits small, medium and large businesses—but in particular, the primary and secondary industries—in Tasmania. It is uncapped so it is demand driven and I commend the Tasmanian Farmers and Graziers Association, and their president, Brendan Thompson, for their continued support of this important scheme for the Tasmanian farming and rural industries.

The second is the Bass Strait Passenger Vehicle Equalisation Scheme, which is worth nearly $31 million a year and is also uncapped and demand driven. It grows as the economy grows and as tourist numbers grow. It underpins Tasmanian tourism growth and has the support of the Tourism Council of Tasmania. I acknowledge the work of Michael Roberts, his support for this initiative and the work that he undertakes on behalf of the tourism industry, and I congratulate him for that. Combined, these two initiatives amount to in excess of $110 million per year of benefits to the Tasmanian economy and they help offset the disadvantages of our island status.

The third measure is that the Australian government is pouring $10 million over four years into the upgrading of the Scottsdale-Lilydale road in order to open up Tasmania’s north-east to future business and tourism prospects. This requires a matching grant from the Tasmanian government of some $10 million. It will be a great boost for Tasmania’s north-east.

The fourth measure is that every year Hydro Tasmania quietly receives approximately $38 million from the Howard government in the form of greenhouse credits, consistent with the renewable energy regime, which is a world first introduced by the Howard government just a few years ago. It is a massive $38-odd million a year. Just where would the Tasmanian government’s budget bottom line be if it was not for those annual payments? Recently, together with the members of the Tasmanian Liberal Senate team, I toured the
wind farm at Woolnorth on Tasmania’s north-west coast. I want to thank and acknowledge the professionalism and work of Geoff Willis, the CEO of Hydro Tasmania and also the Chairman of Hydro Tasmania, Peter Rae, a former senator of the Australian parliament. I congratulate them for their advocacy and for their role in growing the wind farm developments in Tasmania, which represent an investment of approximately $100 million each year. I am proud of a government which, through this renewable energy regime, has helped to underpin that investment regime.

The fifth measure is that earlier this year Prime Minister John Howard opened Tasmania’s famous West Coast Wilderness Railway in Queenstown. This was built with almost $21 million of Australian government funds. That railway is now owned and operated by Federal Hotels, which is a great Tasmanian corporation, leading the way in tourism developments—hotel and resort developments—not only on the west coast but in many other parts of Tasmania, including Coles Bay. I want to congratulate Federal Hotels for their confidence in Tasmania and thank them for their continuing reinvestment in Tasmania. I note, in particular, the fact that they are Tasmanian owned and operated. I commend Greg Farrell for the work that he undertakes as managing director and acknowledge the hard work of Brendan Blomeley, their public affairs director.

The sixth measure is that the Australian government’s First Home Owners Scheme has paid out almost $100 million to 13,500 Tasmanian families since July 2000. This comes on top of the lowest interest rates for 30 years thanks to the sound economic policies of the Australian government. It underpins the housing and construction industry, providing a windfall, in fact, in stamp duty for Premier Bacon. This is one of the reasons that there has been a significant increase in the stamp duty take by the state Labor government in Tasmania. I have actually called on the state government to review their stamp duty impost on housing and insurance policies as it is a double tax. I hope that they undertake that review and alleviate the burden on the Tasmanian taxpayer.

The seventh measure is that, in the 2003-04 financial year, the Tasmanian government will start receiving windfall GST payments worth an extra $8 million this year and, based on recent estimates, will amount to an extra $150 million in windfall GST payments to Tasmania over the next five years. This is enough to pay for one of the two Tasmanian ships—Spirit of Tasmania I and Spirit of Tasmania II, which cost approximately $300 million. That $150 million would pay for at least one of those ships, so it is a wonderful injection of support and funding for Tasmania.

The final measure is that this year the Australian government offered Tasmania a historic hospital funding deal worth an extra $220 million over the next five years, an increase of 17 per cent in real terms. I have not heard confirmation from the Tasmanian government that they will sign up to this deal. I hope they do for and on behalf of the Tasmanian public. Waiting lists and waiting times can be reduced. In Tasmania, for example, based on the most recent research that I have checked, over 6,670 people are on the surgery waiting list and some 10,000 are on the waiting list for dental care. I ask the Tasmanian government to reconsider and to sign up to this agreement to alleviate the pain, the suffering and the burden on the people of Tasmania so that the waiting lists and waiting times can be reduced. If they fail to sign up, I will then be asking the people of Tasmania to lobby their Tasmanian state Labor members of parliament to encourage them to sign this agreement, which will be of great benefit to Tasmania.
The issue of hepatitis C in the blood supply is becoming more and more concerning every day. Most recently it has come to light that a woman in Queensland who had contracted hepatitis C in 1978, unaware of her infected status, made numerous blood donations to the Australian Red Cross during 1995. This woman was not notified by the Red Cross that her blood had tested positive to hepatitis C nor was she told that she should not donate any more blood.

The most important point about this woman’s case is the year in which she made her donations. It was in 1990 that the Australian Red Cross implemented surrogate testing for hepatitis C. Yet this woman’s donations were made in 1995, and her infected status was not detected by the Australian Red Cross. By all accounts, surrogate testing for hepatitis C in blood is well over 99 per cent effective. Yet this woman from Queensland was allowed to donate infected blood on more than one occasion. A simple mathematical calculation demonstrates that the failure to detect hepatitis C in her multiple donations was either one of the greatest flukes of all time or there was a fault in the processes used by the Red Cross for detecting hepatitis C.

Professor Barraclough’s inquiry dealt with the issue of hepatitis C in donated blood in the year 1990 only. It was assumed that since that date the implementation of surrogate testing had all but eradicated the problem. It would appear that the case of the Queensland woman I have mentioned raises serious doubts about the quality of blood provided to hospital patients in the mid-1990s, if not today. I have mentioned in previous speeches that the real issue in inquiries into hepatitis C is not what happened in 1990; the real issue is why the Australian Red Cross chose not to implement surrogate testing in 1986 when it first became available.

Surrogate testing was first implemented in the United States in 1986. Instead of immediately using the same form of testing here in Australia, the Australian Red Cross chose to conduct a four-year study into the efficacy of surrogate testing of blood. This was a study into a process which was already known to reduce the risk of hepatitis C being introduced into the blood supply by at least 50 per cent. The years between 1986 and 1990 are the most concerning and the ones which should be looked into in detail. It is unknown as to why the Red Cross chose to undertake a study rather than implement the test, and they should be called to account for their actions.

The number of Australians who have been exposed to and have contracted hepatitis C is not known. Those who have been infected are often unable to raise their concerns and tell their stories due to confidentiality clauses in settlements provided to them by the Australian Red Cross. It must be noted that, in an answer to questions I placed on notice earlier this year, Senator Patterson confirmed that many of these settlements have been at least partially funded by Commonwealth government money. This means that the government and the taxpayer are funding compensation which prevents Australians from knowing the dangers they have been exposed to in the past.

There are a number of questions which still need to be answered. The practice of accepting blood from prison inmates, for example, is concerning if only for their increased exposure to diseases such as hepatitis C. As with many other issues, there is little public information as to where and when this practice occurred in Australia. Australians still do not know how often blood and blood products are imported from
overseas for use in transfusions here in Australia. Nor do Australians know what countries those blood products were imported from or the testing arrangements and procedures used by source countries to ascertain the quality of the blood or its freedom from infection by hepatitis C. These questions need to be answered and, to that end, I have placed questions on notice to Senator Patterson regarding the hepatitis C infected woman in Queensland who made blood donations after 1990, the use of blood donated by prison inmates and the importation of blood products. I hope that they are answered swiftly so that this issue can be dealt with as effectively as possible.

Hepatitis C is a life-changing disease. It causes progressive liver disease, and the outcome for between 10 and 20 per cent of sufferers is cirrhosis of the liver and liver cancer. The failure to detect hepatitis C in the blood supply has resulted in thousands of individuals and families being affected. Many of these people will die as a result of mistakes or miscalculations which were no fault of their own, and others face a lifetime of disability. Many sufferers have attempted to obtain much needed financial assistance in dealing with their illness, but it has often been blocked by legal challenges.

The Anti-Discrimination Board of New South Wales has recently found that sufferers of hepatitis C face widespread discrimination as a result of their illness. Because of the confidentiality clauses in compensation agreements with the Red Cross, many of the thousands of Australians who have contracted hepatitis C through no fault of their own are not able to tell their stories, nor are they able to advise other Australians of the consequences of the actions of the Australian Red Cross. Many of the people who have contracted hepatitis C do not even know how or why their blood was infected. There are many questions at the moment, but very few answers. People who have contracted hepatitis C through a blood transfusion need to be provided with the facts. It is only right and fair.

Johnson, Mr Alwyn
Tasmania: Foxes

Senator MURPHY (Tasmania) (1.43 p.m.)—There are two things I would like to speak about today. The first is the outcome in respect of a Tasmanian whistleblower, Alwyn Johnson. Let me say at the outset that I congratulate the Prime Minister for pursuing the inquiry and bringing about a just outcome in respect of what happened to Alwyn Johnson. I cannot say that the payment was just, because I do not think it was given the time that Alwyn Johnson had waited for justice to be done, but I certainly congratulate the Prime Minister on pursuing the matter, as he undertook to do some time ago.

It is heartening to see that Neil Brown, a former member of the House of Representatives, found in favour of Mr Johnson—and correctly so, because this is a matter I have also followed for a long time. A great injustice was done to Alwyn Johnson by consecutive state governments, both Liberal and Labor, neither of which was ever prepared to have a proper inquiry into the circumstances surrounding Alwyn Johnson’s unfair and wrongful dismissal from the Trust Bank. I have made many comments about the Trust Bank over time, but I read with interest the story in both the Examiner and the Mercury newspapers. It is interesting to note that there is a degree of criticism now mounted by these newspapers, which seemed to find some difficulty mounting similar criticisms some time ago—and, indeed, during the course of Trust Bank’s operation. I can understand that. I guess they were a bit concerned about the potential loss of revenue from advertising dollars that might be paid to them by the Trust Bank. The two editorials
that I read also provide some interest in this respect: neither of them mounts any criticism of either the present state government or previous state governments. They are very critical of the circumstances that Alwyn Johnson went through, many of which were as much to do with state governments as they were to do with anyone else. I will wait with interest to see whether or not the current state government responds to the finding of Mr Neil Brown in respect of the inquiry that the Prime Minister had conducted.

To date, there has been a deathly silence—not one word—in respect of Alwyn Johnson, and the fact is that he did save Tasmania a significant possible debt. I think it would be an honourable thing for the state government to come out and actually acknowledge, as they have never been prepared to do in the past, that somehow Alwyn Johnson was correct. It is just unbelievable from a Labor government point of view, I have to say. But consecutive state governments of both political persuasions have never acknowledged the circumstances and the suffering that Alwyn Johnson has gone through.

Neil Brown would have found in favour of Alwyn Johnson simply because there was an agreement—this is actually documented and I think I have mentioned it in this place before—between the then Premier, Michael Field, the Trust Bank and the union for Alwyn Johnson to receive compensation many years ago. But it was only because Senator Bob Brown, who was then a member of the House of Assembly in Tasmania, got up in the parliament and raised the issue that the then government withdrew from the agreement. That is the fact of the matter, yet this person has had to suffer for a long time. It is unacceptable. Frankly, I think that the now state government ought to come out and make some compensation payment themselves as an honourable gesture to somebody who has had a great deal of pain and suffering for doing something that saved the state of Tasmania a potentially significant loss.

Another matter I wish to say a few words on relates to the Tasmanian fox issue. I have made a few comments in this place before on this matter, but it is an article in the *Examiner* today which causes me to raise the matter again. The article is headed ‘Fox dog on the run’. I know that the state government of Tasmania and indeed the Commonwealth have funded the Fox Free Task Force for a fox eradication program in Tasmania—if foxes do exist in Tasmania—and that the Fox Free Task Force found it necessary to have two dogs trained to sniff out dead foxes that had taken the 1080 baits that had been laid by the Fox Free Task Force. Tens of thousands of baits have now been laid and we still have not found a fox, but two dogs have been trained at a cost of $36,000. The article headed ‘Fox dog on the run’ states:

The Fox-Free Task Force Northern detector dog has escaped from a property near Westbury and the public has been asked to help locate him.

Jock is a four-year-old male golden labrador and was wearing a leather collar when he escaped.

Fox Free Task Force acting manager Chris Emms said advertisements had been placed in newspapers and radio appealing for help in locating Jock.

‘Jock is very important to the ongoing work of the Fox Free Task Force and I urge people in the area to keep a look out for him,’ Mr Emms said.

Anyone who sees the dog is asked to phone 6336 5320.

It is my information that poor Jock was actually poisoned by one of the 1080 baits used by the Fox Free Task Force. I would urge the state government to conduct an investigation to determine whether or not that is a fact. It seems odd to me that a dog that has been trained and, I hope, well looked after would somehow escape without a trace, given the importance of a dog that has cost such a con-
siderable amount of money to train. As I said, it is my information that, unfortunately for the dog, he was poisoned by a 1080 bait used by the Fox Free Task Force.

Senator McGauran—Isn’t this a state issue?

Senator MURPHY—Senator McGauran, the Commonwealth actually provided $400,000 of taxpayers’ money for this program, which I have to say—and I have expressed this view before—is a significant waste of taxpayers’ money. It would be much better spent on some real feral animal control processes rather than on searching for something that does not exist, in my opinion. Others have a different opinion, but that is my opinion.

When you have laid tens of thousands of baits and you have had people running all over the place and you have had something like 500 sightings—five of which I am told were by Fox Free Task Force members—you have to wonder because we have been unable to shoot one, unable to poison one or unable to find one. This is a program that involves some $3 million or more, and the Tasmanian government is coming back to the Commonwealth and asking for another $500,000. That is why I am talking about it in the Senate, for Senator McGauran’s benefit. It is important that we expend taxpayers’ money in a valuable way.

It causes me concern to have been informed that this dog has been poisoned by one of the fox task force’s own baits of 1080 poison. The baits are laid indiscriminately—that is how I would describe it—and it has been suggested that they be put on top of the ground. God only knows how many native animals, such as Tasmanian devils and native cats, have been poisoned as part of this process for no result in respect of foxes. It is a known fact that the New South Wales state department refuses to allow the use of 1080 poison for foxes, particularly in national park areas. So with regard to the fox task force issue, I will have further comments to make in the fullness of time and I am sure Senator McGauran will be in here listening to what I have to say because he is so interested in how we expend taxpayers’ money.

I will just refer back to Alwyn Johnson. As I said, I have had a long association with Alwyn Johnson and have followed and pursued his case. I am sure the Prime Minister’s office would acknowledge that because I have rung them many times to ask how the inquiry was proceeding and to urge them to bring the inquiry about. Alwyn Johnson has finally received the justice that was due to him, and I congratulate him on that. I also congratulate the Prime Minister for having the inquiry conducted because it does prove that Alwyn Johnson was right and that he was unfairly dismissed from the bank by a bloke—and I have said this before—who should never have been running the bank in the first place, by a bloke who really did a disservice to Tasmania in respect of the Trust Bank and caused the Trust Bank to be lost to the state, which was a very sad day. It is very unfortunate. As I said, the Prime Minister deserves praise for doing something in respect of this matter.

Sitting suspended from 1.56 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Education: Report

Senator CARR (2.00 p.m.)—My question is to Senator Alston, the Minister representing the Minister for Education, Science and Training. Can the minister now confirm that two briefs were prepared by DEST for and addressed to Minister Nelson on the completed national report prior to Easter 2002? On what dates were these briefs actually provided to the minister or his office? Did the department commission Ray Adams
and Associates for formatting, indexing and other preparations for the national report? Were they paid $6,000 for the work? Was their consultancy in fact completed in April 2002? In light of this, does the government stand by the claim that editing of this work actually began in April 2002?

Senator ALSTON—I am not in a position to give Senator Carr a timeline and a chronological itemisation of all the matters that he might think are relevant to this discussion. I can simply refer once again to the letter from the secretary confirming that the minister was not formally briefed on the report at any time before July 2003.

Senator Sherry—What about informally?

Senator ALSTON—I am telling you what the letter says.

The PRESIDENT—Order! Minister, would you make your remarks through the chair and ignore the interjections.

Senator ALSTON—If the opposition want to take a cute point then they can take any points they like, but the fact is that the words speak for themselves. If I am able to obtain anything further from the minister, I will.

Senator CARR—Mr President, I ask a supplementary question. Thank you, Minister. I appreciate you taking that question on notice. I ask you a further question. Has the minister established who in the department was responsible for failing to report the $62,000 of consultancies for the national report in last year’s departmental annual report? I refer to the minister’s admission that there had been a ‘misclassification’ of a $22,000 consultancy from Emeritus Professor Grant Harman. What action has been taken to establish who was responsible for the error? Was the failure to report accurate records about these consultancies part of a plan to hide this research from the parliament and the public?

Senator ALSTON—I do not know about this particular issue. I hear Senator Carr using the term ‘misclassification’, which I presume he interprets to mean failing to report. Then he resorts to the usual conspiracy theory.

Senator Faulkner—So you will put it on notice?

Senator ALSTON—Yes, but I am adding a bit extra. He then gets to the conspiracy theory that this is all part of a grand plan. As we know, this is the bread and butter, the stock-in-trade, of the member for Albania because that is the way they think down there. As we are talking about consultancies, it might be more helpful if Senator Carr were able to apologise to the Senate for suggesting that Mr Textor was involved in the research that was commissioned on community attitudes. I do not know of any basis on which he said that. If he would like to inform the Senate then I think we would at least be better advised.

Senator Faulkner—He actually asked a question about it, didn’t he?

Senator ALSTON—Yes, he did ask a question about it, but I am simply saying—

(Time expired)

Solomon Islands

Senator SANDY MACDONALD (2.04 p.m.)—My question is to the Minister for Justice and Customs, Senator Chris Ellison. Minister, given the importance of our Solomon Islands cooperative engagement to the security of our region, will you update the Senate on current developments in this mission to restore law and order to the Solomon Islands?

Senator ELLISON—I thank Senator Sandy Macdonald for what is a very important question. Yesterday I advised the Senate that there had been talks between Harold Keke; the Acting Police Commissioner, Ben
McDevitt; and, of course, the coordinator, Nick Warner. I believe Lieutenant Colonel John Frewen from the ADF was present for those talks as well. As a result of that, I am pleased to advise the Senate that Mr Harold Keke surrendered into the custody of the Regional Assistance Mission to the Solomon Islands on the Weathercoast earlier today. This is a great outcome for this mission in the Solomon Islands. It was an outcome sought by many Solomon Islanders and, as a result of it, three of Mr Keke’s senior lieutenants have also been taken into custody. Importantly, 40 weapons, including 28 high-powered weapons, were handed over by villagers and militants from Keke’s area. This has now opened the way to establish a police post at Kalena on the Weathercoast. Again, this is an outcome that will be welcomed by the Solomon Islanders in that area.

Harold Keke and his associates are now being transported from the Weathercoast to Honiara on the HMAS *Manoora*, and they will then be transferred to a secure location on remand. Of course, he will be securely kept and protected whilst in custody and will receive all the rights and privileges accorded to anyone in his position under Solomon Islands law. Mr Keke has been arrested on an outstanding warrant for robbery. A full investigation of crimes, however—including murder, allegedly committed by Mr Harold Keke and his group in recent times—can now proceed. This is a major success for the mission in the Solomon Islands. Keke’s activities caused much anxiety and fear for many Solomon Islanders over recent years. Early in July, we provided $100,000 in emergency assistance for food, shelter and clothing to an estimated 1,250 people displaced by the militant activities of Keke and his followers. These people can now rest easy knowing that justice will take its course.

This sends a very clear message to militants and others in the area who want to cause trouble that we will not tolerate this, and that there will be no excuse for not handing in weapons before the end of the current amnesty, which expires on 21 August this year. This is the best outcome that we and the Solomon Islanders could have expected. It was a peaceful surrender, without need for aggressive police action that might have endangered lives on both sides. This underlines the value of deploying sufficient forces in this mission to constitute a credible deterrent. Again I want to place on record the great appreciation by the Australian government of the work being done by the Australian Defence Force personnel, the Australian Federal Police and of course the Australian Protective Service. Their professionalism and judgment in this matter has led to an outstanding outcome in just over three weeks of the life of this mission. As I mentioned yesterday, there have been many weapons which have been returned and, of course, two police posts have already been set up outside Honiara—and the most notorious militant leader in that region is now behind bars. We welcome the early progress, we still realise there are many dangers and we look forward to a speedy resolution of this mission and the safe return to Australia of all concerned.

**Social Welfare: Carer Allowance**

**Senator MOORE** (2.08 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Can the minister explain why she decided yesterday to add six medical conditions to those on a list automatically qualifying families for carer allowance? Didn’t the minister tell the Senate on Monday:

... we will have another review of the recognised disabilities list, and that will be finished by Christmas. That happens every couple of years and is unrelated to matters currently being discussed about this particular group of carers ...

Can the minister confirm that in the past 48 hours the Prime Minister’s office has had to
intervene yet again? Hasn’t the Prime Minister’s office forced her to truncate her review of the recognised disabilities list less than 24 hours after Monday’s statement to the Senate?

_Senator Hill interjecting—_

_Senator VANSTONE—I note Senator Hill’s interjection. If you speak slowly, you are in trouble because you are treating people like idiots; if you go fast then they do not get the picture. There has been no—_

_Opposition senators interjecting—_

_Senator VANSTONE—When we have had our song and dance—_

_Opposition senators interjecting—_

_Senator VANSTONE—Taxpayers up here are paying for this parliament and this question time and they wish your joking would finish and you would just let the answer be given. I cannot even hear myself think, Mr President.

_The PRESIDENT—_Senators on my left will come to order!

_Senator VANSTONE—_Senator, I am sorry to say this because you do have a strong interest in welfare issues, I know that, and some experience in the area, but you have completely misunderstood the announcement yesterday. The review of recognised lists that I spoke of is going ahead and will be finished by Christmas. What I also indicated prior to yesterday was that the government would be having a look at the other review that is going on—namely, that of the 70,000 saved cases. As a consequence of that review of the 70,000 saved cases we have decided, at this point, to make a determination to include six extra medical conditions on the recognised lists. They will be put on the lists very soon, if not today, but in any event the review of the recognised lists, which happens every couple of years, will go ahead.

I was at pains to point out yesterday, however, that the review of recognised lists that is going ahead will not review these six that have been added—it would be silly to put something on the list today and review it tomorrow. They will form part of the list and when the next review of recognised lists—not the review of recognised lists being undertaken now—comes around—which, all other things being equal, should be in a couple of years—they will be on the recognised lists and reviewed, just as the rest of the recognised list is reviewed. I hope that has made it clear. There are two reviews: one of the recognised lists, which is continuing and always has been; and there was a review of the saved cases, from which the government concluded that we could add six medical conditions to those recognised lists. This would save a significant number of people in the saved cases review having to have their child assessed against a child of that age without a disability.

_Senator MOORE—_Mr President, I ask a supplementary question. Can the minister confirm that problems with the management of this review of carers on top of mismanagement of family payments have seen the Prime Minister’s office take over all decision making within her portfolio? Minister, is this the reason that the Prime Minister’s chief of staff now attends your press conferences?

_Senator VANSTONE—_Again, I am sure your question is completely misplaced and you do seem to misunderstand. I hope you also understand that the Prime Minister of course takes a very strong interest in matters in the welfare area. I know your colleagues, not necessarily you, would like to portray him as a Prime Minister who is not interested in the welfare area. That is not the case; he has always had a longstanding interest in the welfare portfolio and in family and community services. I think that is important to mention, given the misunderstandings that
some of your colleagues would like to create about the Prime Minister’s interest. If the Prime Minister’s chief of staff was at any doorstop that I have done then I will be apologising to him later because I did not see him and I would have said, ‘G’day, mate.’

Information Technology

Senator TCHEN (2.14 p.m.)—My question without notice is to the Minister for Communications, Information Technology and the Arts, Senator Richard Alston. I ask: would the minister inform the Senate of actions taken by the Howard government to support the growth of large and small businesses in Australia’s information technology sector, and would the minister also advise the Senate whether there are any serious risks faced by these businesses, and of the safeguards regarding those?

Senator ALSTON—Thank you, Senator Tchen, for identifying a very important area of government policy and one that is crucial to the ongoing future and prosperity of Australia. Quite clearly, ICT has to be seen in the context of a healthy economic environment; therefore, it is absolutely crucial to have very impressive rates of growth, low levels of inflation, historically low interest rates and a tax environment that encourages innovation.

We have a $2.9 billion Innovation Action Plan, which we launched a couple of years ago. That includes a $129 million centre of excellence, which is coming along very nicely. As far as small- and medium-sized enterprises are concerned, in 2001-02, ICT SMEs constituted 30 per cent of R&D Start recipients, 42 per cent of Innovation Investment Fund recipients and 51 per cent of COMET grantees. We now have the world’s best practice venture capital reforms in place. Invest Australia has launched the new Technology Australia brand, with ICT as one of its three target areas for investment promotion. Our BITS Incubator Program has fostered and nurtured many SMEs. I think all the building blocks are in place.

I am asked whether there are any serious risks faced by the industry. Quite clearly, there are a number on the horizon. I am not sure whether they should be taken seriously at this stage, but the opposition’s announcement of its general approach to economic issues ought to be enough to send shivers up anyone’s spine. The opposition has already flagged that it will oppose changes to international tax arrangements designed to encourage the international expansion of Australian companies and to provide a key incentive for multinational companies to set up business in Australia. It has announced a $467 million reduction in the diesel fuel rebate for the mining industry. That will do a great deal to promote employment in that sector!

The shadow Treasurer has advocated a doubling of the capital gains tax. Don’t take my word for that—Laurie Oakes, who is usually very well informed on these matters, tells us that Mr Latham was furious over capital gains tax cuts and concessions arising from the Ralph review. He was even more furious when Labor decided to vote for them. He is on the record as saying:

To introduce capital gains concessions, to open up tax avoidance on a major scale and to have capital gains rates below corporate tax rates is a foolish policy ...

The day after the government announced that it would implement the changes, Latham told parliament:

It is proposing to do the thing that tax avoiders want.

So everyone should be on notice that, whatever Mr Latham might say in the short term, Labor’s agenda is clearly to increase the rate of capital gains tax in this country. That is bad enough but, when we come to the ‘Angry Albanian’, one really ought to be very
concerned indeed. As Annabel Crabb said in the Age recently:
Tax breaks for industry worth $2 billion a year would be reviewed by a Labor government, according to the Opposition’s new industry spokesman ... 

Can you imagine a better death wish for a leader like Mr Crean than to appoint someone whose whole track record in politics has been of anticapitalism? Senator Carr might wear bourgeois suits, but he hates business with a passion. He is on record advocating greater social control of private capital, so there ought not to be any misunderstanding about what he has in mind for business, and it is very bad news indeed. If you combine that with Mr Crean’s decision to snub the AIG dinner the other night, one really has to wonder whether Labor has given up on business and employment creation and innovation. Senator Carr no doubt thinks that there is plenty of easy money to be made by hacking into R&D tax concessions—not assisting business but actually telling it what to do. There is going to be a very stark choice for the voters at the next election. (Time expired)

Social Welfare: Carer Allowance

Senator MARK BISHOP (2.19 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Can the minister confirm whether her department was consulted by the Prime Minister’s office or his department during their intervention to try to limit the damage done by the minister’s changing daily advice to families about the status of the government’s carer allowance review? Isn’t it the case that the altered recognised disabilities list is the only thing that protects families from this minister’s tough new child disability assessment tool? Hasn’t the Prime Minister’s policy making on the run on the new contents of that list prevented proper consideration of whether conditions such as cerebral palsy, Asperger’s syndrome, chronic severe asthma and ADD be considered as automatically qualifying conditions for receipt of carer allowance?

Senator VANSTONE—I thank the senator for his question. I am sorry, Senator, because you are generally very courteous and polite at estimates committees and maintain an interest.

Senator Hill—He doesn’t fit the Labor mould, does he?

Senator VANSTONE—No, he doesn’t fit the Labor mould.

Opposition senators interjecting—

Senator VANSTONE—I am not meaning to cause mirth on your behalf, Senator Bishop; it is just so unusual for someone on your side to be a gentleman that I thought I would point it out. In any event, these are the risks you run when you read out questions written for you by other people. You refer to my ‘tough new child disability assessment tool’. This tool is half a decade old. You might call that brand spanking new where you come from, and in terms of Labor policies you would be right—you are still sticking around there with stuff you are dragging out of drawers from decades ago! The plain facts are that this new child disability assessment tool was introduced in 1997 or 1998 legislation and was reviewed in 1999-2000. It was found that minor changes needed to be made, and it will eventually be reviewed again, but I am highlighting for you the trap you run into when you read some rubbish that some other whacker has written out for you and you display that you actually know nothing about the area about which you are asking.

As to one of the points of your question—whether the Prime Minister’s office has consulted my office or department; I am not sure whether you referred to his office or his department—I do not know about his office,
but I would certainly hope his department has. Frankly, I would be very annoyed if Prime Minister and Cabinet prepared advice for the Prime Minister on affairs related to my department and did not consult my department. Furthermore, the relevant adviser in this area in PM&C, who is quite new, was wisely snatched from my department by Prime Minister and Cabinet because she is very good at her job. She was, up until a few weeks ago, in charge of the disability area and, of course, my own department would ring her to keep continuity in the changeover with the new people.

Senator MARK BISHOP—Mr President, I ask a supplementary question. It is good to see that they are taking a close interest in your department, Minister. Can the minister explain why cerebral palsy has not been included on the Prime Minister’s new list of recognised disabilities for receipt of carer allowance? Can the minister confirm that the Prime Minister’s overruling of her review of the recognised disabilities list means that families with children with cerebral palsy now have no chance of having their lost carer allowance payments reinstated?

Senator VANSTONE—Again, I say the same thing to Senator Bishop: I offer you some caution about reading out a question that some whacker has written for you and displaying your complete lack of knowledge in this area. Let me try to answer it for you again. The review of recognised disabilities, of which I have spoken on a number of occasions here and in the media, is proceeding. Any parents or representative groups of particular medical conditions that are not at this point included on the list of recognised disabilities will be able to make a case to that review that their medical condition should be included. That point was made very clear yesterday. Obviously there were a number of people at the press conference, and I am sorry that you were not one of them and were not interested enough to show up, Senator. You might have learned something if you had. Again, I point out that we have added six disabilities to that list.

Senator Mark Bishop—But not cerebral palsy.

Senator VANSTONE—But not cerebral palsy. It is a variable condition, Senator. The experts who put this list together in 1997 and reviewed it later did not include that. *(Time expired)*

The PRESIDENT—Minister, I would ask you to withdraw that term that you used twice during your answer. It is unparliamentary.

Senator Vanstone—What was that?

The PRESIDENT—It starts with a ‘w’ and ends with an ‘r’.

Senator Vanstone—Mr President, can I seek your advice in relation to this matter? Are there any parliamentarians about whom I have used unparliamentary language?

The PRESIDENT—Minister, I am asking you politely to withdraw that statement because I believe it was unparliamentary.

Senator Vanstone—Mr President, I agree that it would be unparliamentary if it had been directed at parliamentarians, but I am making the point to you that it was not.

The PRESIDENT—Order!

Senator Vanstone—I am making the point to you that it was not directed at parliamentarians, and I think the transcript will show that.

The PRESIDENT—I quite agree that it was not directed at parliamentarians, but it was still unparliamentary language.

Senator Vanstone—If you believe it was unparliamentary language in any event, I will withdraw it.
The PRESIDENT—Thank you.

Honourable senators interjecting—

Senator Vanstone—Mr President, I will take up privately with you what you think the word was that I said, because a colleague of mine has indicated that you might have thought it was a word which I would regard as unparliamentary. If you did think that, then, even more so, I withdraw. But I do not think the record will show that it was that word.

Social Welfare: Pensioner Education Supplement

Senator GREIG (2.26 p.m.)—My question is also to Senator Vanstone, the Minister for Family and Community Services. I ask the minister what her reasoning is behind axing the pensioner education supplement during the holiday periods of students with disabilities. Given that the supplement is designed to assist people with a disability to access further education, does the minister not accept that education and learning continue during non-teaching weeks and that a person’s disability does not vanish during a holiday period? Does the minister agree with concerns expressed by disability advocates that the combined removal of this supplement and the student financial supplement loans scheme could force up to half of all students with disabilities to leave tertiary education? How does the minister justify this $39 million budget cut over four years, given that it conflicts with the government’s expressed commitment to improving access and social participation for people with disabilities?

Senator GREIG—Mr President, I ask a supplementary question. How could the minister possibly make that statement with any confidence, given that she has confirmed through answers at budget estimates that no assessment has been made of the impacts of these cuts by her department? Minister, why did you endorse this drastic budget measure without giving any consideration to those who would be affected?

Senator VANSTONE—I thank the senator for his question. Senator, the pensioner education supplement is just that: a supplement for someone who is undertaking education. The government made a decision that over the long recess, which, in my view, is getting longer all the time, students are not in fact studying. Many students over the long summer break leave university because the courses are not running and undertake some sort of part-time activity. That may well not be true of most of those who are getting the pensioner education supplement, because you are referring to people who would be on the disability support pension. In any event, it is an education supplement; it is there to assist with going to and from university or from wherever the courses are, and that does not happen during the long break. Other means of assisting students are still available. I do not believe that the removal of that supplement for the summer holiday period is inappropriate, and I do not believe it means at all that there will be the sort of drop-off in the numbers of disabled students undertaking education that you allege there will be.

Senator GREIG—Mr President, I ask the senator to look at it in this context, and I think I can explain it very simply. If you take two people—Senator, the pensioner education supplement is just that: a supplement for someone who is undertaking education. The government made a decision that over the long recess, which, in my view, is getting longer all the time, students are not in fact studying. Many students over the long summer break leave university because the courses are not running and undertake some sort of part-time activity. That may well not be true of most of those who are getting the pensioner education supplement, because you are referring to people who would be on the disability support pension. In any event, it is an education supplement; it is there to assist with going to and from university or from wherever the courses are, and that does not happen during the long break. Other means of assisting students are still available. I do not believe that the removal of that supplement for the summer holiday period is inappropriate, and I do not believe it means at all that there will be the sort of drop-off in the numbers of disabled students undertaking education that you allege there will be.

Senator VANSTONE—I thank the senator for his question. Senator, the pensioner education supplement is just that: a supplement for someone who is undertaking education. The government made a decision that over the long recess, which, in my view, is getting longer all the time, students are not in fact studying. Many students over the long summer break leave university because the courses are not running and undertake some sort of part-time activity. That may well not be true of most of those who are getting the pensioner education supplement, because you are referring to people who would be on the disability support pension. In any event, it is an education supplement; it is there to assist with going to and from university or from wherever the courses are, and that does not happen during the long break. Other means of assisting students are still available. I do not believe that the removal of that supplement for the summer holiday period is inappropriate, and I do not believe it means at all that there will be the sort of drop-off in the numbers of disabled students undertaking education that you allege there will be.
Social Welfare: Carer Allowance

Senator JACINTA COLLINS (2.30 p.m.)—My question is to Senator Vanstone as Minister for Family and Community Services. Is the minister aware that, in one of his regular editorials on 8 August, Alan Jones said that he had spoken with the Prime Minister and stated:

… he assures me that the carer’s allowance will not be withdrawn from people because of the review—equally, we have to address those people for whom the allowance has already been removed or reduced, and I raised that point with him.

Can the minister confirm whether she shares the Prime Minister’s view that no payment should be cut as a result of her review? Was the minister informed of the Prime Minister’s view in this regard, or is the Prime Minister just making policy on the run and consulting only Alan Jones?

Senator VANSTONE—Thanks very much for the question, Senator Collins. You will understand that, after my experience with your question earlier in the week, I would not, frankly, answer much from you without checking the record that you allege and putting it in context—

Opposition senators interjecting—

Senator VANSTONE—Yes, that is fine. We have had that experience with you before. We had it the day before yesterday, Senator, when you clearly implied to this chamber that a woman had been cut off—

Senator Jacinta Collins—but she has.

Senator VANSTONE—Yes, but you implied that it was subsequent to my having said that the review would be put on hold while we reconsidered it. You did that twice. I do not know whether you did it knowingly or in ignorance but, in any event, you did it. I will check the record of what you had to say. I do not, as a matter of course, get transcripts of everything Alan Jones says. In fact, the last time I recall him being referred to in this place it was not the government using him as an adviser; it was senators opposite using him as a benchmark. As I recall, I expressed some surprise that you would use Mr Jones as a benchmark guide for the sorts of things you were using him for. I indicated that I could not think of a job that I would be applying for where I would choose to use a reference from Mr Jones. I have had occasion to think about that, and there might be jobs I would apply for where Mr Jones’s views might be helpful to me. I do not know; I will reflect on that.

Senator, I will have a look at the transcript to which you refer, but I can assure you this government does not make policy on the run. That is why we did not make the change that we recently made to the saved cases review without having the information and the facts to hand with respect to some 28,000 cases that had already been reviewed. That provided data which would give us confidence to make a new decision.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Is the minister aware that Alan Jones told his listeners on Friday, following his conversation with the Prime Minister:

... if you are still having Amanda Vanstone take a carer’s allowance away from you, or reduce your carer’s allowance, don’t hesitate to be in touch with me ...

Didn’t the minister promise on Monday that no-one would be put off the allowance ‘until the government has had a look to see if we can find a better way’? Isn’t the minister currently engaged in breaking her promises and those made by the Prime Minister by refusing to reinstate families whom she has reviewed and to whom she has cut off payments?

Senator VANSTONE—I thank the senator for her question. I am just wondering if I
am on something the AFP would be interested in, because three or four times in a row Labor senators have got up and identified themselves as being completely out of touch. Senator, if you have a look at the transcripts of yesterday you will find—

The PRESIDENT—Senator, address your remarks through the chair.

Senator VANSTONE—Mr President, the government indicated yesterday that anybody who had been cut off as a consequence of a medical condition—obviously not if they had been cut off because they were not caring for the child—would have their payment reinstated and backdated. I do not know what you were doing yesterday, Senator. I do not know how you missed this, and I do not know why you do not know it now.

Senator Jacinta Collins—That is not what you said in here yesterday.

Senator VANSTONE—Senator Collins identifies that I did not come in here and tell her that, as if the only thing she ever needs to think about is what is said in this place. She does not need to go and check any other sources, she does not need to go to press releases, she does not need to go to news, she does not need to keep herself informed—

(Time expired)

Senator Jacinta Collins interjecting—

Senator Vanstone—You whacker!

The PRESIDENT—Senator Vanstone, I ask you to withdraw that, because it was directed at a particular member.

Senator Vanstone—that remark, Mr President, was in fact directed at a senator, and I withdraw it.

Environment: Water Management

Senator LEES (2.35 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage, Senator Hill. I ask the minister: does the government share the Wentworth Group’s concerns regarding the state of our rivers? I quote from a report they have just released, entitled Blueprint for a National Water Plan:

Australia desperately needs a national effort to restore and protect our fresh water resources.

Specifically I ask the minister: does he support their call for the next COAG meeting to commit to specific actions on water reform and in particular that:

The environmental needs of Australia’s rivers have a guaranteed first priority call on water required to keep them healthy.

Senator HILL—The government does appreciate the work that has been done by the so-called Wentworth Group—scientists clearly committed to seeing Australia’s water resources used at a sustainable level. As the honourable senator will know, this government has already done a great deal towards that objective through the Natural Heritage Trust and then through the National Action Plan. The government nevertheless acknowledges that more remains to be done and, as a result of that, water is back on the COAG agenda for the forthcoming meeting.

As I have said before in this place, the primary responsibility for management of our natural resources lies with the states. The Commonwealth can, nevertheless, play a role in encouraging and supporting good practice and going further than that on occasions by providing a lead and also some financial support. As a result of that, there has been negotiation with the states for some time. I think that there is some optimism that the next COAG meeting will in fact lead to an outcome which, in turn, will be in the direction of sustainable use that is being sought by the honourable senator.

The specific reforms that are being looked at for property rights in water and the like so that water will be used for highest value purposes are to be premised on there being first achieved sustainable levels of extraction. I
understand that further advice is being sought from the scientific community on what amounts to a sustainable level of extraction, particularly on a basin by basin basis. But, having said that, I would submit to Senator Lees that it is heading in the right direction. Certainly it is my hope—and I think hers also—that this COAG meeting will result in a substantial step forward in the direction that I have outlined.

Senator LEES—Mr President, I ask a supplementary question. I thank the minister for his answer. However, given the competing interests for the water that is at last falling in the Murray-Darling Basin catchment area—and those competing interests range from hydropower to irrigators—at the upcoming COAG meeting will the federal government support the environment having that first priority and specifically support adequate amounts of water being allowed to flow down and to flush through the Murray River rather than the top priority being to top up the reservoirs?

Senator HILL—I had said in answer to the question that the specific reforms are premised on first achieving a sustainable level of extraction and that, by definition, means that there is sufficient water flowing in the system to maintain its health and protect the natural values. Certainly, that is an important part of the total project that is before governments at the moment. Whilst I do not think that I am at liberty to go into negotiating positions in depth, as I said in answer to the question, that general direction is the direction in which I see this reform heading.

Health: Hospital Funding

Senator HUMPHRIES (2.41 p.m.)—My question is to the Minister for Health and Ageing, Senator Kay Patterson. Will the minister update the Senate on the progress of Commonwealth funding for state run public hospitals under the Australian health care agreements? Is the minister aware of developments revealing the real agenda of the upcoming summit on health care reform?

Senator PATTERSON—Thank you very much, Senator Humphries, for your question to remind all honourable senators that the Commonwealth is offering the states $10 billion more over the life of the next five-year agreement—a 17 per cent real increase over and above inflation. It is a $10 billion offer. We are asking the states to tell their public what they are going to spend in this financial year and to at least match our growth. Normally, the Commonwealth has to put up front what it is going to spend over the next five years and the states do not tell us what they are going to spend. In fact, their public often does not know what they spent a year or two years ago. It is only fair and it is only right that the states indicate what they are going to spend. What they tended to do was to withdraw funding as the Commonwealth put in funding and then start to shoot money in when it got closer to an election. We want to give some surety and information to those people running health facilities in their states about what the budget will look like. We are asking them to sign up to the agreements by 31 August. We have a strong commitment through the health care agreements to undertake reform.

Since last year we have been working with a large number of stakeholders and clinicians and talking about ways in which we can use and drive the health dollar further. Every year $40 billion is spent between the states and the Commonwealth on health. I believe that we can drive those health dollars more efficiently to get better health outcomes. We have a reform agenda. A report went to the health ministers meeting the week before last. I suggested to the ministers that we drive forward on the items where there was agreement that no extra funds were needed—on coordinating cancer care, on
coordinating mental health care, on driving quality and safety, on a couple of other items that do not require additional funding and also on the national Pharmaceutical Benefits Scheme, which has been in place for some years and which only three states so far have taken up.

Some weeks ago a group came to me and said that they wanted to run a health summit and wanted some funding for it. I was given a list of people who were going to be participating and speaking. I have since discovered that some of those people had not even been asked. Therefore, it gave a false impression of the level of support for this meeting, when some people had had their name on the agenda as speakers and they had not even been asked. I am not saying that it was malevolent. I am saying it was most inefficient, inappropriate and inconsiderate to put people’s names on before they had been invited, let alone being given the opportunity to say they were not coming.

I was a little concerned about the health summit. I left my options open as to whether I would attend, and I still have not got a final agenda, but my suspicions were confirmed when I received an email that had been circulated to various people. I had been told it was going to be an apolitical event and that members of parliament were not going to be speaking, but I received an email saying that because I had refused and Peter Costello had refused—and I had not had the invitation to speak by the time this email had been circulated, but that is beside the point—that Mr Carr was being invited to speak.

There has been some shilly-shallying about the fact that he is really not on the agenda. It is like a UN thing: he is not on the agenda; he is only speaking at lunchtime? Then you read this email that says, ‘Mr Carr will be speaking on behalf of all premiers and he will embrace the concept of the states signing the health care agreements for a limited period.’ (Time expired)

Senator HUMPHRIES—Mr President, I ask a supplementary question. Does the minister have further information she can provide to the Senate about the nature of the activities that surround the summit that she referred to in her answer to the question?

Senator PATTERSON—Mr Carr was going to speak and support the concept—

Senator Chris Evans interjecting—

The PRESIDENT—Senator Evans, shouting across the chamber is out of order.

Senator PATTERSON—that they not sign the health care agreements—they will sign them for six months or a year—and also that we have a national health commission. A national health commission would cost us hundreds of millions of dollars, add another layer of bureaucracy and not drive reform. What the public want is action; what the public want is the state ministers to go ahead with me, developing a reform agenda and responding to the reform agenda that we have already initiated. I am sorry if some people have been caught up in this event and it has become more political sometimes than even the organisers might have wanted it to be, but I think there are other ways we could deal with it. I said to the organisers that it would have been much better had they suggested that they have this summit after the states had signed up to the health care agreements. It is obvious that it is political.

In the email it says, ‘We’ll have a press conference before Senator Patterson is due to speak at the Press Club on Wednesday.’ They did not realise it was being cancelled. (Time expired)
Social Welfare: Carer Allowance

Senator CROSSIN (2.46 p.m.)—My question is addressed to Senator Vanstone, the Minister for Family and Community Services. I refer to the minister’s refusal to confirm her own departmental estimates that 30,000 families were budgeted to lose access to the carer allowance. Can the minister confirm that her own question time brief in fact details the percentage of the 70,000 families whose carer allowance payments are under review and who are expected to lose their $80.70 payment and the percentage who will also lose their health care card? Don’t these briefs also estimate the effect of yesterday’s decision by the Prime Minister with regard to the recognised disabilities list? Will the minister now provide the Senate with details of these figures or table them, as well as her brief, in the Senate?

Senator VANSTONE—This never stops; it just never stops—Labor getting up today asking very badly informed questions. I do not know who it is who is putting them up to ask questions to display their lack of knowledge or the alleged moles they have got it wrong. When I look at my brief, Senator, I see nothing that relates to that which you are discussing. So, I am sorry, whoever told you that they had given you something from my question time brief is ill informed.

Senator CROSSIN—Mr President, I ask a supplementary question. Can the minister confirm that her promised reconsideration of all 70,000 carer allowance cases under review, announced a week ago, has now been finalised, even though not even 50 per cent of the cases have been assessed by Centrelink? Isn’t this a breach of the undertaking the Prime Minister gave to Alan Jones on 2GB last Monday to look at all of the cases under review?

Senator VANSTONE—Senator, I thank you again for the opportunity to make something clear that is clear to everybody else but, apparently, not to your side. The review was of the process that has been undertaken. You cannot review 70,000 cases that you are reviewing. Why would you stop reviewing 70,000 cases in order to review 70,000 cases? With respect, your question is a non sequitur. What we said we would do is review—

Opposition senators interjecting—

Senator VANSTONE—That is exactly my point: your question does not make any sense. The point is that the Saved Cases Review was put under review. It is as a consequence of that review that six medical conditions were added to the recognised lists.

Social Welfare: Carer Allowance

Senator HUTCHINS (2.49 p.m.)—My question is also addressed to Senator Vanstone. Can the minister confirm that families of hearing impaired children in receipt of the carer allowance are among the 70,000 families being reviewed? Is the minister aware that one family from Wagga with two hearing impaired children stands to lose $175 a fortnight if its payments are cut? Is the minister also aware that this family has already suffered the burden of having to repay consecutive family tax benefit overpayments caused by late maintenance payments? Can the minister justify to these families why her policies have put them under so much financial pressure?

Senator VANSTONE—Yes, there would be people who have children with a hearing disability or impairment. That would be in the 70,000 saved cases that were under review. You could not have picked a better example of a type of medical condition that can vary. You might have used asthma, you might have used diabetes, but a hearing impairment is the same. Some people have al-
most no recognition of sound at all, others hear within a range that is unsatisfactory and others have hearing that is not as good as the general population but, nonetheless, is not too bad. So, of course, those cases will be reviewed.

As to specific cases and the specific level of hearing disability that the family you refer to has, I am happy for you to raise that with me. I did not understand you to say that they had in fact had their payment cancelled; I think I understood you to say that they were in fear of it happening. If that is the case, and they have children who would qualify for payments, you have your side to look at for carers of children who are seriously disabled—who will not be cut off under this review—being frightened that that would happen. So, Senator, you need to put the mirror up to your own to get the answer as to why this family is concerned.

If the family has had an overpayment of family tax benefit due to late maintenance payments, there are two ways that families can take their family tax benefit to accommodate variables in late maintenance payments. I think this happened to a colleague or acquaintance of Senator Webber’s. It was found, when she alleged in here that Centrelink had made mistakes, that in fact they had not. The family had chosen, on two or three occasions, not to use the Centrelink default mechanism. Despite being advised to use the default mechanism, they chose the other one and of course got into difficulty. No family I know expects to keep more money than another family in the same circumstances.

Senator HUTCHINS—Mr President, I ask a supplementary question. Is the minister aware of an editorial in last Sunday’s Herald Sun which described her attack on carer allowance families as ‘brutal’ and ‘misguided’ and said her decision to proceed with these cuts ‘throws into doubt Senator Vanstone’s suitability for a sensitive portfolio’? Will the minister, as the Herald Sun suggests, look elsewhere for spending cuts or does she remain determined to make life impossible for families caring for disabled children?

Senator VANSTONE—I thank the senator for his question. I think I have seen, if not that editorial, one that is roughly similar. I do not run my life—and the government does not run its policies—on editorials. That was a practice of the previous Labor government, and I think it was a part of the reason that they got themselves tipped out.

Senator Robert Ray—That is absolute rubbish!

Senator VANSTONE—I notice that Senator Ray says ‘absolute rubbish’ and what he is in fact saying by asserting that is that he knows full well that governments do not run by editorial. There is a reason for that: not all editorial writers are fully informed. Nonetheless, you say that this particular editorial referred to—

The PRESIDENT—Remarks through the chair, please, Senator.

Senator VANSTONE—Sorry, Mr President—these as being cuts. It has been explained time and time again. There were about 70,000 families who had been on the carer allowance for five years and not had any reviews. Their children may have no longer had the disability—such as attention deficit disorder—or may now be able to manage their diabetes or their asthma. If the public knew that story, rather than the story that your colleagues push, they would agree that the review needs to take place. (Time expired)

Indigenous Affairs: Art

Senator RIDGEWAY (2.54 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. As you are aware, Indige-
nous art is a booming industry worth millions of dollars, both domestically and internationally, as was demonstrated at the recent Sotheby’s auction in Sydney where a number of works by Indigenous artists sold for record prices and more than $7.2 million changed hands. Given that we continue to see numerous examples of Indigenous artists selling their work for very low prices which are then sold later at auction for massively inflated prices, and given that many contemporary artists continue to live in poverty in remote communities, what is the minister’s response and what is this government doing to improve the situation of Indigenous artists under Australian copyright law?

Senator ALSTON—I certainly acknowledge Senator Ridgeway’s concerns. I notice that there were some comments arising out of Garma last weekend and Senator Ridgeway was quite rightly pointing to some of the concerns that we would all have about the apparent significant disparity between prices in auction houses, on the one hand, and the general level of the standard of living in many remote communities, on the other.

However, it also has to be acknowledged that looking now at a price that has been obtained at an auction house does not of itself tell you what price should have been sought when the painting was first commissioned or purchased from the artist. These days artists and art coordinators have a pretty fair idea of what prices those artists are likely to get in galleries and auction houses as they can access works of art on the Internet or you can send people down there, as many of the communities that have relationships with particular galleries are able to do. Therefore, in many respects, artists are much better informed about the current market value of their works than they were in previous years. The fact that there might subsequently be a boom which results in very significant prices being obtained is something that all first purchasers might regret later because if they had only held onto the work they might have got a lot more.

Having said all that, Senator Ridgeway is well aware that one of the recommendations from the Myer inquiry into the visual arts was in relation to droit de suite, which of course is a concept that does attempt to ensure that the creator of the work is able to get some continuing compensation as a proportion of future sales prices. That is something that the government is currently giving consideration to. We will be introducing legislation by the end of this year to implement our election commitment to giving Indigenous communities moral rights. Again, I acknowledge Senator Ridgeway’s very significant contribution on that particular issue. I think there are some aspects of community ownership that make it quite separate and distinct from works that are normally painted by a single individual.

We will be doing some work on that front, and we would hope to be making a decision on the resale royalty scheme in the not-too-distant future. Certainly, there are separate issues of copyright and perpetuity which raise particular concerns. While the Americans seem to be very keen on life plus 70, it seems to me that it is not necessarily in the best interests of the communities. It might be in the best interests of the relatives who might get a windfall, but I think the greater concern should be to ensure that the money is distributed. Take someone like Emily Kngwarreye, for example: I think nearly all of the very substantial sums of money that she obtained during her lifetime, and subsequently, were very widely distributed throughout the Utopia community. So it is a very significant aspect of income generation in communities. I can assure you—you do not need to be assured, but I assure the rest of the Senate—that in many respects creation of works of art is not only something that
Indigenous communities seem to be particularly good at but often the only real source of income. Therefore, there is a great argument in favour of trying to expand those economic opportunities and we are currently looking at doing that on a number of fronts.

Senator RIDGEWAY—Mr President, I ask a supplementary question. Thank you, Minister, for your answer. No doubt you are aware of the numerous examples where a number of Indigenous artists have sold pieces for $50 to $150 from the side of the road and they have gone for phenomenal prices some years later in auction houses. No doubt you are also aware that many other countries have introduced resale royalty schemes, particularly in the European Union where a directive has just been issued to member states to follow suit in order to harmonise the scheme across all of its member states in the years to come. You have mentioned that a key recommendation of the Myer report was to look at resale royalty arrangements. Is the government prepared to look at the establishment of a working group, as was called for by the National Association for the Visual Arts, in order to look at these issues more seriously? Given the nature of the Indigenous arts industry in this country—now generating some $87 million a year—will the government also take on board recent calls from Garma to look at the resale royalty scheme?

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

Senator ALSTON—Concerning the first part, I acknowledge the apparent problem; the classic example being Johnny Warangkula, who, I think, sold works for around $150 which subsequently sold for in excess of half a million dollars. Senator Kemp has done some excellent work in this area. He deserves a great deal of credit for getting the Myer recommendations up and running, despite all the difficulties one normally has in going through the budget process. I think Senator Kemp would be more than happy to have an off-air discussion about the possibility of accepting that NAVA recommendation for a working group. We have already had a number of discussions about the virtues of the resale royalty scheme and they may be sufficiently advanced not to need a working group for further information. I know that when Senator Kemp is not attending first nights, he is out talking to groups like NAVA for a living. I am sure he would be happy to have further discussion.

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

ANSWERS TO QUESTIONS ON NOTICE

Question No. 1292

Senator O’BRIEN (Tasmania) (3.01 p.m.)—Pursuant to standing order 74(5), I seek an explanation from the Leader of the Government in the Senate representing the Prime Minister for the reason question on notice No. 1292, asked on 18 March this year, remains unanswered.

Senator HILL (South Australia—Leader of the Government in the Senate) (3.02 p.m.)—I thank Senator O’Brien for the courtesy of advising my office that he intended to raise this matter.

Senator Faulkner—So you have an answer?

Senator HILL—I have an answer; I do not think it will totally satisfy the senator. I am told that this question is part of a comprehensive series of structured questions from Senator O’Brien to several ministers which related to the government’s biofuels industry policy and ministerial and departmental involvement with the Manildra group of companies and the proposed importation
of a shipment of ethanol from Brazil by Trafigura Fuels. Senator O’Brien has received answers to some of those questions. I regret that answers to some of the longer and more complex questions to several ministers remain outstanding. I am advised that answers to questions outstanding are being assembled and will be provided to Senator O’Brien and the Senate as soon as possible. I understand that will include the one to which he has specifically referred today.

Senator O’BRIEN (Tasmania) (3.03 p.m.)—I move:

That the Senate take note of the explanation.

The question on notice lodged on 18 March this year goes to a matter at the heart of the ethanol scandal which is engulfing the Howard government. It is a scandal of the government’s own making and is one in which a raft of senior ministers are complicit. In noting the minister’s explanation, I want to outline why the failure to provide answers matters. The question concerns ministerial knowledge of the proposed importation of Brazilian ethanol by Trafigura Fuels Australia. It is among a number of unanswered questions to senior ministers concerning their knowledge of this matter—questions that have remained unanswered for five months. They are structured and detailed, but five months is a long time for that information to be assembled.

Usually, unanswered questions denote no more than this government’s contempt for the parliament, but the questions about ethanol are different. They concern a matter about which this government has something to hide. Firstly, the government refused to comply with a Senate order for the production of documents relating to communications between senior ministers and the ethanol industry, communications which included at least one private meeting between the Prime Minister and Mr Dick Honan, the head of Manildra—and he has been in the country, Senator Ferguson, which is more than I can say for you.

Not only is Manildra a dominant fuel ethanol producer but it holds a new monopoly position in this market. According to the government’s own advice, Manildra captured more than 96 per cent of ethanol subsidies paid by the Howard government last year. Mr Honan’s company got $20,857,998 between September 2002 and June 2003, while its only fuel ethanol competitor, CSR, received $845,182. When the government tells the Australian people that it did not design its ethanol package with Manildra in mind, I would urge Australians to make an evidence based assessment. If you care about the development of a viable and sustainable alternative fuels industry—and Labor does—you have to wonder whether entrenching the dominance of the existing new monopoly producer is the way to do it. Of course, the Howard government does not care about alternative fuels but it does care about Manildra. It is a little surprising, therefore, that the head of the Treasurer’s own fuel tax inquiry, Mr David Trebeck, has described the Howard government’s ethanol policy package as ‘one of the craziest examples of public policy I have come across in 30 years’.

The Prime Minister failed to disclose his private meeting with Mr Honan on 1 August 2002 when asked about it in the other place on 17, 18 and 19 September last year. Mr Howard’s pathetic explanation for failure to disclose his private meeting with Mr Honan has attracted the commentary it deserves. Liberal Party backbenchers have been telling the press that ethanol was not mentioned during this week’s party room meeting. So, ipso facto, the issue of honesty on ethanol does not rate. Not only does the absence of discussion highlight the craven character of the Liberal party room under the Prime Min-
ister; it flies in the face of three key realities of Australian politics.

The first is that Australian families care about the fuel they put in their cars and they know the Howard government delayed the imposition of a cap on ethanol blends because it would hurt Mr Honan’s ethanol business. And, unfortunately for ordinary families—and, I guess, for the coalition as well—they cannot boast the sorts of donations Mr Honan can to the coalition parties.

Senator Hill—I thought he made donations to your lot.

Senator O’BRIEN—I will come to that, Senator Hill—I am quite prepared to enlighten you on this subject. According to returns lodged with the Australian Electoral Commission, Manildra’s donations have included $10,000 to the Prime Minister’s re-election campaign in Bennelong and another $10,000 to the Prime Minister’s acolyte and chief parliamentary defender, Mr Abbott, in Warringah. AEC returns also show that the member for Parramatta, Mr Cameron, has been happy to receive a $20,000 donation from Manildra, despite the known risk to motorists in Western Sydney from unregulated ethanol blends in petrol.

The second reason this issue is important is that Australian families care about the tax they pay. In relation to ethanol, they are being asked by this government to pay big-time. In the last financial year, the government handed over $21.7 million. The May budget revealed an extension of the ethanol subsidy regime and, of course, the production subsidy, and the total has grown ever upwards. Last month taxpayers’ generosity grew with an announcement by the acting industry minister, Mr Hockey, that the government would expedite subsidy payments, pay tens of millions of dollars in capital grants and appoint an exclusive facilitator to give Manildra assistance in its commercial negotiations.

I frankly do not care what personal access the Prime Minister chooses to give Liberal Party donors—and for all I care, they can spend as much time in each other’s company as either can bear—but I do care about how the Prime Minister chooses to spend public money. I care very much that decisions about domestic industry protection and the provision of tens of millions of dollars to Manildra were made six weeks after Mr Howard sat down for a private chat with Mr Honan at which these specific matters were discussed—particularly when, a week after the decisions were made, the Prime Minister told the parliament no such meeting had taken place. If members of the government think Australians do not care how their tax dollars are spent then I think they are badly mistaken.

The third reason the ethanol scandal matters relates to honesty. I know using the words ‘honesty’ and ‘the Howard government’ in the same sentence has a jarring effect on many ears, but the parliament and the people are entitled to demand and receive an honest account of the government’s dealings on all matters. On the matter of ethanol, the parliament and the people have been badly let down. It is indisputable that Mr Howard met Mr Honan on 1 August last year. It is indisputable that an industry assistance scheme, including production credits and import protection, was discussed by these men at that meeting. It is indisputable that Mr Howard denied that such a meeting occurred in answer to three questions in the parliament over three days in September last year.

Just because no government backbencher is prepared to confront the Prime Minister about an issue does not mean that it is not important. No doubt the deception over
‘children overboard’ is rarely discussed by the members of the government, but that does not mean that people will not hold them to account for it at the next election. First, the deception over ‘children overboard’; then, the false information about Iraq’s uranium imports from Africa; and, now, the cover-up over ethanol. In relation to each of these incidents, Mr Howard has sought to hide behind his staff and the bureaucracy, choosing to blame others for his actions, but on ethanol he has run out of excuses.

Despite the fact that part of the story has been exposed through a protracted and only partially complete freedom of information process, the government continues to treat the truth with contempt by refusing to disclose details about its ethanol activity. Today the Sydney Morning Herald alleges that staff of Australia’s embassy in Brazil engaged in activity akin to spying on Trafalgu Fuels operations. This is the company that sought to import ethanol to Australia from Brazil aboard the Oriental Wisteria. It is a company that, together with Neumann Petroleum, has paid a very heavy price for wanting to stay in the fuel ethanol business. The media report is consistent with an answer to a question taken on notice at Senate estimates last year by the Department of Foreign Affairs and Trade in which the department confirms that it received directions from the Prime Minister’s department in relation to this matter.

As reported in today’s paper, the rushed decision to protect the domestic industry directly cost Trafalgu and Neumann Petroleum in the order of $1 million. This is despite the fact the companies informed the government of their intention to import the ethanol. The Managing Director of Trafalgu Fuels, Mr Barrie Jacobson, says he cannot understand why the government took what, due to its timing, amounted to punitive action against his company. After all, all Mr Jacobson wanted to do was compete against Manildra. He says the government’s action stinks—and, frankly, I do not blame him.

My unanswered question on notice goes to the government’s knowledge of that shipment and, together with other unanswered questions on notice, seeks information about the government’s action in response to that knowledge. It is a reasonable question, it is one that is capable of being answered, it is one that does not require five months of compilation to answer and it is one that, frankly, demands an answer. I am not satisfied with the minister’s explanation for failing to respond, given five months have elapsed since the question was asked, just as the Australian people are not satisfied with the Howard government’s ongoing deception on ethanol matters.

Question agreed to.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Social Welfare: Carer Allowance

Senator MARK BISHOP (Western Australia) (3.13 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked today relating to the carer allowance and disability services.

Yet again, today we have seen a performance from the Minister for Family and Community Services which demonstrates why she is unsuitable to administer this portfolio. It is difficult to imagine a more deserving group for a helping hand than families caring for children with disabilities, but no group is off limits to this minister. In search of budget savings, her own department established a quota of 30,000 families to be stripped of the carer allowance. This stubborn minister has concealed and continues to conceal the full extent of these cuts.

Yesterday—only after weeks of pressure—the minister was dragged kicking and
screaming to a partial backdown. Pressure from families who were brave enough to come forward and pressure from Labor have triggered a change of heart from this government, but it took the intervention from the Prime Minister’s office for the movement which occurred yesterday. On Monday the minister defended the cuts and made it clear that no changes to the recognised disability list would be made until probably Christmas. She added that any conditions would be separate to the current process. But, less than 24 hours later, six conditions had been added or modified on the recognised disabilities list that confers automatic entitlement. That was a breathtaking turnaround.

The announcement yesterday would have brought joy and happiness to some families, but thousands of others who stand to lose their allowance received no comfort. The truth is: few were affected by the announcement yesterday—a fact confirmed by the minister herself when she said that most of those families would have requalified anyway. The figure she used in passing was of the order of 98 per cent. Today we have challenged the minister to produce figures to show exactly how many of the 70,000 under review will be protected by the new additions to the recognised disability list. Families will be cut off the allowance because they do not meet the new, harsher rules.

The minister cannot escape the fact that the child disability assessment tool was designed to further restrict access to this payment. To justify these cuts, the minister has been peddling plenty of half-truths. She makes the assertion that many children who have lost the allowance have somehow outgrown their disability. This may be the case in some instances. Fair enough. But she ignores the many families who through hard work and medical advice learn to better manage disabilities. Some examples that come to mind are chronic asthma, diabetes, ADD and ADHD—to name but a few. The fact is that conditions such as these involve considerable time and costs. Many are only under control because of the expensive treatment that the carer allowance assists with.

Take the case of the family mentioned today who have three girls diagnosed with ADD. Two of the prescribed drugs are not on the PBS list and are not subsidised, leaving that family to foot a medicine bill of up to $135 per month per child. The carer allowance did help with this cost until it was stripped away under the current review. I make the point again that families like this have no relief from the announcement made yesterday.

Another point I would like to address is the minister’s assertion that somehow one-third of the people who have lost the payment thus far have voluntarily opted out. After talking to many families, our concern is that many are intimidated by the 30 pages of forms that they believe are designed to ensure that they do not requalify. The minister says there will be another review of the assessment which will look at how multiple conditions are considered. The minister has this the wrong way around—the minister should be certain of the assessment process and ensure it works appropriately before it is applied to families.

No review should proceed until the child disability assessment tool and the forms are redesigned to properly account for the time and cost of care as well as to reflect basic community standards. However, we do not expect the minister to listen. Senator Vanstone has demonstrated time and time again that she cannot handle the sensitive issues of this portfolio. Indeed there can be only two reasons for this mess: firstly, the whole process is deliberate and hence the minister is heartless or, alternatively, the
process is driven by incompetence and hence the minister is—(Time expired)

Senator Barnett (Tasmania) (3.18 p.m.)—I stand to refute these allegations. They are unsubstantiated. In fact, they are scurrilous, unparliamentary personal accusations. Senator Bishop is playing the woman, as it were, and not the ball. I would far prefer the focus to be on the policy and the process rather than the people involved. Using people in this way is an inappropriate approach. Senator Vanstone made that point quite clear when she said that people are being used as pawns in the political point scoring that is being attempted by the opposition.

Let us put the facts on the table. Five years ago the carer allowance was introduced by the Howard government. It is a very good allowance and it provides $87 a fortnight. So my first point is to acknowledge that it is a good policy initiative. It is paid to a carer in recognition of the workload and the impact on them in caring for someone with a disability or a severe medical condition. The carer allowance is not paid in recognition of any particular disability. It is paid to the care provider, not to the person being cared for.

Two weeks ago I spoke to the Carers Association in Scottsdale. I acknowledged the work that they do, and they appreciated my involvement in talking with them. We talked about the importance of the carer allowance to them, their families and those who need care. On 1 July 1999, there were 152,000 recipients of the carer allowance and, in July 2003, there are 298,000—nearly 300,000, nearly double the number. So it has been taken up. It is a successful policy initiative of the Howard government. Spending has increased from $400-odd million in 1999-2000 to $740-odd million in 2002-03. Those points should be acknowledged.

Yesterday’s announcement made it quite clear—Senator Bishop is confusing the record—that six disabilities have been added to the recognised list of disabilities. It is clear that they have been given automatic access to the carer allowance. A review will take place, and I encourage those who have concerns, or a contribution to make, to make an input into that review. It is expected that it will be finished by Christmas. About a month ago, I made it clear in statements to the public in Tasmania that my office and I are happy to assist those who need help in completing the forms and the paperwork. It is appropriate to have a review—it is taxpayer funds. Senator Bishop said during his presentation today that some people have ‘outgrown their disability’. Fair enough. Indeed it is important to note that. Things change and they have changed in the last five years.

He used the example of diabetes. I know about that situation quite well because I have type 1 diabetes and I know that, particularly for young people with type 1 diabetes, the high level of care that is required changes over time as the person with diabetes learns to understand their disease and how to look after themselves in terms of diabetes management. So things change, and that is the point that Senator Bishop acknowledged in his speech, but he said very little about it. I would like to emphasise that point and say that is why we are having a review. I want to put that on the record.

There are quite a few things we could say in terms of the things that change acute asthma early in life. It is debilitating and frightening. My elder brother had asthma and does have asthma, but as you get older and understand things differently you can manage your condition differently. These are the things that the opposition simply are not acknowledging. But the carer allowance is important, and this is something that we will stand to protect, endorse and support in the months and years ahead.
Senator JACINTA COLLINS (Victoria) (3.23 p.m.)—I agree with Senator Barnett that of course the carer allowance is an incredibly important payment to families with disabilities.

Senator Knowles—Why didn’t you introduce it?

Senator JACINTA COLLINS—Can I add further to his comments that it is very important, unlike Senator Knowles’s interjections, to deal with the issue of policy and not the person. The critical issue on this matter is that we are dealing with two distinct matters. One is the altered recognised disabilities list and the other is the tough new child disability assessment tool.

Unfortunately, Minister Vanstone coped some of what she asks for when she tries stunts like she did yesterday. Yesterday, after I had raised the case of one particular constituent, Ms Linda Watson, she came back into the chamber the next day, read into my question an implication that did not exist and then tried a very clumsy sidestep to avoid the issue, which is that the Prime Minister gave a commitment that people would not be affected by these reviews until the review had been conducted. Senator Vanstone tried to say that people would be reinstated on the basis of the new recognised disabilities list, but she completely sidestepped the issue of people who have already been cut off payments by this tough and brutal assessment tool.

Unfortunately, Minister Vanstone will not address the issue of the 30,000 figure in the PBS. Senator Vanstone will not address the issue of whether people who have already been cut off payments before the review was put on hold will be reinstated. For instance, that since I raised Linda Watson’s case on Monday, when the minister said she would look into it, Ms Watson has not been contacted any further. She has not been asked, ‘When you filled out the form, was that just some naive self-nomination and it has now been interpreted that you are no longer eligible?’ No. Did anyone from Centrelink or anyone from the department talk to this woman and ask, ‘Why weren’t you satisfied with the assessment tool process?’ No. Did they give her any assurance that she would be back on payments? No. Is it any wonder that Alan Jones and the editor of the Herald Sun describe the minister as the forbidding face of the family services ministry? It is no surprise, because she stands here and tries to justify completely arbitrary cut-offs.

Senator Vanstone will not answer this question: when will Ms Watson be reinstated onto her payments, consistent with the commitment given by the Prime Minister to Alan Jones that people would not be harmed whilst the government looked at this tool? She tries to sidestep and say, ‘Oh no, 97 per cent of people will not be taken off the recognised disabilities list and anyone who has been will be reinstated,’ but that is moving away from the point. There are people who, listening to Alan Jones, would quite reasonably have felt assured that they would be reinstated onto their payments because the government recognised that the new child disability assessment tool was too tough and too brutal and the government was now reviewing it. But, no, the minister steps away from that point. So you wonder why people attack the person rather than the policy when the minister tries these stunts.

Senator Vanstone will not address the issue of the 30,000 figure in the PBS. She will not address the issue of whether people who have already been cut off payments before the review was put on hold will be reinstated. I know, for instance, that since I raised Linda Watson’s case on Monday, when the minister said she would look into it, Ms Watson has not been contacted any further. She has not been asked, ‘When you filled out the form, was that just some naive self-nomination and it has now been interpreted that you are no longer eligible?’ No. Did anyone from Centrelink or anyone from the department talk to this woman and ask, ‘Why weren’t you satisfied with the assessment tool process?’ No. Did they give her any assurance that she would be back on payments? No. Is it any wonder that Senator Vanstone is regarded as brutal and misguided when she maintains those sorts of arbitrary lines in relation to families with disabilities? The commentators on this issue are quite right: families with disabilities have enough to cope with without some brutal, tough tool involving some 30 pages of forms and some
assessment that we are looking for any way to cut some people off benefits to save money in the budget.

Minister Vanstone has been used by the government in the past to carry out these sorts of tasks. If I recall, she was demoted from cabinet after she had one particularly difficult task to do for the Howard government. Well, it looks like she has been lined up for it yet again here. Now she is picking on people receiving the carer allowance. (Time expired)

Senator KNOWLES (Western Australia) (3.28 p.m.)—It is just amazing to think that we can get a diatribe like that dished out by Senator Collins somehow presented to the Senate as fact. It is interesting that the carer allowance was introduced five years ago. Anyone’s basic mathematics skills would tell them that the carer allowance was introduced by this Howard government. Senator Collins is stalking out now; she is not interested in the facts. Thirteen years of Labor government did not see the introduction of a carer allowance; but Senator Collins is not interested in that.

Senator Eggleston—Weren’t there disabled people around in their 13 years?

Senator KNOWLES—That is a very good question, Senator Eggleston. He asked, ‘Weren’t there disabled people around in the 13 years of the Labor government?’ Obviously, there were disabled people around in the 13 years of the Labor government, but at no stage did they introduce a carer allowance. So I find it a bit rich for them to come in here now abusing and accusing a government that has not only introduced a carer allowance but also since its introduction more than doubled the money paid to recipients.

In 1999, there were 152,000 recipients of the carer allowance. In 2003, there are 298,000 recipients of the carer allowance.

Let us get the facts straight. The Labor opposition, when in government, did nothing. This government introduced it and has in the last five years doubled the number of people receiving it. Yet this opposition can only go out there and create a fear campaign amongst those people who least need it, in the same way that it creates fear about rising doctors fees, lack of access to doctors and all of this other nonsense. Is there a policy position that the Labor Party can contribute on this very subject? The answer is no. There is not one single, solitary policy that the Labor Party currently has or has had in the last 7½ years on the issue of the carer allowance. What would it do? Yesterday in response to the first question on the carer allowance asked of Minister Vanstone in question time, she said, ‘I made an announcement today,’ and there was jeering across there from that useless opposition in expectation that she had taken people off the list. When she announced that in fact six more disabilities had been added to the list, there was stunned silence.

Senator Eggleston—There was stunned silence. They just could not believe it.

Senator KNOWLES—That is right. They could not believe it because that is not what they wanted to hear, because that did not comply with what they had done and are doing to the most vulnerable people in our society. I wonder how many people over on that side of this chamber actually deal on a day-to-day basis with people with severe disabilities. I can tell you I do. I deal with one family in which there are very severe disabilities. In that family, three out of four children are autistic. If anyone understands the plight of the autistic children and the families that have to care for them, I can tell you that I now do—thanks to that family and many of the other families who have subsequently contacted me.
Autism and the carers of children with autism are included as part of the government’s initiative, but they were totally and utterly neglected under the Labor government of 13 years. I think they should stand with their heads held in shame at the fact that they ignored for so long all those categories of people with disabilities. To think that they are now going out there and wilfully frightening people by saying that they will have their allowance removed is nothing short of disgraceful and contemptible. These are constituents for whom they should have far greater care and compassion. They are a very special group of people, and they are being treated abysmally by a Labor opposition. (Time expired)

Senator MOORE (Queensland) (3.33 p.m.)—Minister Vanstone today in her answers, as she has done on previous days in the Senate, was both very fast and very slow. But the confusion remains as to exactly what is happening with this review or, indeed, as we have found out, with these reviews. The fear, the concern and the confusion felt by the families about which Senator Knowles has just spoken very effectively has not been caused by members of the opposition. The confusion and the concern has been caused by the review process that is being implemented by the government of the day.

As a result of an ongoing process, 70,000 families across the country have received notices that their payments are being reviewed. Attached to those notices are the quite complex forms we work through when we are working through the bureaucracy. As a result of this review process—the initial review, the review of the 70,000 families—people have had to confront these forms. In their daily lives they are coping with people and family members with severe disabilities. We are not talking about people who have mild disabilities. We are talking about families, as Senator Knowles mentioned, with whom all of us deal. We deal with them because we care and because these families are very effective members of our community. They come to us and tell us that they are confused and concerned because the justification for their receiving the payment they have been receiving quite rightly for the last few years is being reviewed.

It seems to be beyond the understanding of the government that that review is causing fear. That is symptomatic of the process, and that is something that all members of this Senate should be considering. The fact that people receive letters from the department actually causes fear. That is a point we should be considering, but that has been overlooked in the debate so far. We get into the debate about who said what and when, but we overlook the fact that the interaction between members of the community and the department that is providing payment to them is not causing support, is not causing a desire to communicate but is actually causing fear. I think that is the core issue in this debate.

We have also found out that the minister, as she said today, makes public statements—and I agree we should all be waiting to hear them—not in this house but outside. We do accept the invitation—and I hope it will come—to attend her media conferences. We found out that members of the Prime Minister’s office attend them, but somehow we do not get invited. We will read the media comments to find out what is going to happen to the policy today. This is exactly the cause of some of the confusion. The initial questions asked by the opposition are asked on behalf of their constituents. This issue is not something we plucked from the air. We did not think, ‘Today I’m going to ask a couple of questions about the review of the carers payment.’ The reason we are asking these questions is that members of the community
have come to us and expressed their concerns.

So we asked the questions. Then, in the middle of the process of responding to the questions about the initial review of the carer allowance, there was a public announcement. There was not so much a stunned silence yesterday when the announcement was made in this house after the media announcement as people asking, ‘How does this work? What is going to happen now?’ When we found out that six conditions about which we had been speaking have now been reinserted into the allowable conditions list—in the middle of the process of reviewing people who are receiving payment—this caused a degree of concern and confusion for all of us.

We recognise—and we are very pleased to see—that the department and the minister have accepted that these conditions can now be included. Of course, they will be reviewed down the track. What we are trying to find out—as indeed the people who are living with these conditions are trying to find out—is exactly how the department is going to continue to communicate with people, and how we can have some security, some clarity and some recognition of the real issues of this debate, which should be about the extra costs, the extra responsibilities and the genuine care and concern that families have for their members who have a significant medical condition. When we can reach clarity on that issue, maybe we will be able to look at the other parts of the debate. (Time expired)

Senator GREIG (Western Australia) (3.38 p.m.)—I also wish to take note of various answers today by the Minister for Family and Community Services, Senator Vanstone, in particular the answer to the question I directed to her about pensioner education supplements going to students with disabilities. We now know pensioner education supplements have been axed, or will be axed shortly, but only for holiday periods—that is, for non-teaching periods—for students with disabilities. In her answer today, Minister Vanstone said in part that the reasoning behind that is that the supplement, the financial assistance, is just that—it is assistance for students for their education and is thus quarantined to the education period only.

Where the minister is so wrong in both policy and process is that this ignores the fact that many students with disabilities have requirements outside of teaching hours and during the holiday period. This can act against them and ought to necessitate the assistance, rather than prohibit it. We know, for example, that many students with disabilities stay much longer than do other students in terms of their education, and are often back sooner as they have to do more preparatory work. It may even be the case that they need to organise texts in alternative formats or simply acquaint themselves with the campuses and the lecturers.

We also know that people with disabilities who are on a pension are living on very humble budgets and, overwhelmingly, they tend to budget for the entire year and work very hard to live within that as best they can. Yet the rug has been pulled out from under them in terms of this strange system where the particular assistance being directed to them is now going to be removed. That, for example, is radically different from Austudy, which is in itself an education assistance supplement which is paid throughout the whole of the year and not simply quarantined to when a campus may be teaching during a semester. To extend the analogy, should we now remove Senator Vanstone’s senatorial salary on the basis that she should only be permitted to accept her ministerial salary because when the Senate is not sitting somehow she is not required or mandated to receive a senatorial payment as well? The argument is a nonsense. But the end result is
that some 12,500 students with disabilities will have their pensioner education supplements cut during the summer break, forcing many, I believe, into giving up their studies altogether and therefore going back to living solely on disability pensions.

The extra difficulty is that many people in that situation will be unable, in many cases, to take up part-time or casual work to supplement their payment. The pensioner education supplement should be consistent throughout the year and not turned off and on like a tap. Outcome 3 of the minister’s portfolio is entitled ‘Individuals Reach their Potential’. That is its specific name, yet one of the miserly savings measures in this year’s budget, found at page 140 of the portfolio budget statements, saves around $7½ million a year through matching payments just to study periods. This means that, during summer breaks, pensioners are not eligible for the extra $62.40 per fortnight.

It is important to point out though that the department itself does quite all right from this. It takes back around $2½ million to implement the measure. I find it an extraordinary situation to take back $2½ million to implement a measure that takes away $7 million in total from pensioners trying to do something to better their lives. To swallow so much of that up in the bureaucracy of administering it is quite ridiculous.

We also know from the minister’s recent answers to questions I have placed on notice, in which I asked the minister whether she agrees that there are extra difficulties and costs associated with people with disabilities studying—and I refer to her answer to my question on notice No. 1552—the minister has acknowledged that there are a range of areas—and she qualified her answer by saying that it depends on the type of disability—in which there are additional difficulties and burdens and the need for resources for students with disabilities. That is on the record from the minister. Yet contradicting that in her answer today is this extraordinary argument that somehow the particular education supplement should be quarantined to only teaching weeks and denied to these people in non-teaching weeks and, in fact, on the basis of ignoring particular difficulties. (Time expired)

Question agreed to.

PETITIONS

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

Environment: Great Barrier Reef Marine Park

The petition of certain citizens of Australia draws the attention of the Senate to our concern that:

1. The Minister for Environment and Heritage has approved an Environmental Impact Study for seismic testing for oil and/or gas in the Townsville Trough only 50 kilometres from the World Heritage Listed Great Barrier Reef Marine Park area;

2. The Howard Government has not responded to opposition to oil or gas exploration from environmentalists, the tourism industry, the fishing industry, community members and the Queensland Government.

The petition therefore calls on the Senate to support legislation that ensures that no exploration or mining can proceed in the Townsville Trough adjacent to the Great Barrier Reef.

by Senator McLucas (from 128 citizens).

Petition received.

NOTICES

Presentation

Senator Heffernan to move on the next day of sitting:

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 9 September 2003.
Senator O’Brien to move on the next day of sitting:

That the Senate condemns the Prime Minister (Mr Howard) for his ongoing pattern of deceit in relation to his dealings with the chair of the Manildra Group, Mr Dick Honan, prior to a Cabinet decision that delivers direct financial benefits to that company.

The President to move on the next day of sitting:

(1) That, in accordance with section 54 of the Parliamentary Service Act 1999, the Senate resolves that:

(a) the Joint House Department, Department of the Parliamentary Library and Department of the Parliamentary Reporting Staff are abolished with effect from 31 January 2004; and

(b) a new joint service department, to be called the ‘Department of Parliamentary Services’ be established from 1 February 2004 to fulfil all the functions of the former joint departments;

and supports the Presiding Officers in the following endeavours:

(c) to reinforce the independence of the Parliamentary Library by strengthening the current role of the Library committees of both Houses of Parliament;

(d) to bring forward amendments to the Parliamentary Service Act 1999 to provide for a statutory position of Parliamentary Librarian within the new joint service department and conferring on the Parliamentary Librarian direct reporting responsibilities to the Presiding Officers and to the Library committees of both Houses of Parliament;

(e) to ensure that the resources and services be provided to the Parliamentary Library in the new joint service department be specified in an annual agreement between the Departmental Secretary and the Parliamentary Librarian, approved by the Presiding Officers following consideration by the Library committees of both Houses of Parliament; and

(f) to consider, after the establishment of the joint service department, that department providing human resources and financial transaction-processing activities for all the Parliamentary departments, subject to such an arrangement being proven to be both cost-effective and efficient.

(2) That this resolution be transmitted to the House of Representatives.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes the retirement of champion athlete Cathy Freeman from athletics on 16 July 2003;

(b) notes the tremendous contribution Cathy has made to Australian and international athletics including:

(i) being the first Aboriginal track and field athlete to represent Australia at an Olympic Games at Barcelona in 1992,

(ii) winning 200m and 400m gold medals at the 1994 Commonwealth Games in Victoria, Canada,

(iii) being the first woman to claim consecutive 400m world championship titles with victories in 1997 and 1999—the first time an Australian had won successive world titles in any sporting field,

(iv) holding 13 national athletics titles, and

(vi) winning the 400m gold medal at the Sydney Olympic games in 2000; and

(c) recognises the role she has also played in national reconciliation by being a great role model for young Indigenous people and by overcoming stereotypes of Indigenous Australians to become an Australian national icon.
Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes:

(i) that it was NAIDOC (National Aboriginal and Islander Day Observance Committee) Week from 6 July to 13 July 2003 and that this year’s theme was, ‘Our Children, Our Future’, and

(ii) the high proportion of youth who make up the Indigenous Australian population, with the 2001 Census showing that 58 per cent of the Indigenous population is aged under 25 years, compared with the rest of the Australian population with only one-third (35 per cent) aged under 25 years;

(b) recognises the significance of NAIDOC Week in celebrating Indigenous culture and the individual achievements of Indigenous people throughout the country; and

(c) congratulates the 2003 National NAIDOC Award winners including:

Person of the Year: Ms Deborah Mailman
Apprentice of the Year: Ms Laurell Dodd
Scholar of the Year: Mr Frederick Penny
Female Elder of the Year: Mrs Violet French
Male Elder of the Year: Mr William Kennedy
Youth of the Year: Ms Stacey Kelly-Greenup
Sportsperson of the Year: Mr David Peachey
Artist of the Year: Ms Belynda Waugh

Senator Stott Despoja to move on Tuesday, 19 August 2003:

That the Senate—

(a) expresses its concern that the rights and liberties of the people of Hong Kong are threatened by the proposed Article 23 legislation being considered by Hong Kong’s Legislative Council;

(b) notes that:

(i) the proposed legislation will introduce powers similar to those which operate in the People’s Republic of China to restrict freedom of expression and religion, and to imprison religious leaders, journalists, academics and labour activists,

(ii) the People’s Republic of China previously pledged to respect Hong Kong’s Basic Law of 1990, which protects many of the rights and freedoms threatened by the Article 23 legislation, and

(iii) those members of Hong Kong’s Legislative Council who have been elected by universal suffrage oppose the Article 23 legislation but are unable to prevent its enactment because the People’s Republic of China either directly or indirectly controls a majority of votes in the Legislative Council;

(c) welcomes the improvements to the Article 23 legislation announced by the Hong Kong Government on 3 June 2003; and

(d) urges the Hong Kong Government to further amend the legislation to ensure that it can not be used to silence opposition, restrict freedom of speech, of the press and of publication, freedom of association, of assembly, of procession and of demonstration, the right and freedom to join trade unions and to strike, and the right to engage in academic research, literary and artistic creation and other cultural activities, in accordance with Articles 27 and 34 of the Basic Law.

Senator Cherry to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the European Union in December 2002 imposed a moratorium on the further
approvals of food irradiation due to research about the possible health effects, particularly in relation to cyclobutanones.

(ii) Food Standards Australia in the same month expanded the list of foods that can be irradiated in Australia to include a range of tropical fruits, and

(iii) a number of community campaigners have chosen to fast in protest against the approval of food irradiation in Australia, arguing that fasting is safer for their health than eating irradiated food;

(b) calls on the Federal Government to urgently commission research on the health effects of food irradiation and to follow the lead of the European Union in not approving any further foods for irradiation until such research is completed; and

(c) calls on the Queensland Government to conduct a full review of the safety of food irradiation plants in Queensland, including the impacts on public health and the environment.

Senator Cherry to move on the next day of sitting:

That the Senate—

(a) notes that thousands of Indigenous workers in Queensland suffered the economic injustice of having their wages stolen, or of being underpaid, as the direct result of Government policy up to the 1970s;

(b) endorses the view of the Queensland Council of Unions that the issue of stolen wages is a legitimate issue of wage and workers’ justice; and

(c) calls on the Beattie Labor Government to withdraw its paltry $2 000 and $4 000 compensation caps and negotiate a full, just and proper settlement of stolen wages.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes:

(i) that Australian citizens Mamdouh Habib and David Hicks currently incarcerated at Guantamano Bay, Cuba, still face the possibility of a death sentence at the hands of the United States military, and

(ii) the comments by the Prime Minister (Mr Howard) regarding the sentencing of Bali Bomber Amrozi where he said, ‘If it’s the view of the Indonesian court that it be carried out then it should be carried out’; and

(b) calls on the Government:

(i) to reaffirm its opposition to capital punishment as a matter of principle,

(ii) to reaffirm its commitment to the fundamental tenets of common law, namely, habeas corpus and judicial review of executive action, and

(iii) to take immediate action to secure the release and return of Mr Hicks and Mr Habib to Australia to face trial or to be freed as appropriate.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the serious allegations of kidnap, beating and arson in relation to the tactics of Indonesian Special Forces ‘Kopassus’ in their deployment in Aceh,

(ii) the unresolved allegation that Kopassus was involved in the murder of United States citizens near Freeport, West Papua, in 2002,

(iii) that Kopassus members have been found to be responsible for the murder of West Papuan independence leader Theys Eluay in November 2001,

(iv) that Kopassus troops trained East Timorese militias responsible for massacring civilians and attacking Australian forces in East Timor, and
(v) that Kopassus members have been found to have links with terrorist organisations including the now disbanded Laskar Jihad; and
(b) calls on the Government:
(i) to cancel any planned re-establishment of cooperation with Kopassus,
(ii) to acknowledge that it is not in the best interests of Australia or the region to extend tacit support for an organisation which engages in terrorising civilian populations, and
(iii) to heed the advice of Professor Damien Kingsbury of Australia’s Deakin University that Indonesia’s military is ‘part of the problem, not part of the answer’ and that restoring military cooperation should be off the agenda until the Indonesian military ‘is thoroughly reformed, including closing its business and criminal networks, and it is brought under full civilian authority’.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes the significant steps taken by the company ERA towards the rehabilitation of the Jabiluka uranium mine site;
(b) congratulates the traditional owners of the land, the Mirrar people, for their strong and ongoing opposition to uranium mining on their land;
(c) congratulates the community voices in Australia and overseas who have constantly campaigned to stop the Jabiluka uranium mine so as to protect the World Heritage values of Kakadu National Park; and
(d) calls on the Federal Government:
(i) to immediately implement the recommendations of the UNESCO World Heritage Committee’s report on Kakadu National Park, and
(ii) to implement outstanding recommendations from the Environment, Communications, Information Technology and the Arts References Committee report, Jabiluka: The undermining of process—Inquiry into the Jabiluka uranium mine project, including the recommendation that the Jabiluka uranium mine should not proceed because it is irreconcilable with the outstanding natural and cultural values of Kakadu National Park.

COMMITTEES
Selection of Bills Committee
Report
Senator EGGLESTON (Western Australia) (3.45 p.m.)—I present the eighth report of 2003 of the Selection of Bills Committee. Ordered that the report be adopted.

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

Leave granted.

The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 8 OF 2003
1. The committee met on Tuesday, 12 August 2003.
2. The committee resolved to recommend—
That—
(a) the provisions of the ACIS Administration Amendment Bill 2003 and the Customs Tariff Amendment (ACIS) Bill 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 15 September 2003 (see appendix 1 for statement of reasons for referral);
(b) the provisions of the Age Discrimination Bill 2003 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report on 18 September 2003 (see appendix 2 for statement of reasons for referral);
(c) the provisions of the Taxation Laws Amendment Bill (No. 7) 2003 be referred immediately to the Economics
Legislation Committee for inquiry and report on 8 September 2003 (see appendix 3 for statement of reasons for referral);

(d) the provisions of the Telstra (Transition to Full Private Ownership) Bill 2003 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report on 30 October 2003 (see appendix 4 for statement of reasons for referral); and

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

• Education Services for Overseas Students (Registration Charges) Amendment Bill 2003
• Financial Services Reform Amendment Bill 2003
• Freedom of Information Amendment (Open Government) Bill 2003
• Higher Education Legislation Amendment Bill 2003
• Legislative Instruments Bill 2003 Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003
• Migration Amendment (Duration of Detention) Bill 2003
• States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003
• Vocational Education and Training Funding Amendment Bill 2003.

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:
Bills deferred from meeting of 12 August 2003

• Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003
• Communications Legislation Amendment Bill (No. 2) 2003
• Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003
• Student Assistance Amendment Bill 2003
• Fuel Quality Standards Amendment Bill 2003
• Migration Legislation Amendment (Identification and Authentication) Bill 2003
• Non-Proliferation Legislation Amendment Bill 2003
• Social Security Amendment (Supporting Young Carers) Bill 2003
• Statistics Legislation Amendment Bill 2003
• Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003.

(Jeannie Ferris)
Chair
13 August 2003
Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
ACIS Administration Amendment Bill 2003
Customs Tariff Amendment (ACIS) Bill 2003
Reasons for referral/principal issues for consideration
To investigate the impact of the provisions of the bill on the automotive industry in Australia, and to ensure that the proposed changes to the ACIS assistance package will appropriately and effectively manage the industry’s transition to a state of reduced tariff protection.
Possible submissions or evidence from:
Federal Chamber of Automotive Industries
Federation of Automotive Products manufacturers
Australian Industry Group
Committee to which bill is referred:
Economics Legislation Committee
Possible hearing date:
Possible reporting date(s): As soon as practicable
(signed)
Senator Lyn Allison
Whip/Selection of Bills Committee Member

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Age Discrimination Bill 2003
Reasons for referral/principal issues for consideration
• Prohibit age discrimination in the areas of work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information;
• Include a range of exemptions that make allowances for legitimate distinctions based on age; and
• Confer functions on the Human Rights and Equal Opportunity Commission concerning age discrimination including inquiring into possible infringements, policy development, education and awareness-raising.
Possible submissions or evidence from:
A range of community and human rights groups representing younger or older people, employer groups and professional associations.
Committee to which bill is referred:
Legal and Constitution Legislation Committee
Possible hearing date:
Possible reporting date(s): To be determined by the committee
(signed)
Senator Jeannie Ferris
Whip/Selection of Bills Committee Member

Appendix 3
Proposal to refer a bill to a committee
Name of bill(s):
Taxation Laws Amendment Bill
Reasons for referral/principal issues for consideration
Revenue risks associated with transitional rules to allow certain entities with foreign losses to be excluded from a consolidated group
Life offices may wish to comment on the adequacy of imputation rules, accounting and corporate tax advisors may wish to comment on the proposed tax treatment of instruments in foreign hybrids.
Possible submissions or evidence from:
Treasury, Australian Taxation Office, life offices, peak accounting bodies, finance industry, corporate tax associations and insurance council
Committee to which bill is referred:
Economics Legislation Committee
Possible hearing date:
Possible reporting date(s): 8 September 2003
(signed)
Senator Sue Mackay
Whip/Selection of Bills Committee Member

Appendix 4
Proposal to refer a bill to a committee
Name of bill(s):
Telstra (Transition to Full Private Ownership) Bill 2003
Reasons for referral/principal issues for consideration
This is a significant issue.
Possible submissions or evidence from:
Telstra, other telecommunication companies, consumer groups, representatives from bodies representing regional and rural consumers
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): Mid September 2003—end September 2003 at the latest
(signed)
Senator Jeannie Ferris
Whip/Selection of Bills Committee Member

Regulations and Ordinances Committee
Reference

Senator LUDWIG (Queensland) (3.45 p.m.)—by leave—I move the motion, as amended:

That the provisions of the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003 be referred to the Standing Committee on Regulations and Ordinances for inquiry and report by 3 October 2003, with particular reference to:

(a) the scope of the exemptions contained in the bills;
(b) the mechanisms contained in the bills to improve the quality and transparency of legislative instruments; and
(c) parliamentary scrutiny of legislative instruments and the impact of the bills on the work of the committee.

Question agreed to.

ENVIRONMENT: GLOBAL WARMING

Senator BROWN (Tasmania) (3.46 p.m.)—I move:

That the Senate—

(a) views, with due gravity, the mounting evidence for global warming including:
   (i) a sea level rise of 10 to 20 centimetres since 1900,
   (ii) nine of the world’s ten hottest years (since temperature records began) have occurred since 1990,
   (iii) the rapid melting of glaciers in Greenland, Alaska, and the Himalayas,
   (iv) the record frequency of tornadoes in the United States of America,
   (v) the average 1.2 degrees Celsius higher temperature across the Murray Darling basin in the 2002-03 summer, worsening drought and bushfires, and
   (vi) Europe’s heatwave;
(b) recognises global warming’s catastrophic potential for the Australian and global economies, society and environment;
(c) accepts that global warming is being induced by human activity which is both identifiable and able to be modified;
(d) calls on the Prime Minister (Mr Howard) and his Cabinet to:
   (i) acknowledge the need for much greater national action to curb the release of greenhouse gases from Australian sources, well beyond the goals of the Kyoto Protocol, and
   (ii) take an urgent lead in the international effort to reverse global warming, including at the forthcoming Forum of South Pacific nations (some of which face obliteration from the rising sea levels).

Question agreed to.

TELECOMMUNICATIONS: MOBILE PHONES

Senator GREIG (Western Australia) (3.46 p.m.)—At the request of Senator Allison, I move:

That the Senate—

(a) notes:
   (i) the French Industry Minister announced that mobile phones will soon be required by law to be sold with hands-free kits,
   (ii) that hands-free kits currently come free with the phone in France, and
   (iii) the Minister also announced that a future regulation will put a limit on the power of handsets; and
(b) calls on the Federal Government to request a report from the Australian Communications Authority on:
   (i) the French Government’s legislative and regulatory requirements for hands-free mobile phone kits, and
   (ii) the standard setting arrangements for these devices.

Question agreed to.
MATTERS OF URGENCY

Australian Broadcasting Corporation

The DEPUTY PRESIDENT—The President has received the following letter, dated 13 August 2003, from Senator Cherry:

Dear Mr President,

Pursuant to standing order 75, I give notice that today I propose to move:

“That in the opinion of the Senate the following is a matter of urgency:

The Senate’s need to assert:

(a) the continuing confidence in the ABC complaints handling process, noting that it is more comprehensive than any process in place for any other media organisation, and

(b) the requirement for the Minister for Communications to apologise to the members of the ABC Independent Complaints Panel for questioning their independence and integrity.”

Yours sincerely,

John Cherry

Australian Democrats Senator for Queensland

Is the proposal supported?

More than the number of senators required by the standing orders having risen in their places—

Senator CHERRY (Queensland) (3.49 p.m.)—I move:

That, in the opinion of the Senate, the following is a matter of urgency:

“The Senate’s need to assert:

(a) the continuing confidence in the ABC complaints handling process, noting that it is more comprehensive than any process in place for any other media organisation, and

(b) the requirement for the Minister for Communications to apologise to the members of the ABC Independent Complaints Panel for questioning their independence and integrity.”

This is a very important motion, and I move it on behalf of the Australian Democrats. Over the last seven weeks—probably even over the last seven years, depending on how you count it—we have seen an increasingly shrill war of words between the Minister for Communications, Information Technology and the Arts and the public broadcaster, the ABC. I am not quite sure why it has become so shrill. I did notice some speculation in the media this morning that the minister for communications missed out on an overseas trip, so I suspect he may have been a little down in the mouth over the winter break. The comments that came from the minister on whether the ABC is independent, whether it has an independent complaints handling process and the general continuing attacks on its coverage should not go without public comment in this place. The minister has been trying to put out the impression to the public that the ABC does not have in place a complaints handling process. On 25 July he said:

So any means that would give public confidence and provide credibility to an outcome, I think, is in everyone’s interests, including the ABC.

He said that in the wake of recent decisions they are examining other ways of ensuring a proper, independent, arms-length assessment of claims. He went on to say:

The purpose of the exercise is to ensure that all the parties concerned are confident about the outcome being independently analysed and that the public itself, which obviously is the ultimate beneficiary, it pays, all taxpayers fund the ABC, all public itself has a vested interest in being confident that the outcome is credible.

That is his syntax, not mine. He said that same day:

The Independent Complaints Review Panel is one appointed wholly by the ABC Board ... That is not entirely arm’s length; that is a creature of the ABC itself.
On the issue of Russell Balding referring the matter to the independent complaints tribunal, the minister said:

What he’s now done, without consulting me, is to refer these matters to his board-appointed complaints panel. Now, he’s done that because he’s concerned about this appearance of objectivity and that’s precisely my point, that if you think that after seven or eight weeks you can have an internal full-time employee of the ABC passing judgement on complaints and expect the public to say ‘well, that’s fair and reasonable, that looks like an arm’s length process, I’m sure the guy was utterly impartial’, then I don’t think that’s the real world.

There are dozens of comments that I could point to where he highlights quite clearly that he has no confidence in the complaints process of the ABC and no confidence in the independent complaints panel. There are quite a number of comments that I will point to.

I would also like to look at exactly who is on the complaints panel, which is the third stage of the ABC’s complaints process. The complaints panel consists of: Mr Ted Thomas, the convenor, who is a former general manager of Channel 7; Ms Margaret Jones, the deputy convenor, who is a journalist, author and member of the Australian Press Council; Professor Michael Chesterman, former dean of the Faculty of Law at the University of New South Wales; Mr Stepan Keryasharian, New South Wales ethnic affairs commissioner, formerly of SBS radio; and Mr Bob Johnson, formerly of Channel 7 news and current affairs. The particular panel are now looking at Senator Alston’s complaints, but they are doing so in an environment where he has made it quite clear that he does not have confidence in their independence. No matter what the outcome, he will criticise it because they are ‘creatures of the board’.

This attack on these individuals is extraordinary. In my view, they are clearly a group of eminent people who are quite capable of making judgments about whether Senator Alston’s complaints have any merit or not. It is extraordinary to look at some of the commentary from other people as to whether Senator Alston’s attacks on the independence of this panel are justified. The Australian Press Council made an extraordinary statement on 9 August 2003: The Australian Press Council views with concern any moves by the federal Minister for Communications to establish a new government-appointed body to deal with complaints about the Australian Broadcasting Corporation (ABC).

In the Council’s view, the establishment of an ad hoc tribunal supervening the established complaints systems is both unnecessary and may cause the public to believe that the government wants to interfere in the editorial processes of media organizations and, thus, limit the public’s right to receive information of interest and concern to it.

Errol Simper wrote in the Australian on 31 July 2003:

This both demonstrated publicly that the national broadcaster had such a body and seemed to imply any additional, government-imposed arbitration was superfluous.

Mr Simper went on to say that the line-up is clearly ‘reasonably independent’. Probably the most dramatic support for the ABC came from Mark Day, from News Corporation, who said about this panel:

Nobody from the ABC sits on it, everybody is there because they have some knowledge of journalistic ethics or practice or media operations or complaints handling processes and that kind of thing. And nobody on the board has ever worked, to my knowledge, at the ABC—people like Ted Thomas ... These are people who have been around in the industry a bit and are utterly independent of the ABC. That complaints panel is in place now. What’s he going on about, needing another complaints review thing?
It is quite clear when you go through these comments that senior people like Mark Day, Errol Simper, Robert Mann and the Australian Press Council itself are making it quite clear that the minister is on very shaky ground when he refers to the review panel as being anything other than independent. In fact, looking at the comments from Mark Day, it is quite clear that the ABC has probably the most rigorous and independent complaints handling process of any media organisation in the world and certainly of any media organisation in Australia. It is worth noting that, of the few complaints that have passed through the process to the Australian Broadcasting Authority, the ABC actually has a success rate of four dismissed complaints and two upheld in the last three years. Compare that with the Channel 9 rate of 20 findings that it has breached the code of practice.

It is certainly a matter of concern that this minister continues to attack the complaints panel and the complaints process of the ABC and draws into question the integrity and independence of the panel members. I believe the Senate should support this motion on the basis that we need to send a clear message that we stand by the fact that the ABC has an independent complaints panel. It is working, it is effective and the minister should abide by it.

Senator EGGLESTON (Western Australia) (3.56 p.m.)—One wonders where Senator Cherry has been in terms of really paying attention to the complaints process of the ABC. If he believes that the two points he has made in this urgency motion are true, he really has no idea about the complaints process of the ABC or the fact that it is anything but independent. In requiring in part (b) that the minister should apologise to the members of the ABC Independent Complaints Review Panel for questioning their independence and integrity, I can only say that he is wide of the mark. Senator Alston’s comments were more than justified by (a) the method of appointment of the members of that panel and (b) their lack of diligence in finding the complaints to be upheld. In particular, their views about complaints lodged about the ABC’s coverage of the war in Iraq showed nothing but a total lack of independence in their assessment of the bias that the ABC AM program in particular demonstrated in reporting that war.

It is almost universally acknowledged that the ABC is an important Australian cultural institution, justifying the significant amounts of public funding that it receives annually. Indeed, in its last budget the government maintained the ABC’s triennial funding in real terms, allocating $760 million over the current financial year and in excess of $2.2 billion over the next three years. I remind Senator Cherry that public funding demands accountability. In return for such public largesse, the ABC has a responsibility to be fully accountable not just to the parliament but to the people of Australia. Having a transparent, arms-length complaints handling process is crucial to ensuring that the ABC is accountable both to the parliament and to the people, and that is what Senator Alston wants set up.

One cannot in any way claim that the current process is independent and able to make objective judgments. Let us just have a look at what the ABC complaints process involves. There is the Independent Complaints Review Panel, and they have now set up a complaints review executive. The decisions of both of those bodies can be appealed to the ABA if necessary, but the ABC does have the right to intervene and turn off such an appeal. Let us have a look at the Independent Complaints Review Panel. First of all, it was created by and is a creature of the ABC. All members of the panel are appointed by the ABC. The Independent Complaints Review
Panel rules and procedures are set by the ABC. Reports can be edited by ABC management and the ABC management decides what action should be taken as a result of reports made by the panel. Furthermore, people who complains to the panel do not have the right of legal representation and, as I said, the ABC management itself has the right to edit reports and decide what action will be taken. So it is a pretty internalised process.

Senator Ian Campbell—You’re joking!

Senator EGGLESTON—I am serious, Senator Campbell. It is like a boys’ club setting up a little body to review its activity and—surprise, surprise—it very rarely finds a complaint against the ABC justified.

Senator McGauran—One per cent.

Senator EGGLESTON—One per cent? Let’s look at the numbers, shall we? Over the last three months, 1,457 complaints have been made to the ABC Independent Complaints Review Panel. Of those complaints, 47 have been upheld, or just 3.4 per cent—hardly a great record of independent judgment and assessment of complaints against the ABC. Since it is appointed by the ABC, this complaints panel does not have any basis to independently judge the ABC. That is the point Senator Alston is making. We should have a complaints review panel which is truly independent of the ABC and which can independently review complaints made about the ABC.

Let us go back to the war in Iraq. After the biased presentations made, particularly on the ABC AM program by Linda Mottram, whose introductions were consistently sarcastic, cynical and characterised by a serious anti-American bias, the minister for communications made a complaint in which he detailed some 68 different incidents in which the ABC showed bias in reporting what had happened in Iraq. Those complaints were considered by the ABC Independent Complaints Review Panel executive, headed by a gentleman called Mr Murray Green. One might wonder whether Mr Murray Green was really an independent assessor. It is interesting to find that Mr Murray Green had been with the ABC since 1988. He was a senior manager during most of those 15 years. Again, one has to ask whether he was capable of forming an independent judgment on programs provided by the ABC.

Senator Ian Campbell—He was probably in the same union as Linda Mottram.

Senator EGGLESTON—He probably was, when you think about it; they were probably old mates. It is no surprise at all that, of the 68 complaints which Richard Alston lodged, Murray Green upheld only two. It is interesting to see what other journalists thought about the complaints which Richard Alston lodged. Gerald Stone, who, as we all know, is an SBS board member, a former executive producer of 60 Minutes and a former editor of the Bulletin, said of Richard Alston’s dossier—the 68 complaints about bias in reporting the war in Iraq:

…As a former senior producer and editor, I must say I didn’t find Alston’s dossier of 68 alleged offences as far-fetched as some of my colleagues. I noted at least 20 incidents where, as an ABC news executive, I would have called AM staff members to task for making smug and gratuitous comments blatant enough to bring the program’s impartiality into question.

Gerald Stone is one of Australia’s most respected and most senior journalists. He, as a genuinely independent observer, made those comments about Linda Mottram’s introductions on AM and about the complaints which Richard Alston made. It is very hard to believe that Richard Alston’s complaints were not justified, so let us have a look at the letter he wrote to Mr Ted Thomas, who, as Senator Cherry said, is the convener of the Independent Complaints Review Panel. Senator
Alston made several points which I think Senator Cherry will find quite interesting. First of all, he pointed out in his letter of 1 August this year that the members of the ICRP may not currently be employees of the ABC but all have long records of having been senior ABC executives. The panel itself, as we said, is a creation of the ABC. Secondly, as Senator Alston said, the ABC chooses the panel members—hardly an independent factor there. The Broadcasting Act 1992 allows a complainant to seek appeal to the Australian Broadcasting Authority, but the ABC reserves the right to effectively pre-empt any decision to exercise that right. The ABC dictates the ICRP rules and procedures—(Time expired)

Senator MARK BISHOP (Western Australia) (4.06 p.m.)—Let me say at the outset that the opposition, the Labor Party, supports and commends the motion moved by Senator Cherry before the chair for discussion. In another parliament, the previous parliament, I had responsibility for communications in the Senate. That was a very interesting and useful time. From memory, when my office checked, we had written 18 or 19 minority or dissenting reports on a range of matters that were relevant at that time to the communications portfolio. One of the recurring matters under discussion and debate during that time—and it appears that we are revisiting it—was the worth of the ABC.

My strong recollection of that period of two or three years when I was handling the communications portfolio in the Senate was that the ABC was constantly under attack and review by the then and current communications minister, Senator Alston. There were constant debates because there were constant attacks on its funding, constant aspersions as to the ability of the officers of the ABC and the producers and the programmers to carry out their tasks and constant assertions—rarely, if ever, supported by any hard evidence—that the ABC was biased against the government and engaged in some ongoing cultural warfare.

So it is back to the future when we consider the motion that is under discussion today moved by Senator Cherry. As I said, the opposition is pleased to support it. Senator Alston’s war on the ABC has reached such breathtaking proportions that, over the winter break, the minister proposed that the ABC adopt an independent complaints panel, replicating one which already exists. For the benefit of Senator Alston, let me explain the ABC complaints system. Initial complaints are directed to the Complaints Review Executive, Mr Murray Green, who comprehensively blew apart Senator Alston’s paranoid fantasy about the ABC bias. The Complaints Review Executive, I am informed, dismissed some 66 of the 68 complaints of bias that the minister levelled against the ABC. These were ridiculous complaints which could have come only from the most extremist paranoid mind, buried deep in the bunkers of the minister’s office.

However, if complainants are unhappy with this first step, as Senator Alston clearly was and is, they can appeal to the Independent Complaints Review Panel. This panel consists of five non-ABC staff appointed for their expertise in journalism and the media. The minister did not have the fortitude to go to this next level, so the ABC sent his ABC complaints upstairs of its own volition. This is the panel that the minister has been trying to pretend does not exist. He even hoodwinked his leader, the Prime Minister, who said in late July:

… the best way for the ABC to be seen to be dealing with complaints about bias would be to have a completely independent review process.

Of course, one already exists. It is in the act. The minister knows it and the department knows it. The minister, Senator Alston, must
have received a real dressing-down from the Prime Minister when he discovered an independent complaints panel already exists, is functioning and is carrying on its duties. I am sure that Donald McDonald would have been on the phone that night pointing out to his friend the Prime Minister that Senator Alston had ill-advised him on this issue. We can also point out to the minister that complainants can also go to the Australian Broadcasting Authority if they are unhappy about the ABC’s handling of their complaint. So they have another avenue of appeal to make complaints in the supposedly biased, retrograde, non-independent ABC complaints process.

In August last year the minister, Senator Alston, was reported as being pleased with the ABC’s independent complaints review system. So I ask the question: why is he unhappy now and why has he been unhappy for the best part of six months on this issue? Is it because he is embarrassed that his bizarre ABC dossier will get blown out of the water at every stage of the appeals mechanism? Is it because the minister is searching for new angles in his longstanding and ongoing war against the ABC? Was the minister trying to deflect criticism towards the government over the ABC being forced to cut popular programs like Behind the News because of ongoing government cutbacks?

Why does the minister feel that each of the existing members of the ABC Independent Complaints Review Panel—and we should list them: Mr Ted Thomas, a former general manager of Channel 7; Ms Margaret Jones of the Australian Press Council; Professor Michael Chesterman, Dean of Law at the University of New South Wales; Stephen Kerkyasharian, the New South Wales Ethnic Affairs Commissioner; and Mr Bob Johnston, formerly of Channel 7 news and current affairs—is not sufficiently independent of the ABC? Maybe the minister has information not available to the opposition. Maybe he is correct, maybe he is completely justified. I am sure that if he is he will lay out that information in the discussion later on this afternoon.

Senator Mackay—He’s here, but he’s not speaking!

Senator MARK BISHOP—Isn’t that shameful! Worse still, maybe some members of the panel may be inclined to give the minister’s bizarre ABC bias dossier the shellacking that it so patently deserves. Why has the minister insisted that the ABC does not have an independent complaints panel when the ABC does have an Independent Complaints Review Panel, established by the department under the act, funded by the ABC? Just today we see another example of the ongoing attacks by the government—not by the minister. Senator Alston has, apparently, authorised his colleague in the lower house Mr Christopher Pyne to float the policy of advertising on the ABC. The agenda is the same as it was three or four years ago. It is clear: bully and starve the ABC into compliance and then, when that job is done, allow advertising and finish the job completely. Seventy years of bipartisan support for our independent, non-commercial national broadcaster, the ABC, has been thrown out the window, and it is clear that the government intends to continue going down that particular path.

One thing is for sure: Senator Alston owes an apology to each and every one on the Independent Complaints Review Panel whom he has slurred as not being independent. He owes an apology to Ms Indira Naidoo and to Mr Max Uechtritz, to whom he still has not apologised after allowing his own colleagues loose at Senate estimates. He owes an apology to the AM program, which he has falsely accused of being anti-American. He owes an apology to rural and regional Australians in
about 60 towns who will not be getting NewsRadio or Classic FM—

**Senator Mackay**—Mr Deputy President, I rise on a point of order. I ask you to ask Minister Alston, who is here, but as I understand not speaking—

**The ACTING DEPUTY PRESIDENT** *(Senator Lightfoot)*—What is your point of order, Senator Mackay?

**Senator Mackay**—In fact, the remaining government speakers are Senator Santoro and Senator McGauran. I would ask you to call the minister to order for repeated interjections.

**The ACTING DEPUTY PRESIDENT**—There is no point of order.

**Senator Alston**—On the point of order—

**The ACTING DEPUTY PRESIDENT**—There is no point of order, Senator Alston.

**Senator Alston**—I am here because my starting time for being on duty commenced at 4 p.m. I would not dream of interfering—

**The ACTING DEPUTY PRESIDENT**—I am sure that every member appreciates you being here, Senator Alston, but there is no point of order.

**Senator MARK BISHOP**—As I was saying, Senator Alston owes a series of apologies. He owes an apology to the rural and regional Australians in around 60 towns who will not be getting NewsRadio or Classic FM as a result of the Howard government’s rejection of the ABC’s 2003 triennial funding bid. He owes an apology to the thousands of students, parents and teachers who are angry that the ABC has been forced to axe *Behind the News* after years of Howard government cutbacks. Labor commends Senator Cherry’s motion, but it is worth while, in the last minute or two that I have available to me, to repeat so that everyone who is listening understands the background to this issue.

If complainants are unhappy with the first step, as Senator Alston clearly was, they can appeal to the Independent Complaints Review Panel. That panel consists of five non-ABC staff appointed for their expertise in journalism and media. So this independent complaints review tribunal, which was alleged not to exist, apparently does exist and has five very senior persons who come from backgrounds in media, commercial TV, journalism and non-government organisations. They receive only sitting fees for their duties and they are committed to public and community broadcasting. That independent complaints tribunal exists and has existed for many years. Senator Alston knows that it exists because in recent months, before this current mess was created by him, he was publicly commending the independent complaints review tribunal for the worth of their work, for carrying out their duties in a professional and unbiased manner. *(Time expired.)*

**Senator SANTORO** *(Queensland)* *(4.17 p.m.)*—I would like to thank my Queensland Democrat colleague Senator Cherry for the opportunity to return so quickly to the issue of the ABC and the problems that it has in presenting news and current affairs. It really beggars belief that he can actually suggest that the Senate should assert continuing confidence in the ABC’s complaints handling process given what occurred earlier this year over the Iraq crisis and subsequent war—all the more so when the problems that those circumstances revealed were worsened by the ABC management having a hissy fit when the government was unable to meet the full whack of the corporation’s ambit funding claim. It is absolutely incredible that Senator Cherry should seek to require the Minister for Communications, Information Technology and the Arts to apologise to the members of the ABC independent complaints panel. So it is with pleasure that I
come back to this chamber to have two bites of the cherry on the issue of the ABC.

There has been an extraordinary sequence of events following the Senate Environment, Communications, Information Technology and the Arts Legislation Committee budget estimates hearing on 26 May when the ABC gave its annual accounting to the parliament. Let me say this: it is vital that some balance be kept in this debate. It is deeply regrettable that it is in danger of becoming unbalanced because of the action of people rushing to the defence of the corporation without thinking through the real issues that lie behind the walls of self-serving rhetoric around the ABC and its defenders. Let me say this too: the ABC is a valuable public asset which, in the main, serves the Australian listening, viewing and online audience well, particularly in regional and remote areas where alternatives are hard to find. Let me further add that I genuinely believe that the majority of ABC journalists, broadcasters and other staff are decent, fair-minded Australians who do their best, and they often achieve it. That is to the ABC’s credit.

But the ABC cannot be above public scrutiny on any aspect of its business. In that context it is inevitable that from time to time issues will arise on which the minister—whatever that is at the time—and the ABC will take contrary positions. The ABC exists on public money, and existing on public money requires those who receive it for public purposes to give a full account of what they have done with it. It is absolutely clear from the responses of ABC management to the budget outcome that the management believes that special pleading on its part is not something with which anyone could possibly argue. Apparently, this is particularly the case where the government is concerned.

It would appear that for the ABC—an organisation that in the media stands as a scrupulineer of public spending—the matter of its funding cannot be a matter for debate. But it is a matter of priorities, of course. It is not clear at all that the ABC audience—that is, the total audience, not just the vocal part of it that in many cases is itself a willing participant in the sort of circus we have seen over the past few months—thinks that ABC priorities are necessarily correct or, more particularly, that its complaints process is valid. As other speakers have said before me, when 96.6 per cent of complaints received between 1 January and 31 March this year were found to be ‘baseless’, even the most idle of eyebrows should have difficulty remaining unraised.

Within broad guidelines, what the ABC’s priorities are is properly a matter for ABC management and the board. Both are independent of government, in the sense that government does not and should not dictate the daily dealings of the corporation or the detail of its spending. There is nothing that this government has said or done that injures that central principle, and nothing that anybody opposite says can convince this place in totality—or any individual in it—of that. But the thrust of the ABC’s so-called case for special consideration in funding terms was made abundantly clear on 26 May at the estimates hearing. It was revealed by the comedy sequence in which Senator Conroy opened proceedings for the Labor Party with a dorothy dixer about the ABC’s alleged financial plight and managing director Russell Balding’s reading of his prepared reply. That says it all.

I want to address very specifically the issues that have been raised by Senator Mark Bishop and others in relation to the Independent Complaints Review Panel. Senator Cherry, Senator Bishop and the ABC claimed that the ICRP is a fully independent complaints appeal body. However, the fact is that the ICRP was created by the ABC, and all

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the members of the ICRP are appointed by the ABC board. In addition, the ABC’s own editorial policies make it clear that the ICRP rules and procedures are set by the ABC. Its reports can be edited by the ABC for legal reasons, and the ABC managing director alone decides what action comes out of its reports. That is fact; it cannot be denied. The claim that Senator Alston has questioned the independence of members of the ICRP is false. He has merely criticised the fact that the ICRP is a creation of the ABC, that its members are appointed by the ABC and that the ABC sets its rules and decides what happens with its reports. The minister has sent a letter to the convener of the ICRP which makes clear that he has not impugned the independence of ICRP members. That, again, is a fact that senators opposite seek to ignore.

But what is of greater concern is the revelation in last week’s Bulletin by highly respected journalist Fred Brenchley that earlier this year the ABC tried to nobble the ICRP. The hypocrisy of it all! Despite the ABC claiming that the ICRP is fully independent, Mr Brenchley revealed that the ABC sought to have the ICRP deal with ABC staff only through the audience and consumer affairs section—which, by the way, is the very section that usually handles the initial complaint and hence is being appealed against. It was also revealed that the ABC wanted to have the opportunity to edit drafts of ICRP reports. Now if honourable senators want to dispute that, dispute it with Mr Brenchley, but he, just like the government, will give you short shrift when you make statements the way that you have.

In this additional opportunity for debate on the matter of very high public importance, I want to return to the capacity of the ABC to manage its budget and put out an objective news and current affairs service. It is something that I touched upon in an earlier speech this afternoon—that is, the issue of the left-leaning Economic Policy Institute in Washington: the one that hosts the home page of those who think that Cuba and North Korea are models for developing countries to follow. I recommend the web site particularly for the headline ‘Success Stories’. It carries a sub-title, ‘Stories from the front lines: Successful struggles against privatization’. This does not seem quite to match the desirable level of objectivity for an organisation that purports to be unbiased. It brings into question the capacity of the ABC to make an objective judgment on what might constitute fair comment to be broadcast on its services. It is not only on privatisation that the EPI takes a particular view—one from which Marx might easily once have squinted at the world with his anticapital myopia.

Among other things it cites these interesting issues for virtual visitors to contemplate in terms of its fixation with successful struggle against privatisation. It also has the heading ‘El Salvador: Nine-Month Health Strike to End’—

Senator Cherry—Mr Acting Deputy President, I have to raise a point of order: this is not relevant to the motion that is being debated. I heard all this at lunchtime; I do not want to hear it again.

Senator Alston—Mr Acting Deputy President, on the same point of order: the mere fact that it might have been canvassed elsewhere cannot possibly affect the relevance of it to this motion. This motion may in fact be very close to what was discussed at lunchtime. As I follow Senator Santoro’s impeccably logical argument, he is simply setting this up as a prelude to demonstrating that this particular outfit is of a stripe which could not, in any shape or form, be characterised as independent. So I wait, with bated breath, to hear how in fact it has been characterised in this country.
Senator Cherry—Mr Acting Deputy President, on the same point of order: I am having great difficulty working out how it is relevant—bouncing around the web site of the Economic Policy Institute in Washington to get back to the independence of the complaints panel.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—I have listened assiduously to the contribution that Senator Santoro has made this afternoon because his speech is interesting, and I do believe that what he has said is relevant. Even if some may say that that is only peripherally relevant, it is nonetheless relevant.

Senator Santoro—Obviously I will not be able to conclude all of my remarks but the fact is, Senator Cherry, I have not said this in this place before. I have mentioned the web site but the material I am quoting now is new. What that material shows is that that web site favours the running of stories as success stories that are anti privatisation within developed countries. The ABC quotes that particular site—

The ACTING DEPUTY PRESIDENT—Senator Santoro, you may care to address your last 26 seconds to the chair.

Senator Santoro—Through you, of course, Mr Acting Deputy President. The ABC clearly quotes that particular site as one that is relevant to the way that it reports the news. That, Senator Cherry, is something that you should be very cognisant of: that the ABC displays bias towards featuring sites and featuring certain news items that are indeed biased against what this government is about, including some issues of privatisation—sites and news stories with slants that favour its own biased viewpoint. (Time expired)

Senator Mackay (Tasmania) (4.26 p.m.)—Quite frankly, I think many of us here are becoming sick and tired of having to rise in this chamber to defend the ABC from what are unrelenting and unwarranted attacks by the Minister for Communications, Information Technology and the Arts, who is yet again—let me tell you—here and still not contributing to the debate, but interjecting and taking points of order. It seems that Minister Alston, the Prime Minister and other members of the Howard government are determined to destroy Australia’s much loved and respected independent broadcaster and will take any opportunity that they can to undermine it.

They may want to be a bit careful about that. According to Newspoll over 13 million people watch ABC television at least once a week, more than 6.5 million people listen to the ABC radio at least once a week and in excess of one million people use ABC online monthly. Even more importantly, Newspoll showed that 80 per cent of respondents last year believed that the ABC was balanced and even-handed when reporting news and current affairs. I noticed in the press today 2UE, in fact, complaining and blaming Minister Alston for the decrease in its ratings and the increase in the ABC’s ratings as a result of the publicity that Minister Alston is giving the ABC. So the minister also owes 2UE an apology, I suspect.

Now for a minister with responsibility for the ABC, Senator Alston has also shown an alarming lack of understanding of the organisation and its processes. Were Minister Alston or Senator Eggleston to be one of those one million Australians who visit the ABC web site at least once a month, there they would find a clear outline of the ABC’s complaints-handling mechanism.

Senator Eggleston interjecting—

Senator Mackay—Senator Eggleston says, ‘All appointed by the ABC board.’ Well, who appoints the ABC board? The government appoints the ABC board. If the
government does not like what the ABC board is doing, maybe it should sack the ABC board. I suspect what has happened is that a couple of people who are on the ABC board may have ratted on the government. I noticed interjections earlier by Senator McGauran with respect to one of them in particular. Yet the minister is not satisfied. It is hard to see his ongoing attacks on the ABC other than as a fit of pique because he was made to look silly, I believe, over the out-of-hand dismissal of his allegations of bias over the reporting of the war in Iraq.

However, I think that the motivation behind these attacks unfortunately goes somewhat deeper than that. The ongoing attacks against the ABC are part of this government’s attempt to silence all voices that do not conform to their narrow ideological world view. In fact, I suspect that the only independent mechanism the government would be happy with is the Federal Council of the Liberal Party—not the National Party, Senator McGauran, but the Federal Council of the Liberal Party.

In recent days we have heard of the government’s deliberate attempt and until now secret decision, highlighted by Senator Lundy, to underfund the National Museum in an attempt to bleed this important institution to death. Why would the government do this? Because the Museum does not tell the story of Australia in the way the government would like it to be told.

Like those of many other senators and members, my office has been receiving many calls from constituents who are unhappy with the effects of this government’s treatment of the ABC. These calls relate to the decision that has had to be made by the ABC to end the show Behind the News—a decision I hope there is some way of overturning but one that has had to be made because of the failure of this government to adequately fund the ABC. However, I am sure this is one decision of the ABC the minister will support, because shows such as Behind the News considerably add to the awareness of young Australians of news and current affairs by presenting events in a form readily accessible to young viewers. Schools, for the last 30 years, used this program as part of their curricula to encourage critical thinking and analysis by students of local and world events. That is something this government does not want too much of, so I am sure there will be no complaints from the minister about the axing of this program at least.

Let me return to the ABC’s complaints handling mechanism—the mechanism the government clearly feels is flawed because the ABC board basically appoints the independent panel. As with every other complaint handling process or grievance process in existence in shops, workplaces, government agencies, hospitals, airlines—you name it—if someone has a complaint against the ABC, the complaint should in the first instance be taken to the ABC. For example, if the minister does not like a meal he has in a restaurant he presumably does not rush off to an independent gourmet food review panel. I presume he would take his complaint to the restaurant itself. Having done so, if he remained unhappy, unless there was a health or safety issue at stake there would be little further the minister could do other than withdraw his custom. However, in the case of the ABC, if the complainant is not happy with the outcome of this process they may ask for the complaint to be referred to an independent body, as indicated by my colleagues previously: the Independent Complaints Review Panel. This is established by the ABC board, which is appointed by the government but is completely independent of the ABC. None of the members of the panel has any past or present association with the ABC as an em-
ployee, despite Senator Alston’s previous statements with respect to this.

One might think that review by an independent panel such as this would be the end of the line for a complaint but, in the case of a complaint against the ABC, it is not. Even after these two stages of review, if a complainant is still not satisfied they can take their complaint to the Australian Broadcasting Authority, the ABA. There, in the words of Professor Flint—a real favourite of the government—the ‘highly competent investigating staff’ will examine the complaint. I would be pretty careful if I were Professor Flint. Were those ‘highly competent investigating staff’ to uphold the previous decisions which dismissed the minister’s allegations, we might begin hearing attacks on the ABA in this chamber and thinly veiled threats to the ABA’s funding, as we have to the ABC’s funding. But, given that it is Professor Flint, I suspect they will be all right.

The minister seems to forget that there are many important things he should be doing in his portfolio. Even in the relatively narrow area of complaints handling, perhaps the minister would be better off turning his attention to how commercial broadcasters uphold broadcasting codes of practice and deal with complaints. According to the ABA annual reports one show, A Current Affair, had 10 code breaches upheld against it whilst in the same period the ABC had one for the whole organisation.

Beyond this narrow area of complaint mechanisms the minister—and I am sure Senator Lundy will touch on this—could turn his attention to, for example, the debacle that his handling of digital TV has become. We have had a datacasting auction that failed, two channels that ended up nowhere and high definition television also going nowhere. He has had to change the rules on that several times. He has also supported multichannelling but nothing has happened. He has gone to cabinet a couple of times and sought to get multichannelling for the commercial networks, and that has gone nowhere. To add insult to injury, in spite of repeated warnings about the effects of funding constraints, the minister has had to suffer the embarrassment of the ABC cancelling its digital multichannels. The digital roll-out, which was proceeding at a digital crawl, is now in reverse. It is time the minister got his eye back on the main game and stopped lashing out at the ABC to cover his embarrassment and policy failures.

Further to the remarks of my colleague Senator Mark Bishop, we read today in the Age of a further assault on the ABC. The Liberal chair of the House of Representatives Standing Committee on Communications, Information Technology and the Arts, Christopher Pyne, has had published today an opinion piece supporting advertising on the ABC. I cannot believe, and I know Senator Bishop does not believe, that Mr Pyne would not have cleared it with his very close colleague and the relevant minister, Senator Alston, before writing such a piece. There we have it: a de facto communications policy announcement from the Howard government—a policy to allow advertising, a policy which will destroy the ABC’s editorial independence and ability to produce quality independent public broadcasting services and a policy which can only make eventual privatisation of the ABC inevitable. I certainly hope that the minister was not consulted by Mr Pyne and that this is some terrible error by his colleague. I understand that the minister has sought to address this, but we do not necessarily believe him fully.

Perhaps we could ask the minister to concentrate on his portfolio for long enough to categorically rule out this policy change. Once that is done, the minister may be able to start spending some time coming to grips
with the ABC’s complaints handling process. On this side of chamber we have the utmost confidence in the ABC’s complaints handling process; it is the minister in whom we lack confidence. His questioning of the independence and integrity of the members of the Independent Complaints Review Panel is but the latest in a long line of vindictive attacks. It shows hubris and complacency. I absolutely agreed with Russell Balding, Managing Director of the ABC, when he said:

The questioning of the integrity and credibility of this group of professionals has been nothing short of offensive.

The Minister owes the panel members an immediate apology. I support this motion absolutely.

Senator McGauran (Victoria) (4.36 p.m.)—The irony of the Democrats rushing to defend the ABC’s existing complaints system is that they are drawing the ABC further into a political mire. It is absurd. We reject the call for the Minister for Communications, Information Technology and the Arts to apologise to the ABC Independent Complaints Review Panel. If the minister overseeing the operations of the taxpayer funded Broadcasting Corporation feels that the existing complaints tribunal deserves scrutiny then, acting on behalf of the public, he has a right and a duty to act accordingly. That is what this is all about: accountability, which the ABC cannot be immune to.

The minister has properly tested the processes with his own complaint regarding the coverage by the AM radio program of the Iraqi war and found it to be questionable. As the Senate would be aware, the minister submitted a very hefty and articulate document to back his 68 claims of biased reporting. In the words of the managing director, Mr Balding, the complaint ‘would be treated like an ordinary complaint’. In other words, Richard Alston would be treated like any other citizen. Let us see what happens to him; let us see how Richard Citizen is treated, keeping in mind that few other citizens could compile such a convincing and detailed case as he did. On 28 May the complaint went to the ABC, and it was not acknowledged until 21 July. As one wit put it, the ABC took longer to respond to the minister’s complaint than the war to topple Saddam Hussein’s regime. It is fair to say that if it took so long for the Minister for Communications, Information Technology and the Arts to get an answer, it would have taken even longer for Joe Citizen to get an answer.

The 68 complaints against the AM program were reviewed by the complaints review executive, Mr Murray Green, as has been said by previous speakers. If the ABC want to present a fair and balanced and accurate complaints department that the public can have confidence in, they should take heed of the old saying that you must not only be independent but be seen to be independent. It is doubtful that the public would see Mr Murray Green as an independent arbitrator. Look at his background. He joined the ABC in 1988 as a manager of ABC Radio GWF in Perth. In 1992 he moved to Melbourne as manager of ABC Radio Victoria. In 1997 he was promoted to the position of ABC state manager of Victoria and in 2000 he was further advanced to the position of ABC state director of Victoria. Mr Murray Green has excellent ABC credentials.

I have read both the minister’s complaints and the conclusions by the complaints review executive, Mr Murray Green. On any fair and commonsense analysis, I cannot concur with Mr Green’s conclusions. In fact, I would say that it would be easier to get a free kick against Collingwood with Eddie McGuire umpiring—and that is all we are asking for in this case: a fair and independent umpire. Frankly, everyone who heard AM’s coverage of the Iraqi war was stunned by its
biased reporting. It came through the reporter’s tone of voice, inflection and expression and was always laced with anti-Americanism in its introductions. As the minister pointed out, the reports were dripping with sarcasm and full of sneers, and they were just plain bad journalism. This style of reporting flowed over to the welcome home parade for our troops in Sydney on 18 June. My office received numerous, angry complaints about the continuing sneer style reporting of the ABC against Australia’s involvement in Iraq. As an example, just one case was the stand-up report by the journalist who said that the crowd that met the troops coming home was smaller than the crowd that protested against the war, which was a false assertion and an utterly inappropriate comment, to say the least.

These stand-up journalists do not act freely. The thrust and flavour of their reports is influenced very much by the directors, by those off camera, and that is the core problem—the hierarchy. In the case of the ABC, it is Mr Max Uechtritz, director of news and current affairs. Regrettably, Mr Uechtritz is in his own hot water. His ability to be balanced is also under question. When he attended the News World Asia conference in August 2002, he was quoted as saying:

We now know for certain that only three things in life are certain—death, taxes and the fact the military are lying bastards.

That is from the director of news and current affairs in the ABC, so we have every right to question him with regard to fair reporting of the ABC’s coverage of Iraq. Is it any wonder then that the reporters which he has control over are out of control—or in control, as the case may be?

The ABC points to another appeals process, which many of the speakers have mentioned—that is, you may take the next step to the Independent Complaints Review Panel. As has been said, it is not independent at all. Every member is appointed by the ABC executives themselves. While Mr Ted Thomas vigorously defends his independence as a reviewer, he is not seen to be independent. Members of the review board believe that, by titling themselves an independent review board, the assertion makes the truth. No matter how much Mr Ted Thomas defends his independence, as long as he is appointed by the ABC, he cannot be seen to be an independent umpire.

The concern by the public towards the ABC complaints process runs very deep. It is not just this high-profile case that the minister has put on the table; that simply typifies the public’s concern. If you go the letters to the editor section of the Bulletin you will see a letter by Mr Ralph Zwier from Caulfield, Victoria, outlining another case, but time does not permit me to read his letter. He simply says that the ABC’s reporting of many aspects of the troubles in the Middle East is also not balanced. So the minister’s case is the vanguard for a whole list of public concerns against the ABC. We reject this absurd urgency motion by the Democrats and call upon the ABC to get its house in order.

(Time expired)

Senator LUNDY (Australian Capital Territory) (4.43 p.m.)—Over the past few years, but with increasing intensity over the past few months, the Minister for Communications, Information Technology and the Arts, Senator Alston, has engaged in an attack on the ABC in an attempt to convert it from being an unbiased institution into a Liberal Party propaganda arm. A significant part of this attack involved making 68 spurious, highly politically motivated complaints about alleged ABC bias. If the latest contribution from Senator McGauran can be taken as any example, they do not even know whether they are arguing that this is some sort of bias from the top or some sort of un-
controlled thing happening at the grassroots of the ABC. You would think the coalition could get a consistent argument about this issue, but clearly they cannot.

When 66 of these complaints were rejected by an initial internal review which was independent of the programs concerned, Senator Alston decided to shift his attack to the complaints process. He rejected the ABC’s internal inquiry and called for an independent review panel, despite the fact that the ABC already has an independent review panel. Talk about shifty manoeuvring to pursue the vindictive cultural war against the ABC!

For the record, the ABC has the most rigorous and comprehensive complaints handling processes of any media organisation in Australia, and external review is a key element of this process. For example, following the initial internal review, the Independent Complaints Review Panel is available. This panel is used if the complainant is not satisfied with the initial response made by the ABC in its internal review. I am sure the minister is well aware that this panel was specifically established by the ABC board to facilitate independent external review. The panel of processinals is made up of a number of people from a variety of backgrounds who have expertise in media and journalism—Mr Ted Thomas, Ms Margaret Jones, Professor Michael Chesterman, Mr Stepan Kerkasharian and Mr Bob Johnson. No member of the panel has any present or former association with the ABC.

I join my colleagues in calling for Senator Alston to apologise to these people, because he has cast aspersions on their integrity and upon their commitment to the institution of the ABC. It is worth noting also that any dissatisfied complainant may seek a further review through the Australian Broadcasting Authority. However, Senator Alston’s attacks have not been because he was genuinely concerned with issues of bias. This has been part of a broader coalition strategy, a strategy designed to corrupt the independence and integrity of Aunty, just as the Howard government is attempting to do with other significant cultural institutions such as the National Museum of Australia.

The ABC front of this coalition cultural war is evidenced by these current and ongoing attacks that the ABC has had to endure, and there is a pattern. There is a pattern with the National Museum of Australia and there is a pattern with the ABC. Let us look at it. In the past few months Senator Alston has: called for the ABC to institute an independent complaints panel, despite the fact that one already exists; attacked the ABC for cutting costs, ludicrously in response to the government having starved it of adequate funding—for example, the loss of *Fly Tales* is an absolute disgrace and will remain as one of Senator Alston’s legacies to this portfolio and its failed digital TV regime; sought to editorialise and direct the ABC as to which programs it should cut, in an unprecedented defiance of the ABC’s charter of independence; and made unfounded attacks on the reputations of presenters such as Indira Naidoo and Max Uechtritz.

And one more: Mr Christopher Pyne’s piece today in the newspaper is advocating advertising for the ABC. Well, well, well, the favoured son to replace Senator Alston upon his, I am sure, impending retirement from this place has spoken out. Make no mistake: if Senator Alston leaves this place, I am sure it will be Christopher Pyne who has the portfolio of communications. What we have seen today is in fact an insight into what a new minister for communications under the coalition government has in mind for the ABC. So think about that when you are thinking about what will come next from the coalition.
Support for this motion before us will demonstrate that the Senate does not support and rejects completely the coalition’s war on the ABC, a war which is led continually by the shambling rhetoric provided by Senator Alston. I, too, am disappointed that he has been present throughout this debate but has chosen not to take the opportunity to apologise to all those concerned, particularly the ABC, or at least say a few words outside a point of order.

Senator CHERRY (Queensland) (4.48 p.m.)—In closing this debate, I want to make a few points. Firstly, in response to Senator McGauran’s comment that all we want is an umpire, there are four of them in the ABC complaints process. There is the very first section, which is the consumer section; there is the complaints review executive, put in as a result of a recommendation by the Auditor-General and supported at the time by the minister; there is the complaints panel; and then there is the ABA. Mark Day described the ABC complaints process as ‘the best complaints procedure I’ve ever seen, certainly in Australia’. He went on to say:

No commercial media has anything that comes close to it.

That is really what we are talking about here. We are talking about the fact that the minister has attacked this process and the panel members as not being independent, implying that the ABC is somehow judging itself.

Senator McGauran also made the point that this was a case of Caesar judging Caesar, because the board appointed the panel. Who appointed the board? Your government did, Senator McGauran, and there is not a single left winger on it. You have a former Liberal MP, Donald McDonald, described as a true conservative—and a very nice man too, I might add; and Judith Sloan and Ron Brunton, both conservatives to the core. They appointed this board. Another thing I point out is the criticism of Murray Green. According to Errol Simper’s column, of the last 35 determinations he has made, six of them went against his employer. So your argument that he is not going to make any findings against his own employer is simply not justified on the facts that exist.

You talk also about Max Uechtritz’s comment about the military never telling the truth. You should have a look at this morning’s Courier-Mail. News Limited defence reporter Ian McPhedran has complained about the fact that the Department of Defence spends $20 million trying to ensure that journalists do not find out what the Department of Defence is doing, complaining that journalists are not allowed to cover a humanitarian mission to the Solomon Islands. That is the sort of stuff that we are dealing with and that the ABC deals with every day in dealing with government. That is why it needs to be independent, that is why it needs to stand outside government and that is why it needs to ensure that, once the board is appointed, it is allowed to do its job.

I would like to conclude by seeking to table the press release put out by the Australian Press Council in response to Senator Alston’s attacks on the ABC. The council said that it believed that the minister’s actions raised ‘the possibility of further government restrictions on the ability of the media to freely report matters of public interest and concern’. The Australian Press Council is about as independent as you can get, because that is the newspaper proprietors—not an ABC employee there either. When it says that this process that the minister is proposing is shonky and when it says that the process works, then surely this Senate should accept that. I seek to table that press release, because it is important to have in the public record that what this minister is proposing is...
an inappropriate intervention in press freedom. *(Time expired)*

Leave granted.

Question agreed to.

**COMMITTEES**

**Scrutiny of Bills Committee**

Report


Ordered that the report be printed.

**DOCUMENTS**

Auditor-General’s Reports

Report No. 2 of 2003-04


Departmental and Agency Contracts

The ACTING DEPUTY PRESIDENT *(4.53 p.m.)*—I present correspondence from the Australian National Audit Office concerning an audit of the tabling of departmental and agency contracts.

**COMMITTEES**

Membership

The ACTING DEPUTY PRESIDENT *(Senator Lightfoot)*—The President has received letters from party leaders seeking variations to the membership of certain committees.

Senator ALSTON *(Victoria—Minister for Communications, Information Technology and the Arts)* *(4.53 p.m.)*—by leave—I move:

That senators be discharged from and appointed to various committees in accordance with the document circulated in the chamber.

**Economics Legislation Committee**

Appointed: Senator Ridgeway, as a substitute member to replace Senator Murray, for the committee’s inquiry into the provisions of the ACIS Administration Amendment Bill 2003 and the Customs Tariff Amendment (ACIS) Bill 2003.

**Employment, Workplace Relations and Education References Committee**

Appointed: Senator Santoro, as a substitute member to replace Senator Tierney, for the committee’s inquiry into labour market skills requirements, on 15 August 2003.

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

Discharged, as a participating member: Senator Cherry for matters relating to the Communications portfolio.

Appointed: Senator Cherry, as a substitute member to replace Senator Bartlett, for matters relating to the Communications portfolio.

Question agreed to.

**HIGHER EDUCATION LEGISLATION AMENDMENT BILL 2003**

First Reading

Bill received from the House of Representatives.

Senator ALSTON *(Victoria—Minister for Communications, Information Technology and the Arts)* *(4.54 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 ALSTON *(Victoria—Minister for Communications, Information Technology and the Arts)* *(4.54 p.m.)*—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This Government is committed to the development of a sustainable, quality, higher education sector.

Last year I conducted a Review of the higher education sector to determine whether changes were needed to ensure that Australia continues to have a university system that meets the needs of students and the community. In that process, I consulted widely with universities, student groups, unions and other stakeholders. The consultations produced a broad consensus that the current arrangements for funding universities were not sustainable and would, in the longer term, lead to an erosion of the excellent reputation of our universities.

The Government therefore announced the Our Universities: Backing Australia’s Future package of higher education reforms in the recent Budget. To be implemented over the next few years, the reforms will allow the higher education sector to develop in a way that is sustainable, provides high quality outcomes and is equitable in terms of opportunity.

Laying the foundation for this will be an increase in public investment in the sector of around $1.5 billion over the next four years. Over the next ten years, the Commonwealth will provide more than $10 billion in new support for higher education.

There will be more Commonwealth supported student places and more funding for each Commonwealth supported student, linked to improvements in how universities are managed. In addition there are extra funds for regional universities and new schemes and funding to encourage excellence in teaching, more collaboration between institutions and a renewed focus on equity. There will also be new places for national priorities such as nursing and teaching and concessional fee arrangements to encourage people to enrol in these fields.

Under the new arrangements for supporting students, people will have greater choice in how they access higher education and no Australian will have to pay upfront fees at the point of entry to an accredited institution. There will be new income-contingent loans available to help students paying full fees to public and eligible private higher education providers.

The bill now before us continues to deliver on the initiatives already put in place by this Government.

In 2003 the Government will provide record levels of funding. Total higher education funding through my portfolio (including HECS) will be $6.4 billion. This is up from $6.2 billion in 2002.

The key indicators for the health of our higher education sector remain positive. University revenues continued to grow strongly in 2002 and are expected to do the same in 2003. The estimated revenue for the sector is $11.3 billion for 2003, which is $2.7 billion more in real terms than in 1995.

Participation in higher education also continues to increase. There has been significant growth in domestic student numbers to 498,000 up by 75,000 since 1995.

This bill builds on these achievements.

The bill provides $7.3 million in 2003 to assist the Australian National University rebuild its world class research facilities at Mt Stromlo Observatory following their devastation by the Canberra bushfires on 18 January 2003. The bushfires that swept through the Research School of Astronomy and Astrophysics site destroyed heritage buildings, critical workshops and state-of-the-art telescopes that were also a key tourist attraction. The Research School has long been recognised as an important player in national and international astronomy, providing leading edge training for students as well as world class pure and applied research facilities.

Funding amounts in the Higher Education Funding Act 1988 are being updated to reflect the indexation of grants for 2003 and the latest estimates of HECS liability.

This bill will also amend the Australian Research Council Act 2001. The Australian Research Council plays a key role in the Australian Government’s investment in the future prosperity and well-being of the Australian community. Its mis-
sion is to advance Australia’s capacity to undertake quality research that brings economic, social and cultural benefits to the Australian community. The amendments are intended to streamline the administration and financial management of the Australian Research Council, its advisory structures and research programmes. They will update the composition of the Australian Research Council Board, strengthen disclosure of interest requirements, provide for the appropriation of funds by financial year, update funding amounts to reflect indexation and insert a new funding cap for the out-year of the Budget estimates.

Other important amendments to this Act include increased flexibility in determining research program funding splits to facilitate administration, and the discretion for the Minister to delegate certain powers to, and impose conditions on, the Australian Research Council Board in order to facilitate administrative efficiencies.

The Government’s continuing commitment to world class research is underscored by the five year $3 billion Backing Australia’s Ability initiative which continues to be delivered in full and on time, with $644 million allocated for 2003-04, which represents an increase of around $217 million on the 2002-03 commitment.

One of the largest single initiatives of Backing Australia’s Ability is an additional $740 million to research funded through the Australian Research Council. This will double, over a period of five years, the Australian Research Council’s capacity to fund grants through the National Competitive Grants Programme.

I commend the bill to the Senate.

Debate (on motion by Senator Ludwig) adjourned.

FAMILY LAW AMENDMENT BILL 2003

Report of Legal and Constitutional Legislation Committee

Senator McGauran (Victoria) (4.55 p.m.)—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the provisions of the Family Law Amendment Bill 2003, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
speech in the second reading debate earlier today, Labor has a series of amendments to move in relation to the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002, and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002. Our support of these bills will be contingent upon Labor’s amendments being supported. I want to make that very clear and I urge the crossbenchers to consider the Labor amendments. The amendments address the prevailing and profound shortcomings of these bills. They are organised into a series of groups and I want to make some general comments before I move the first set of amendments.

The current set of bills was introduced last year after the government amended its original package to address some, but not all, of the concerns raised in a former Senate inquiry. That inquiry was carried out by the Senate Environment, Communications, Information Technology and the Arts References Committee. As I have said previously, although some changes have been made, there are still far too many problems for Labor to allow these bills through without a long list of necessary amendments.

Labor is concerned that the government wants to turn back the clock and risk wiping out a generation of gains in heritage protection in Australia. Of particular concern is that we are worried that the government wants to remove independent decision making about the places that will benefit from heritage protection. It wants to replace the independent body with an advisory council effectively stripped of any meaningful powers. There is a real danger that an advisory council stripped of such powers will be a severely weakened advocate for heritage matters in Australia and the council will open the way for further politicisation of heritage protection. I say ‘further politicisation’ because the writing is already on the wall. The chair of the independent Heritage Commission, Mr Tom Harley, is a mate of the government and he did something quite remarkable on 18 June this year. He put out a press release welcoming reports of a deal between Senator Lees and the minister that would see the passage of these bills. Senator Lees has confirmed her support for these bills. I will quote my colleague Mr Kelvin Thompson, Labor’s representative on environment matters, who said today:

Senator Lees’ announcement today, “Lees Wins Heritage Deal”, shows how little she knows about the proposed Heritage legislation and how naïve she could be in trying to cut a deal with Minister Kemp.

Senator Lees’ 70 amendments, applying to only one of the three Heritage Bills soon to hit the Senate, do not strengthen heritage protection to any significant degree. Maybe the Senator should have taken a leaf out of Labor’s amendments, which actually cover all three Bills and do provide the heritage protection sadly lacking in the Government’s proposed legislation.

In addition, Senator Lees states that her deal with Minister Kemp is supported by major environment and heritage groups—maybe she should have actually consulted the major environment and heritage groups like the Australian Conservation Foundation before making such a sweeping statement.

But getting back to Mr Harley, he did not stop there. He went on to do the government’s bidding by running some of their media lines, like this one: ‘passage of this legislation will also mean the government will unlock $52.6 million to implement this new heritage system which was announced in the budget’. And still he did not stop. It was not enough for Mr Harley—remember, this is a very important point: he is the chair of an independent commission—to do the government’s bidding and run their media line for them. He went on to put the boot into
other organisations that happen to have a different view from that of the minister. Mr Harley said he totally rejected the stance of the Australian Conservation Foundation and its head, Don Henry, whose assertion that the legislation is a retreat on current heritage laws is muddleheaded and wrong.

I think it is a remarkable age that we live in when the chair of an independent statutory agency feels so comfortable about coming out with guns blazing to do his political masters’ dirty work, but I have to say this is not new. In fact, in the context of the debates in this place earlier today and indeed yesterday in relation to the National Museum, it seems that he is another foot soldier in the ongoing cultural war being perpetrated by the How ard government in this country. I think Mr Harley should go back and look at his job description. He is the chair of an independent commission. If he wants to carry on like a government apparatchik then I think the word with the minister is in order and he can perhaps apply for a job in the minister’s office.

Turning back to the bills before us, as my colleagues and I have said in earlier speeches in the second reading debate, not all of the provisions in these bills are bad. In fact there are some welcome elements. That is why Labor wants to amend the flaws that we cannot live with and make changes to these bills to create a far stronger set of bills that will make improvements to heritage protection in Australia and maintain that very important principle of independence.

I will take this opportunity to reflect on the Democrats, too. It was very interesting to see a scenario being played out earlier today in the chamber that led to the delay of this debate by a significant number of hours. Senator Bartlett made clear in his speech in the second reading debate that this was the worst set of negotiations that they have observed in 13 years, which I think is a pretty big statement in the context of all of the deals that the Democrats have done with the coalition. He said that it would affect future negotiations if the government could not act in good faith. He said it was very difficult to negotiate in bad faith and when the behaviour of government ministers and staff was ‘upsetting’.

These bills do need to be amended, and I urge the Democrats in particular to look at our amendments. I note with interest the series of amendments that have subsequently come forth from the Democrats in the context of their deal and negotiations with the government falling apart. I would like to refer to a couple of points with respect to the Democrat amendments which, like Senator Lees’s amendments, do not address the basic issues that Labor’s amendments address. Do they address the problem of a weakened definition of ‘action’? No, they do not. Do they provide heritage protection for heritage places and associated values? No, they do not. Do they transfer all of the Register of the National Estate places owned by the Commonwealth to the Commonwealth Heritage List? No, they do not. Do they stop this decision-making process from going into the minister’s hands? No, they do not. Do they maintain the independence of the Heritage Council? No, they do not. So in all of these things we still have a case before us that it is only Labor’s amendments that will resolve that problem. It is only Labor’s amendments that will make this bill passable. I seek leave to move Labor’s first set of amendments together.

Leave granted.

Senator LUNDY—I move opposition amendments (1) and (2), (22) to (49), (51) to (105) and (107) to (145) on sheet 2846:
(1) Clause 3, page 2 (lines 14 to 18), omit “Council” (wherever occurring), substitute “Commission”.

(2) Schedule 1, item 4, page 4 (line 24), after “National”, insert “or Commonwealth”.

(22) Schedule 1, item 31, page 6 (line 26) to page 27 (line 2), omit subsection 324G(2), substitute:

(2) Where the Australian Heritage Commission has included a place on the National Heritage List under section 324F (emergency listing), the Commission must complete its assessment of the place’s National Heritage values within 40 business days after including the place on the National Heritage List.

(23) Schedule 1, item 31, page 27 (lines 3 to 6), omit subsection 324G(3), substitute:

(3) The Australian Heritage Commission may make an assessment of a place’s National Heritage values whether or not the place is the subject of a nomination.

(24) Schedule 1, item 31, page 27 (lines 7 to 22), omit “Council” (wherever occurring), substitute “Commission”.

(25) Schedule 1, item 31, page 27 (lines 23 and 24), omit “The Council must give the Minister a copy of the comments with the assessment.”.

(26) Schedule 1, item 31, page 27 (line 27), omit “Council”, substitute “Commission”.

(27) Schedule 1, item 31, page 27 (line 31) to page 28 (line 6), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(28) Schedule 1, item 31, page 28 (lines 7 to 10), omit subsection 324H(2), substitute:

(2) The notice must be published within 20 business days after the day on which the Australian Heritage Commission completes an assessment of the place’s National Heritage values under section 324G.

(29) Schedule 1, item 31, page 28 (line 13), omit “Minister”, substitute “Australian Heritage Commission”.

(30) Schedule 1, item 31, page 28 (lines 18 to 21), omit subsection 324H(4), substitute:

(4) The Australian Heritage Commission must assess the merits of any comments received that comply with this section, or must obtain an assessment of the comments from a person with appropriate qualifications or expertise.

(31) Schedule 1, item 31, page 28 (line 22), omit “Minister”, substitute “Australian Heritage Commission”.

(32) Schedule 1, item 31, page 28 (line 25), omit “Council’s”, substitute “Commission’s”.

(33) Schedule 1, item 31, page 28 (line 29) to page 29 (line 7), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(34) Schedule 1, item 31, page 29 (after line 7), after subsection 324J(1), insert:

(1A) If the Australian Heritage Commission decides not to include a place in the National Heritage List, the Minister may direct the Commission to reconsider its decision. The Australian Heritage Commission must comply with a direction by the Minister to reconsider a decision.

(1B) After reconsidering a decision under subsection (1A), the Australian Heritage Commission must:

(a) include the place in the National Heritage List and publish a notice to that effect in accordance with the regulations; or

(b) advise the person who nominated the place of the Commission’s reconsideration and affirmation of its decision not to include the place in the National Heritage List, and of the reasons for that decision. A notice published under paragraph (a) must include a statement setting out the place’s National Heritage values.
(35) Schedule 1, item 31, page 29 (after line 9), after subsection 324J(2), insert:

(2A) In making a decision whether to include a place in the National Heritage List, the Australian Heritage Commission must consider only the National Heritage values of the place.

(36) Schedule 1, item 31, page 29 (lines 10 and 11), omit “If the Minister includes the place in the National Heritage List, he or she”, substitute “If the Australian Heritage Commission includes the place in the National Heritage List, the Commission”.

(37) Schedule 1, item 31, page 29 (line 19) to page 31 (line 20), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(38) Schedule 1, item 31, page 31 (line 9), omit “Council’s, substitute “Commission’s”.

(39) Schedule 1, item 31, page 31 (lines 11 to 13), omit paragraph 324J(8)(b), substitute:

(b) the comments (if any) received under subsection 324G(4); and

(40) Schedule 1, item 31, page 31 (line 16), omit “(if any) requested”.

(41) Schedule 1, item 31, page 31 (line 20), omit “Minister”, substitute “Australian Heritage Commission”.

(42) Schedule 1, item 31, page 32 (lines 3 to 9), omit subsection 324L(1) (but not the note), substitute:

(1) The Minister may remove a place or part of a place from the National Heritage List only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

(1A) The Australian Heritage Commission may remove a place or part of a place from the National Heritage List only if the Australian Heritage Commission is satisfied that the place does not have any National Heritage values.

(43) Schedule 1, item 31, page 32 (lines 12 to 18), omit subsection 324L(2), substitute:

(2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

(44) Schedule 1, item 31, page 32 (after line 18), after subsection 324L(2), insert:

(2A) The Australian Heritage Commission may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Australian Heritage Commission is satisfied that, ignoring subsection 324D(2), the place no longer has the National Heritage value or values.

(45) Schedule 1, item 31, page 32 (line 19), after “Minister” insert “or Australian Heritage Commission”.

(46) Schedule 1, item 31, page 32 (lines 23 and 24), omit the note.

(47) Schedule 1, item 31, page 32 (line 28), omit “paragraph (1)(a) or (2)(a)”, substitute “subsection (1A) or (2A)”.

(48) Schedule 1, item 31, page 32 (line 30), omit “paragraph (1)(b) or (2)(b)”, substitute “subsection (1) or (2)”.

(49) Schedule 1, item 31, page 33 (line 5), after “Minister”, insert “, or the Australian Heritage Commission,”.

(50) Schedule 1, item 31, page 34 (line 12), omit “the Minister receiving from the Australian Heritage Council”, substitute “the Australian Heritage Commission making”.

(51) Schedule 1, item 31, page 34 (line 20), omit “Minister”, substitute “Australian Heritage Commission”.

(52) Schedule 2, item 31, page 34 (line 30), omit “Minister”, substitute “Australian Heritage Commission”.

(53) Schedule 1, item 31, page 35 (line 4), omit “Minister”, substitute “Australian Heritage Commission”.

(54) Schedule 1, item 31, page 35 (line 18), omit “Council’s”, substitute “Commission’s”.

(55) Schedule 1, item 31, page 35 (line 18), omit “Council’s”, substitute “Commission’s”.
(56) Schedule 1, item 31, page 35 (lines 20 to 29), omit “Council” (wherever occurring), substitute “Commission”.

(57) Schedule 1, item 31, page 35 (lines 27), omit “assessment;”, substitute “assessment.”.

(58) Schedule 1, item 31, page 35 (lines 28 and 29), omit paragraph 324R(1)(b).

(59) Schedule 1, item 31, page 36 (line 1), omit “Minister”, substitute “Australian Heritage Commission”.

(60) Schedule 1, item 31, page 36 (line 5), omit “period; and”, substitute “period.”.

(61) Schedule 1, item 31, page 36 (lines 6 to 14), omit paragraph 324R(2)(b).

(62) Schedule 1, item 31, page 36 (line 15), omit “Council”, substitute “Commission”.

(63) Schedule 1, item 31, page 36 (line 18), omit “criteria; or”, substitute “criteria.”.

(64) Schedule 1, item 31, page 36 (line 19), omit paragraph 324R(3)(b).

(65) Schedule 1, item 31, page 36 (line 23), omit “Council”, substitute “Commission”.

(66) Schedule 1, item 31, page 39 (line 23) to page 40 (line 19), omit section 324Y, substitute:

324Y National Heritage management principles

(1) The Australian Heritage Commission must develop and give to the Minister principles for managing National Heritage places. The principles are called the National Heritage management principles.

(2) Before giving a copy of the draft principles to the Minister, the Australian Heritage Commission must publish in the Gazette, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any) a notice:

(a) stating that the Australian Heritage Commission has prepared draft National Heritage management principles; and

(b) stating how the draft can be obtained; and

(c) inviting comments on the draft from members of the public; and

(d) specifying the address to which comments may be sent; and

(e) specifying a day (at least 30 days after the last day on which the notice is published in the Gazette or in accordance with the regulations (if any)) by which comments must be sent.

(3) The Australian Heritage Commission must take any comments received into account in finalising the National Heritage management principles.

(4) The Australian Heritage Commission must give the Minister the National Heritage management principles for approval.

(5) The Minister may approve the National Heritage management principles with or without amendment.

(6) Approved National Heritage management principles are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(7) If the Minister approves the National Heritage management principles with amendments, the Minister must cause to be published in the Gazette a statement of reasons for making the amendments.

(8) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles.

(9) A person must comply with the regulations to the extent that they impose obligations on the person.

(67) Schedule 1, item 31, page 40 (lines 21 to 30), omit “Minister and the Australian Heritage Council” (wherever occurring), substitute “Australian Heritage Commission”.

(68) Schedule 1, item 31, page 41 (line 11) to page 42 (line 4), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(69) Schedule 1, item 31, page 42 (line 18) to page 43 (line 3), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(70) Schedule 1, item 32, page 43 (lines 10 to 14), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(71) Schedule 1, item 32, page 43 (line 15), omit “The Minister must ask the Australian Heritage Council for”, substitute “The Australian Heritage Commission must undertake”.

(72) Schedule 1, item 32, page 44 (lines 6 to 21), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(73) Schedule 1, item 32, page 45 (after line 4), at the end of section 341D, add:

(4) Before the Governor-General makes regulations for the purposes of this section, the Australian Heritage Commission must:

(a) publish draft criteria for Commonwealth Heritage values; and

(b) invite submissions from the public, allowing a period of not less than 30 days for such submissions to be lodged; and

(c) take any submissions received into account in finalising the criteria; and

(d) if the prescribed criteria differ from the draft criteria, publish in the Gazette a statement of reasons for the differences.

(74) Schedule 1, item 32, page 45 (line 5) to page 46 (line 7), omit section 341E, substitute:

341E Nominations of places

(1) A person may, in accordance with the regulations (if any), nominate to the Australian Heritage Commission a place for inclusion in the Commonwealth Heritage List.

(2) The Australian Heritage Commission may:

(a) ask a person who has nominated a place to provide additional information about the place within a specified period; and

(b) reject the nomination if the information is not provided within that period.

(3) The period referred to in subsection (2) must be reasonable.

(4) A member of the Australian Heritage Commission may make a nomination in accordance with this section.

(5) If the Australian Heritage Commission rejects a nomination under this section, the Commission must, as soon as reasonably practicable:

(a) advise the person who made the nomination of that fact; and

(b) give the person written reasons for the rejection.

(75) Schedule 1, item 32, page 46 (line 8) to page 47 (line 12), omit section 341F, substitute:

341F Emergency listing

(1) Before conducting an assessment of its values, the Australian Heritage Commission may, by instrument published in the Gazette, include a place on the Commonwealth Heritage List if:

(a) the place is either:

(i) entirely within a Commonwealth area; or

(ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and

(b) the Commission is satisfied that the place has or may have one or more Commonwealth Heritage values, any of which are under imminent threat.
(2) Within 10 business days after including the place in the Commonwealth Heritage List, the Australian Heritage Commission must:

(a) publish a notice in accordance with the regulations stating that the place is included in the Commonwealth Heritage List and the date on which it was included; and

(b) if the place was nominated by a person—advise the person that the place has been included in the Commonwealth Heritage List; and

(c) take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the place; and

(ii) advise each person identified that the place has been included in the Commonwealth Heritage List.

(76) Schedule 1, item 32, page 47 (line 13), omit “Council”, substitute “Commission”.

(77) Schedule 1, item 32, page 47 (lines 14 to 17), omit subsection 341G(1), substitute:

(1) Subject to subsection (2), the Australian Heritage Commission must complete its assessment of a place’s Commonwealth Heritage values within 12 months after the place is nominated.

(78) Schedule 1, item 32, page 47 (lines 18 to 29), omit subsection 341G(2), substitute:

(2) Where the Australian Heritage Commission has included a place on the Commonwealth Heritage List under section 341F (emergency listing), the Commission must complete its assessment of the place’s Commonwealth Heritage values within 40 business days after including the place on the Commonwealth Heritage List.

(79) Schedule 1, item 32, page 47 (lines 30 to 33), omit subsection 341G(3), substitute:

(3) The Australian Heritage Commission may make an assessment of a place’s Commonwealth Heritage values whether or not the place is the subject of a nomination.

(80) Schedule 1, item 32, page 47 (line 34) to page 48 (line 13), omit “Council” (wherever occurring), substitute “Commission”.

(81) Schedule 1, item 32, page 48 (lines 14 and 15), omit “The Council must give the Minister a copy of the comments with the assessment.”.

(82) Schedule 1, item 32, page 48 (line 18), omit “Council”, substitute “Commission”.

(83) Schedule 1, item 32, page 48 (lines 22 to 31), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(84) Schedule 1, item 32, page 48 (lines 32 to 35), omit subsection 341H(2), substitute:

(2) The notice must be published within 20 business days after the day on which the Australian Heritage Commission completes an assessment of the place’s Commonwealth Heritage values under section 341G.

(85) Schedule 1, item 32, page 49 (line 3), omit “Minister”, substitute “Australian Heritage Commission”.

(86) Schedule 1, item 32, page 49 (lines 8 to 11), omit subsection 341H(4), substitute:

(4) The Australian Heritage Commission must either assess the merits of any comments received that comply with this section or obtain an assessment of the comments from a person with appropriate qualifications or expertise.

(87) Schedule 1, item 32, page 49 (line 12), omit “Minister”, substitute “Australian Heritage Commission”.

(88) Schedule 1, item 32, page 49 (line 15), omit “Council’s”, substitute “Commission’s”.

(89) Schedule 1, item 32, page 49 (line 23), omit “Minister”, substitute “Australian Heritage Commission”.

(90) Schedule 1, item 32, page 49 (after line 29), after subsection (1), insert:

(1A) If the Australian Heritage Commission decides not to include a place in the
Commonwealth Heritage List, the Minister may direct the Commission to reconsider its decision. The Australian Heritage Commission must comply with a direction by the Minister to reconsider a decision.

(1B) After reconsidering a decision under subsection (1A), the Australian Heritage Commission must:
(a) include the place in the Commonwealth Heritage List and publish a notice to that effect in accordance with the regulations; or
(b) advise the person who nominated the place of the Commission’s reconsideration and affirmation of its decision not to include the place in the Commonwealth Heritage List, and of the reasons for that decision. A notice published under paragraph (a) must include a statement setting out the place’s Commonwealth Heritage values.

(91) Schedule 1, item 32, page 49 (line 24) to page 50 (line 15), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(92) Schedule 1, item 32, page 50 (line 7), omit “he or she”, substitute “the Commission”.

(93) Schedule 1, item 32, page 50 (line 16) to page 52 (line 6), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(94) Schedule 1, item 32, page 52 (line 8), omit “Council’s”, substitute “Commission’s”.

(95) Schedule 1, item 32, page 52 (lines 10 to 12), omit paragraph 341J(8)(b), substitute:

(b) the comments (if any) received under subsection 341G(4); and

(96) Schedule 1, item 32, page 52 (line 15), omit “(if any) requested”.

(97) Schedule 1, item 32, page 52 (line 19), omit “Minister”, substitute “Australian Heritage Commission”.

(98) Schedule 1, item 32, page 53 (lines 3 to 17), omit subsections 341L(1) and (2) (but not the note), substitute:

(1) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

(2) The Australian Heritage Commission may remove all or part of a place from the Commonwealth Heritage List only if it is satisfied that:
(a) the place or part is not entirely within a Commonwealth area; or
(b) the place or part does not have any Commonwealth Heritage values.

(99) Schedule 1, item 32, page 53 (lines 20 to 26), omit subsection 341L(3), substitute:

(3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

(100) Schedule 1, item 32, page 53 (after line 26), after subsection 341L(3), insert:

(3A) The Australian Heritage Commission may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Commission is satisfied that, ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values.

(101) Schedule 1, item 32, page 53 (line 27), after “Minister”, insert “or Australian Heritage Commission”.

(102) Schedule 1, item 32, page 53 (lines 31 and 32), omit the note.

(103) Schedule 1, item 32, page 54 (lines 2 and 3), omit “(2)(a) or (3)(a)”, substitute “(2)(b) or subsection (3A)”.

(104) Schedule 1, item 32, page 54 (line 5), omit “(2)(b) or (3)(b)”, substitute “(2)(a) or subsection (3)”.

CHAMBER
(105) Schedule 1, item 32, page 54 (line 16), after “Minister”, insert “, or the Australian Heritage Commission.”.

(107) Schedule 1, item 32, page 55 (line 23), omit “the Minister receiving from the Australian Heritage Council”, substitute “the Australian Heritage Commission making”.

(108) Schedule 1, item 32, page 55 (line 32), omit “Minister”, substitute “Australian Heritage Commission”.

(109) Schedule 2, item 32, page 56 (line 8), omit “Minister”, substitute “Australian Heritage Commission”.

(110) Schedule 1, item 32, page 56 (line 17), omit “Minister”, substitute “Australian Heritage Commission”.

(111) Schedule 1, item 32, page 57 (line 1), omit “Council’s”, substitute “Commission’s”.

(112) Schedule 1, item 32, page 57 (lines 3 to 12), omit “Council” (wherever occurring), substitute “Commission”.

(113) Schedule 1, item 32, page 57 (line 10), omit “assessment;”, substitute “assessment.”.

(114) Schedule 1, item 32, page 57 (lines 11 and 12), omit paragraph 341R(1)(b).

(115) Schedule 1, item 32, page 57 (line 18), omit “Minister”, substitute “Australian Heritage Commission”.

(116) Schedule 1, item 32, page 57 (line 22), omit “period; and”, substitute: “period.”.

(117) Schedule 1, item 32, page 57 (lines 23 to 31), omit paragraph 341R(2)(b).

(118) Schedule 1, item 32, page 57 (line 32), omit “Council”, substitute “Commission”.

(119) Schedule 1, item 32, page 57 (line 35), omit “criteria; or”, substitute “criteria.”.

(120) Schedule 1, item 32, page 57 (line 36), omit paragraph 341R(3)(b).

(121) Schedule 1, item 32, page 58 (line 4), omit “Council”, substitute “Commission”.

(122) Schedule 1, item 32, page 58 (lines 5 and 6), omit “or advice”.

(123) Schedule 1, item 32, page 59 (lines 13 to 15), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(124) Schedule 1, item 32, page 59 (lines 19 and 20), omit subsection (7), substitute:

(7) A Commonwealth agency that owns or controls a Commonwealth Heritage place must comply with any State or Territory environment, heritage or planning laws that apply generally in the place where the Commonwealth Heritage place is located.

(125) Schedule 1, item 32, page 59 (line 21) to page 60 (line 2), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(126) Schedule 1, item 32, page 60 (after line 2), at the end of section 341T, add:

(4) When making a decision about endorsing a plan, the Australian Heritage Commission must observe the precautionary principle stated in subsection 391(2).

(127) Schedule 1, item 32, page 61 (lines 3 to 10), omit section 341Y, substitute:

341Y Commonwealth Heritage management principles

(1) The Australian Heritage Commission must develop and give to the Minister principles for managing Commonwealth Heritage places. The principles are called the Commonwealth Heritage management principles.

(2) Before giving a copy of the draft principles to the Minister, the Australian Heritage Commission must publish in the Gazette, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any) a notice:

(a) stating that the Australian Heritage Commission has prepared draft Commonwealth Heritage management principles; and

(b) stating how the draft can be obtained; and
(c) inviting comments on the draft from members of the public; and
(d) specifying the address to which comments may be sent; and
(e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

(3) The Australian Heritage Commission must take any comments received into account in finalising the Commonwealth Heritage management principles.

(4) The Australian Heritage Commission must give the Minister the Commonwealth Heritage management principles for approval.

(5) The Minister may approve the Commonwealth Heritage management principles with or without amendment.

(6) Approved Commonwealth Heritage management principles are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) If the Minister approves the Commonwealth Heritage management principles with amendments, the Minister must cause to be published in the *Gazette* a statement of reasons for making the amendments.

(8) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.

(9) A person must comply with the regulations to the extent that they impose obligations on the person.

(10) Schedule 1, item 32, page 62 (lines 16 to 30), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(11) Schedule 1, item 32, page 63 (lines 9 to 20), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(12) Schedule 1, item 32, page 63 (lines 21 and 22), omit “The Minister must consult with the Australian Heritage Council in preparing the advice.”.

(13) Schedule 1, item 32, page 63 (lines 23 to 25), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(14) Schedule 1, item 32, page 64 (line 8) to page 65 (line 2), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(15) Schedule 1, item 32, page 65 (line 5), omit “Minister’s”, substitute “Commission’s”.

(16) Schedule 1, item 32, page 65 (lines 13 to 18), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(17) Schedule 1, item 32, page 65 (lines 19 and 20), omit “The Minister must consult the Australian Heritage Council in preparing the advice.”.

(18) Schedule 1, item 32, page 65 (line 21), omit “Minister”, substitute “Australian Heritage Commission”.

(19) Schedule 1, item 32, page 66 (lines 3 to 22), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(20) Schedule 1, item 37, page 67 (line 15), omit “Council”, substitute “Commission”.

(21) Schedule 1, item 39, page 67 (lines 23 and 24), omit the definition of *Australian Heritage Council*, substitute:

> **Australian Heritage Commission** means the body established by the
As it currently stands, the Heritage Commission has a broad range of functions and it operates as an independent body. The government’s plans are to replace the commission with the Australian Heritage Council. It will be a mere advisory body. The proposed new regime will give the minister the ultimate power to determine what deserves heritage protection. That decision will not be based solely on the heritage value of any site; there will be room for other factors to creep in and influence decisions. It is a move that cannot be tolerated by any heritage conscious group.

Labor’s proposed amendments will divert control of the listing assessment and disclosure processes back to the Heritage Commission and keep it at arm’s length from the minister. Our amendments also improve the qualifications for appointment to the commission. They better define specific membership qualifications relating to Indigenous heritage. Having moved those amendments, I will be interested to hear what other senators have to say.

Senator LEES (South Australia) (5.07 p.m.)—I find it interesting that with regard to what the government is doing on heritage generally Senator Lundy should say, ‘It is a move that cannot be tolerated by any heritage conscious group.’ Yet the only group that is opposed to what the government is doing is the group that she has just mentioned, the ACF. The ACF has a record of being opposed to anything that this government does. It has opposed all previous environment measures. I am not quite sure what it is waiting for by way of improvements to environment legislation because we have had substantial improvements. No, they have not
gone as far as some of us would like to go but certainly they are very substantial improvements on the status quo.

I take real issue with what has been said about Tom Harley. You would presume that Tom Harley, chair of the Australian Heritage Commission, someone with a very wide knowledge of the entire issue and all the details therein, would be someone people would listen to and acknowledge as having some expertise and understanding. Basically the Labor Party is now trying to gut the bill, to undo the new procedures and take us back virtually to square one.

The ACF stands alone in opposition. It is out there as the only opposing voice of all the groups that have been actively involved in this legislation, that have had any discussions and involvement with the government on the issues and negotiating amendments and looking at how improvements can be made. The other groups—and I listed them in my second reading speech—are very supportive of the government’s bill. Therefore I find myself unable to support what Labor is doing, which is effectively gutting the legislation.

Senator HILL (South Australia—Minister for Defence) (5.10 p.m.)—I would like to take this opportunity very briefly—although it is unnecessary—to defend Mr Tom Harley. He was appointed as chair of the AHC in part because of his independence and objectivity. Just because he, in that role, puts out a statement applauding an outcome that is better in terms of protecting Australian heritage than the existing regime, he should not be condemned for doing so. You can be independent and objective and yet at the same time applaud the better outcome, and I am sure that is what he was doing.

Senator ALLISON (Victoria) (5.10 p.m.)—I indicate that the Democrats will not be supporting these amendments. It is not good enough for us to hark back to the days of old. The current arrangements did not protect heritage—and calling it a commission again seems to me to make no substantive difference. Giving the commission the responsibility for listing places on the National Heritage List would go back to a situation where listing really did not mean anything.

Like Senator Lees we do not think the government has gone far enough in terms of the independence of the council, but we do acknowledge that it is critically important to have a tougher regime. You cannot get much weaker than the current one because being on the Register of the National Estate means absolutely nothing. So we think it is important that the decision about listing is made by the minister.

We have sought in this legislation to make sure that that process is as accountable as possible and that the minister is required to go through the kinds of processes which would make sure the government was able to be held accountable for those decisions. So we will not be supporting this group of amendments. We do not think that in any case it is workable for them to be put up in this way. I think that the ALP probably know that these amendments are not going to be successful, which is why they have been put forward. If we have an ALP government it will be interesting to see them put in a tough heritage protection regime with a fully independent commission or council, or whatever they decide to call it, able to take decisions independently of government. I look forward to that day. If that happens we will all be celebrating, but I think the reality is that under this government, and possibly under a Labor government, we will not see that. So the Democrats will not be supporting this group of amendments.

Senator Hill—I seek some clarification. I take it that we are debating the first block of
ALP amendments as allocated on the Clerk’s running sheet—is that so?

The TEMPORARY CHAIRMAN (Senator McLucas)—Yes, Senator. They are amendments (1) and (2), (22) to (49), (51) to (105) and (107) to (145).

Senator LUNDY (Australian Capital Territory) (5.13 p.m.)—Part of this group of amendments is also Labor’s opposition to sections 324M and 341M. I will take this opportunity to respond to comments made by other senators. Let us be really clear about this. Labor’s amendments strengthen the bill. Our amendments do not remove those elements of the bill that strengthen the heritage regime. We think they are a move in the right direction. It is not appropriate, and it is untrue, to stand up and imply that Labor’s amendments are some reversion to how things were in the past. That would happen, however, if this bill were to be rejected by the Senate.

From what we have just heard, the Democrats are unwilling to support Labor’s amendments. They are signalling their decision right now that they are not going to support Labor’s attempt to retain independence of the Heritage Commission. I think that is extremely unfortunate and very disappointing for all concerned. It is also very clear that the process here is now a sort of competition between former Democrat Senator Lees and the Democrats to see who can move amendments first to fiddle around the edges with this bill to try to turn it into something to save them little face. Quite frankly, nothing will work because only Labor’s amendments will preserve that independence of the commission.

The Democrats and Senator Lees are saying that they will support further politicisation of the process. I think that that, far from casting aspersions on Labor’s integrity in this matter, is a clear message from the Democrats that they are not interested in an independent commission. To express concern is one thing; to reject amendments that will, if all are supported, work towards achieving that is another matter altogether.

Senator ALLISON (Victoria) (5.16 p.m.)—Since this debate is setting off on the path of political jibes and rhetoric we might as well continue along this vein for a short time. We have often heard in this place from the Labor Party that they cannot possibly support amendments that we might put up that would improve legislation. The usual reason is that that is what you do when you are in government. The usual reason is, ‘We can’t do anything which is significant because we are a party in opposition.’ In other words, we are ready to take government after the next election and in the meantime we do not support your amendments if there is a chance they will get up because that is not what we are in the business of doing; we are in opposition.’

Senator Lundy, it does not bode well for this, your first bill, to be suggesting now that the Democrats are not wishing to join with you in creating the perfect heritage legislative environment. I think it would be more useful if we heard what your amendments did. A debate such as this is going to be very complicated and if we are just resorting to that kind of political rhetoric then we are not really going to get very far. I suggest that we focus on the effects of those amendments and leave aside from now on the question of whether this can be a perfect bill and whether the Democrats are joining with you in achieving that. We do have a political reality in this case. We do want to see the best possible heritage regime. As I said before, if Labor take government I will be the first to join with you in putting in place that regime to make sure it is as strong as it possibly can be.
Question negatived.

The TEMPORARY CHAIRMAN—The question is that sections 324M and 341M stand as printed.

Question agreed to.

Senator LUNDY (Australian Capital Territory) (5.18 p.m.)—by leave—I move:

(3) Schedule 1, item 4, page 4 (line 25) to page 5 (line 20), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

(4) Schedule 1, item 4, page 5 (lines 22 to 24), omit “on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values, to the extent that they are indigenous heritage values”.

(5) Schedule 1, item 4, page 5 (line 29) to page 6 (line 14), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

(6) Schedule 1, item 4, page 7 (line 1), after “National”, insert “or Commonwealth”.

(7) Schedule 1, item 4, page 7 (line 2) to page 8 (line 26), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

(8) Schedule 1, item 4, page 8 (line 27) to page 9 (line 8), omit “the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values, to the extent that they are indigenous heritage values”.

(9) Schedule 1, item 4, page 9 (lines 11 and 12), omit “the National Heritage values of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values”.

(10) Schedule 1, item 4, page 9 (line 13), after “place”, insert “or Commonwealth Heritage place”.

(11) Schedule 1, item 4, page 9 (lines 20 and 21), omit “the National Heritage values of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values”.

(12) Schedule 1, item 4, page 9 (line 22), after “place”, insert “or Commonwealth Heritage place”.

(13) Schedule 1, item 4, page 9 (line 28) to page 10 (line 8), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

(14) Schedule 1, item 11, page 15 (table items 1B and 1C), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

(15) Schedule 1, item 31, page 22 (line 22) to page 23 (line 3), omit the first 3 paragraphs inside the text box, substitute:

The Australian Heritage Commission may only include a place in the National Heritage List if the Australian Heritage Commission is satisfied that the place has one or more National Heritage values.

The Australian Heritage Commission must assess the place’s National Heritage values and invite public comments on the proposed inclusion of the place in the National Heritage List.

The Australian Heritage Commission must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.
(16) Schedule 1, item 31, page 23 (lines 21 to 30), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

(17) Schedule 1, item 31, page 24 (after line 15), at the end of section 324D, add:

(4) Before the Governor-General makes regulations for the purposes of this section, the Australian Heritage Commission must:

(a) publish draft criteria for National Heritage values; and

(b) invite submissions from the public, allowing a period of not less than 30 business days for such submissions to be lodged; and

(c) take any submissions received into account in finalising the criteria; and if the prescribed criteria differ from the draft criteria, the Minister must publish in the Gazette a statement of reasons for the differences.

(18) Schedule 1, item 31, page 24 (line 16) to page 25 (line 19), omit section 324E, substitute:

324E Nominations of places

(1) A person may, in accordance with the regulations (if any), nominate to the Australian Heritage Commission a place for inclusion in the National Heritage List.

(2) The Australian Heritage Commission may:

(a) ask a person who has nominated a place to provide additional information about the place within a specified period; and

(b) reject the nomination if the information is not provided within that period. The period specified must be reasonable.

(3) A member of the Australian Heritage Commission may make a nomination in accordance with this section.

(4) The Australian Heritage Commission may, by publishing a notice in accordance with the regulations, invite nominations of places within a specified theme or region.

(5) If the Australian Heritage Commission rejects a nomination under this section, the Commission must, as soon as reasonably practicable:

(a) advise the person who made the nomination of that fact; and

(b) give the person written reasons for the rejection.

(19) Schedule 1, item 31, page 25 (line 20) to page 26 (line 20), omit section 324F, substitute:

324F Emergency listing

(1) Before conducting an assessment of its values, the Australian Heritage Commission may, by instrument published in the Gazette, include a place on the National Heritage List if the Commission is satisfied that:

(a) the place has or may have one or more National Heritage values; and

(b) any of those values are under imminent threat.

(2) Within 10 business days after including the place in the National Heritage List, the Australian Heritage Commission must:

(a) publish a notice in accordance with the regulations stating that the place is included in the National Heritage List and the date on which it was included; and

(b) if the place was nominated by a person—advise the person that the place has been included in the National Heritage List; and

(c) take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the place; and

(ii) advise each person identified that the place has been included in the National Heritage List.
(20) Schedule 1, item 31, page 26 (line 21), omit “Council”, substitute “Commission”.

(21) Schedule 1, item 31, page 26 (lines 22 to 25), omit subsection 324G(1), substitute:

(1) Subject to subsection (2), the Australian Heritage Commission must complete its assessment of a place’s National Heritage values within 12 months after the place is nominated.

This set of amendments by Labor reinstates the current level of heritage protection to a place and its associated values. The government proposes to reduce the breadth of coverage offered by heritage protection. As it stands, heritage protection currently flows to a place and its associated values. The government’s proposed new regime will limit the protection to just the values of the place. Labor believes that the legislation should continue to protect places and their associated values as opposed to just relying on values alone. We reject the suggestion that this would somehow restrict the number of places that could be considered and we have always supported protection of a heritage place and its associated values rather than just the values.

A simple example illustrates the significance of why heritage place and its associated values should be used instead of just the values of a heritage place proposed by the coalition. The Great Barrier Reef has had its share of commercial shipping oil spills in the past. Do such oil spills significantly impact on the values of this heritage place? It could be argued no, not really. But do such oil spills significantly impact on the heritage place? They certainly do. In this situation, which form of wording will give better heritage protection to places such as the Great Barrier Reef? Obviously, the heritage place and its associated values is the better definition.

Senator ALLISON (Victoria) (5.20 p.m.)—I want to indicate that the Democrats will not support these amendments either. Protection under the Environment Protection and Biodiversity Conservation Act already extends to include place and values in Commonwealth areas and this is only relevant to national heritage places. It is the case that this was argued for strenuously by some of the heritage groups at the time of the inquiry into the bill but I think that those groups have accepted that place is going to provide adequate protection for heritage. On that basis we will not support these amendments.

Senator LEES (South Australia) (5.21 p.m.)—We are not reducing coverage by moving to the idea of themes or broader definitions of what is heritage. Looking at the potential of the concept of themes, we can look at convict heritage, the goldfields, heritage rivers or wild rivers, Aboriginal trade routes and, as has been mentioned, overseas battlefields. Indeed, the potential under this legislation is much greater than trying to identify every particular convict site. Instead, it is going to be the value of the heritage generally. So I am not able to support these amendments.

Senator BROWN (Tasmania) (5.22 p.m.)—I think the amendments have merit. I am concerned that the Australian Heritage Commission should have the independent control that it has had and that the wrong formula is being brought in here. What was required was for the Australian Heritage Commission not only to have its independent power to list properties in Australia but also to have the power to protect those properties. What we get instead is a formula here which abolishes the Australian Heritage Commission, sets up a council which has advisory powers only and puts into the direct purview or power of the minister the ability to list and delist properties, taking into account economic considerations—and that is a death knell for the environment. We have already seen the way in which heritage legislation...
can fall foul of economic considerations. Nothing could more clearly show that than the removal of forests from legislative action and heritage listing under the environment protection bill which came through with the GST—at the time supported by Senator Lees as the Leader of the Australian Democrats—in 1990. In one go all the forests of Australia, under the regional forest agreements, were removed from ministerial power to be listed and protected, through the wishes of this government. The Greens have amendments coming down the line to put forests back into this piece of legislation so that the Australian Heritage Commission, if it were to survive, would have the power to list those forests that are not listed.

I am very concerned that what we have here is a pulling of the rug a little further from under the specific mandate of the Australian Heritage Commission to be able to independently list what is and what is not of importance to the national heritage. We will then have moved right away from what was then—and I agree with other speakers all around the place—the obvious requirement that the Heritage Commission be empowered to protect those areas. No empowerment here. No Heritage Commission. Everything goes to the office of the minister of the day—and that means that the minister, under the pressure, for example, of corporate interests, makes a decision to list and then can make a decision to delist. It does mean that places that are protected and that may have been protected for years can later, by ministerial fiat—not by the parliament but by the minister—be delisted from the heritage list to satisfy some commercial operator’s wishes.

Senator Lees earlier in the day pointed to the issue of an important heritage listed area, Rous Hill, some of which, through the actions of the New South Wales government, has now been handed across to developers. That is absolutely deplorable. What is required, the area having been listed by the Australian Heritage Commission, is that we should be dealing with legislation here tonight which empowers the commission and protects that area from such piecemeal break-up. But the legislation that we are dealing with here and the amendments that come from Senator Lees and the government are not going to alter that. They are simply going to make that type of process easier: along comes the developer, the minister and even the advisory council agree that you do not need 400 hectares, that the prime part of this property is on the central 50 or 100 hectares and so the rest goes west. Where is the formula here? Where is the protection for a place that, once listed, says that that cannot simply be undone by ministerial whim further down the line? It is not there. So it is a false premise to believe that by abandoning the Australian Heritage Commission, as this legislation does, we are somehow magically going to move to an age in which there is going to be vouchsafed protection for heritage.

Madam Temporary Chairman, if you get the opportunity to buy a copy of the *Bulletin* this week I suggest you get it. It has already sold out at the outlet where I tried to get one, and I have no doubt that that is because there is an excellent three- or four-page article in there about Australia’s biggest existing tree. That tree is in the Florentine Valley in Tasmania and it is listed at the top of Forestry Tasmania’s own list of the biggest trees by volume. They actually dubbed it El Grande, the big one, because it is the biggest by volume: 18.7 metres around at the base, if you measure it at shoulder level—it would not fit into the average bedroom—and 80 metres high. Under the Environment Protection and Biodiversity Conservation Act, which we are dealing with amendments to here tonight, that tree ought to have been at the top of list-
ing and protection in Australia. I would ask Senator Lees, or Senator Hill for that matter, why it was not protected. It would be a rhetorical question. The answer is because forests were specifically excluded from protection under the legislation when it was brought in in 2000. What we should be dealing with here tonight is putting that protection back for Australian icons like that, right here and now. That is a glaring piece of evidence of the failure of that piece of legislation. What is being done about it under this legislation? Nothing.

The Greens will move to have the forests put back into at least listing mode under the EPBC Act. If this were to go through, we would want to see that, and the minister having the responsibility for protecting absolutely stupendous parts of the Australian heritage like that. But there is no sign of that here and I will be interested to see if the Labor Party and Senator Lees support the Greens in ensuring that forests do get protected this time, because it is absolutely essential that the El Grande episode never be repeated. It was burnt by Forestry Tasmania, I might add; it was front page news in London that such a giant of the natural world could be destroyed by a regeneration burn under a forest practices code that is repeatedly broken and a protection system that does not work, sheltered by legislation that went through this place which simply said that the forests were not going to be a Commonwealth matter. If you are not going to have the forests of this nation a national matter, what about the rest of the heritage? Ditto, when you get commercial pressures—the big pressure from corporations like Gunns—and environmentally irresponsible governments like that in Tasmania at work. There needs to be a national protection mechanism, but it is not in this piece of legislation.

The first thing we are asked to do is dismantle the Australian Heritage Commission, which could at least list such places as being of national significance—get rid of that and abolish the lists of some thousands of important cultural, including Indigenous, and natural sites in Australia. If you were replacing it with some more powerful authority then it might be good legislation, but this does not do that; it removes the independence that the Australian Heritage Commission has with at least its list of places. Instead of going on and adding to that independence a power and an authority, it removes that as well. So we are left with the lowest common denominator, which is the minister sitting in the office of the minister for the environment. We know from looking at Senator Hill’s performance on Jabiluka, for example, how much Indigenous people count, let alone environmentalists, when it comes to the pressure of big corporations. We have seen enough to know what the history is going to be coming down the line.

Senator LEES (South Australia) (5.32 p.m.)—I cannot let some of Senator Brown’s comments simply go through to the keeper. Firstly, in relation to the EPBC Act, which I am very proud of—I think it is one of the very significant achievements environmentally in the time of this government—it did not reduce in any way cover of forests; it left, unfortunately, the status quo as it was. I, like Senator Brown, am very frustrated by the fact that neither the Labor Party for its reasons nor the Liberal and National parties—the coalition—for their reasons are prepared to protect forests.

Senator Brown—You voted for it.

Senator LEES—I voted for the EPBC Act, absolutely, Senator Brown, but it did not—I repeat, it did not—reduce the cover that forests have. They are left out on a limb, to use a metaphor, and they are going to stay there. I suspect they would stay there even if the Labor Party were to get into government.
It is an ongoing issue and one that, no doubt, will be fought out on the ground and through various political mechanisms over the coming months and years.

Let us look at some of the claims that Senator Brown has made about this legislation. If it is so evil, if there really are these problems, if the suggestions that Senator Brown is making are actually correct, then why do we have this enormous number of organisations who are committed to the protection of our national heritage supporting this bill? We have the Australian Heritage Commission, we have the Australian Council of National Trusts, who described it as a major step forward for heritage conservation in Australia. They went on to say:

The bills will strengthen the capacity of the Commonwealth to protect heritage places by bringing heritage protection under the umbrella of the EPBC Act.

The Humane Society International said:

We view the proposed legislation to be an advance on existing laws to protect Australia’s natural and cultural heritage and we urge all parties to give them their support.

The list goes on: the World Wide Fund for Nature, Humane Society International, the Tasmanian Conservation Trust and another dozen or so organisations that I listed in my speech in the second reading debate. They cannot all be wrong, Senator Brown. On one side we have the ACF; on the other side we have about 20 organisations who have been working hard with government on this legislation, who have been kept up to date, who know what is in the bill and who are supportive. That is where my support lies—with those organisations.

Senator BROWN (Tasmania) (5.35 p.m.)—On the matter of forests, Senator Lees is wrong. The Commonwealth had quite extensive powers—for example, the corporations powers—to intervene on what woodchip corporations are doing now in our forests, and the EPBC Act in one fell swoop removed that ability for the Commonwealth to intervene. What is more, it endorsed the regional forest agreement, which means that compensation goes to corporations if there is any future intervention. So it manifestly removed the powers that were there. Those powers were not used, because both Labor and Liberal governments have been unwilling to intervene using them. The EPBC legislation explicitly removed forests as a matter for future ministerial intervention.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that the amendments moved by Senator Lundy be agreed to.

Question negatived.

Senator LUNDY (Australian Capital Territory) (5.36 p.m.)—by leave—I move opposition amendments (146) to (153) on sheet 2846:

146 Schedule 2, item 4, page 72 (lines 23 and 24), omit “, a copy of which was given to the Minister by the Council under paragraph 341G(4A)(b) with the assessment”, substitute “provided under subsection 341G(4A)”.

147 Schedule 3, heading to item 1, page 73 (line 7), at the end of the heading, add “and the National Heritage List”.

148 Schedule 3, item 1, page 73 (line 13), omit “Within 6 months after this item commences, the Minister may”, substitute “Immediately after this item commences, the Australian Heritage Commission must”.

149 Schedule 3, item 1, page 73 (line 22), omit “area; and”, substitute “area.”.

150 Schedule 3, item 1, page 73 (lines 23 and 24), omit paragraph (c).

151 Schedule 3, item 1, page 73 (lines 25 to 28), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

CHAMBER
(152) Schedule 3, item 1, page 73 (after line 28),
after subitem (3), insert:

(3A) Immediately after this item
commences, the Australian Heritage
Commission must determine that the
National Heritage List is taken to
include any other place on the
Register of the National Estate not
included on the Commonwealth
Heritage List because of subitem
(2). This list is to be known as the
Transitional National Heritage List.

(3B) The Transitional National Heritage
List ceases to have effect as soon as
the Australian Heritage Commission
establishes the National Heritage
List under section 324C of the
Environment Protection and
Biodiversity Conservation Act 1999
which must occur within 6 months
after the commencement of this
item.

(153) Schedule 3, item 1, page 73 (line 29), after
"(2)" insert "or (3A)".

In response to Senator Lees and all this talk
of the organisations that support this, why
make the trade-off on the independence of
the Heritage Commission? It does not make
sense. As I have stated time and time again,
this issue forms Labor’s core problem with
this bill. Our amendments present an oppor-
tunity for that fundamental flaw to be recti-
fied, yet it seems that Senator Lees and oth-
ers are willing to make that trade-off and
then to make a plethora of other types of
amendments that we are, of course, yet to get
through in this place.

This third lot of amendments by Labor go
to the issue generally of the government not
honouring its commitment to transfer Com-
monwealth places on the existing Register of
the National Estate to the new Common-
wealth Heritage List. Other people say our
amendments will turn the clock back, but
this absolutely turns the clock back on heri-
tage protection in this country. A generation

of heritage gains may well be wiped out in
the process of change.

I looked at the web site of the Australian
Heritage Commission and it states that there
are now more than 12,000 places of natural,
historic and Indigenous significance listed on
the Register of the National Estate. The reg-
ister provides a comprehensive guide that
has been painstakingly compiled over the
last 27 years, and many of the more than
12,000 places that have been deemed worthy
of heritage protection because of their par-
ticular and unique values are Commonwealth
places. The government will pull the rug
from under those Commonwealth places
overnight. If these bills pass as they stand,
most of the Commonwealth places on the
register will be stripped of any protection.
They will not be guaranteed a spot on the
proposed new Commonwealth Heritage List.

The government wants to turn back the
clock by almost a generation and Com-
monwealth assets all around Australia will cer-
tainly suffer. I am talking about places like
the George’s River in Sydney, Myilly Point
in Darwin and Point Cook and Point Nepean
in Victoria. Those are the kinds of places that
will lose their protection. We know that this
government cannot be trusted with such
treasures. We need to look no further than
Norfolk Island where there are plans to sell
off crown land for a song. It is one of the
major deficiencies in this package of bills.
When the department were asked about this
at a Senate estimates hearing on 4 June 2001
they said that in the order of six places a year
would be added to the new Commonwealth
Heritage List. As I mentioned, the govern-
ment initially gave an undertaking to have all
Commonwealth places on the Register of the
National Estate immediately placed on the
Commonwealth list—but that is not what the
bills before us offer. The government has
reneged on a promise.
Instead, the government states in its explanatory memorandum that places on the Register of the National Estate that are wholly within a Commonwealth area may be taken to be included in the Commonwealth Heritage List if the minister so determines within six months of the new regime commencing. That is not good enough in Labor’s view. Without heritage protection Commonwealth properties in transition from the Commonwealth to other ownership may be vulnerable to inappropriate developments or actions. If you look at the number of Commonwealth assets that have been sold off here in my own electorate of the ACT you can understand the importance and currency of that concern. Labor’s amendments overcome these problems of reduced heritage protection by transferring all of the Commonwealth places on the existing Register of the National Estate to the proposed Commonwealth Heritage List.

Once again, I state that these amendments are designed to ensure continued protection for important heritage places across Australia. Heritage protection in Australia was the brainchild of a Labor government. It was a trailblazing regime in its time and Labor has a proud track record in caring for our heritage places. We acknowledge that the current regime needs some updating, and Labor’s amendments do not prevent that updating from occurring. That is why we accept some of the government’s package of legislation. But unless these real weaknesses are addressed and this amendment supported—I know that the crossbenches have not supported some other amendments that we have already moved—the clock will be wound back and a generation of heritage gains will be lost. Having moved those amendments I look forward to hearing a response.

**Senator BROWN (Tasmania) (5.41 p.m.)**—I support the amendments, of course. I will give an example of a place that concerns me and that illustrates why this issue is important. I hope the minister will get advice on this because I will be moving an amendment regarding that place, Recherche Bay—that is French for research—in southern Tasmania, where the north-east peninsula is under imminent threat of logging even though it has arguably the oldest intact European structure in Australasia—the wall of a French garden which was put there by the D’Entrecasteaux expedition in 1792—and remnants of the remarkable observatory which was put on Bennetts Point at the southern end of that peninsula. More particularly we have a very complete history, through the diaries of Labillardiere, botanist with the expedition, amongst others, of the remarkable meeting with the Pallevar Indigenous people on the peninsula in 1793 after the French returned, a year after their first stay there.

The problem is that the area is due to be logged, and there is enormous concern about this in the local community as well as internationally. It has been a matter of contention in France and elsewhere around the world and in academic circles in many places, including Australia. I did get a letter from the Minister for the Environment, Dr Kemp, on 24 March which led me to believe that the area might be being assessed in a way which would lead to its Indigenous and natural attributes being fully assessed before the loggers moved in. Dr Kemp began his letter:

Thank you for your letters of 10 and 22 January 2003 about the proposed forest operations on a privately owned block of land on the northern peninsula of Recherche Bay in Tasmania, and the construction of a related access road—which, by the way, requires the permission of the state Premier, Jim Bacon—through the Southport Lagoon Conservation Area and Extension.

Dr Kemp goes on to point to the Forest Practices Code and the regional forest agreement.
As I have already told the committee, under the regional forest agreement the federal ministers have given up their power under the Environment Protection and Biodiversity Conservation Act to intervene. I would like to ask leave to incorporate this letter, which I have circulated, into the Hansard.

Leave granted.

The letter read as follows—

Senator Bob Brown
Senator for Tasmania
GPO Box 404
HOBART TAS 7001
24 MAR 2003

Dear Senator Brown

Thank you for your letters of 10 and 22 January 2003 about the proposed forest operations on a privately owned block of land on the northern peninsula of Recherche Bay in Tasmania, and the construction of a related access road through the Southport Lagoon Conservation Area and Extension.

I understand a Forest Practices Plan for the proposed logging is currently being prepared and a separate Forest Practices Plan for the access road was certified in April 2002. Forest Practices Plans are prepared in accordance with the Tasmanian Forest Practices Code, and must include measures for the protection of natural and cultural values, including impacts on threatened species and their habitat. Once the Forest Practices Plan for the logging has been finalised, it will be certified in accordance with the Tasmanian Forest Practices Act 1985 and the proposed forestry operations will meet the requirements of the Tasmanian Regional Forestry Agreement (RFA). As you would be aware, the Environment Protection and Biodiversity Conservation Act 1999 does not apply to forestry operations that are undertaken in accordance with an RFA.

In addition, I have been informed that the owners of the land have recently agreed to a six month moratorium on the proposed logging. I also understand that the Tasmanian Heritage Council has provisionally listed some of the archaeological remains at the site, including the Garden and Observatory sites, and will be considering nominations for provisional listing of other related heritage areas on the site. The Tasmanian Heritage Council has also indicated that it intends to engage independent consultants to undertake an assessment of the north eastern peninsula of Recherche Bay. I anticipate that this assessment will be of considerable benefit in determining the origin, nature and heritage significance of this area.

Thank you for bringing your concerns to my attention.

Yours sincerely

(signed)

David Kemp

Senator BROWN—At the end, the minister says:

I also understand that the Tasmanian Heritage Council has provisionally listed some of the archaeological remains at the site, including the Garden and Observatory sites, and will be considering nominations for provisional listing of other related heritage areas on the site. The Tasmanian Heritage Council has also indicated that it intends to engage independent consultants to undertake an assessment of the north eastern peninsula of Recherche Bay. I anticipate that this assessment will be of considerable benefit in determining the origin, nature and heritage significance of this area.

What I want to know from the minister—and this will be one of those sites provisionally listed on the Commonwealth heritage list, which would be transferred to this new list under Labor’s amendment—is (a) what the listing status of that north-east peninsula of Recherche Bay is and (b) whether the engagement of the independent consultants has taken place and whether their work is under way.

Senator HILL (South Australia—Minister for Defence) (5.46 p.m.)—The specific issue just raised by Senator Brown in relation to assets at Recherche Bay I have not got advice on, but I will seek it and at some time during the debate provide the information that has been sought.

CHAMBER
Senator LUNDY (Australian Capital Territory) (5.46 p.m.)—I would like to take this opportunity to ask the minister: what is the government’s justification for not transferring all of these Commonwealth assets to the new list proposed in their bills?

Senator HILL (South Australia—Minister for Defence) (5.47 p.m.)—What we propose is a fundamentally different regime to what we have at the present. As we know, at present we have a very extensive Register of the National Estate, but there is in practice very little protection afforded to that list. Under the existing section 30, there are certainly obligations on the Commonwealth not to take actions that are inconsistent with the values. But, as we all know, assessments are made and so often the answer comes back that the action would not be inconsistent with the values, and the action goes ahead. It only applies to the Commonwealth, as well. What is, rather, being proposed here is a new regime that gives explicit protection according to the status of the asset. So at the highest level there will be developed a list of national heritage items that attract considerable protection under this piece of Commonwealth legislation—much better protection than exists under the current act—with real penalties attached to it. There will also be a list of the Commonwealth’s own assets of heritage value, which the Commonwealth will be obliged to treat in accordance with the provision set out in the bill. There is a provision which specifically obliges the Commonwealth to care for assets that are on its list.

The question is really, ‘What is the rationale for going down a different path?’ The rationale for going down a different path is to provide better protection. The answer to the question, ‘Why don’t you simply transfer the existing massive list of thousands and thousands of items and apply the new protective regime to that?’ is that there are many items on the existing list that do not have within them values of the stature that are designed to be protected by this new legislation. Related to that is that the explicit obligations that are imposed in the new act are more appropriate to assets of higher national significance in terms of heritage value than the massive list that already exists. If we tried to provide these obligations to the current Register of the National Estate, the whole system would be unworkable.

Senator BROWN (Tasmania) (5.50 p.m.)—That is a very important comment by the minister: the whole system would be unworkable. There is the real problem with the existing legislation and the proposed legislation—the fear that governments have that if you are going to, in a dinkum way, protect the national heritage, you are going to run into big problems with those people who want to make money out of it. People who have development interests or who will have in the future are going to line up at the minister’s door asking for areas to be removed. The existing system was breached repeatedly. There is no clearer example of that than, again, wild forest regions and wildlife habitat around the country. Those areas were listed on the Australian heritage list, but then the government did not take action to back up that listing by protecting them. The wood chippers moved in and said, ‘We want to log those areas.’ Then a range of fanciful excuses for doing nothing about it came from governments. It was not that federal governments—Labor and Liberal—did not have the power to intervene; they did. It was that they did not have the will to intervene, because it got in the way of a lucrative, one-off industry destroying this heritage—which can never come back again—to line the pockets of those who are involved in an industry that is no different to whaling.

The new system is a different take on that which serves the same purpose. It is to abol-
ish all the places listed on the Australian heritage register and set up a new short list which takes out all the ones which have any commercial difficulties as far as this government is concerned. If you find that you have put a place on the list that is of concern to a developer down the line, the minister and the minister only can remove it. I would feel a lot safer if there were some parliamentary protection there. The obvious thing was to give the right to both houses of parliament to move to block a minister who was simply sacrificing the national heritage further down the line. But of course that is not in this legislation. This is developer’s legislation and it simply abolishes the problem with the old list—which did not have proper protective power—by effectively abolishing the list itself.

I agree with Senator Lundy and the Labor Party. If the government is dinkum about the national heritage, it should then fall in line with the years of the Australian Heritage Commission and the enormous work that has gone into assessing places as to whether they were nationally significant or not. There has been frustration many a time with citizens who found that places they had nominated were not put on the list because they did not qualify as nationally significant. Here we have the government abolishing the list altogether and saying, ‘Let’s start again, 30 years down the line. That’s good enough.’ We have to hope that areas that we thought were deemed to be nationally significant will somehow get onto that list again in the future by a disempowered advisory council to a minister who—even if she or he does have the gumption to list a place—can be followed by another minister who simply takes it straight back off the list. What a system! What a national commitment by Prime Minister Howard and this government to this nation’s great heritage! It is a sell-out of Australia’s heritage.

I agree with Senator Lees and everybody else here—there would be some gains in this legislation if only it had teeth, but it does not. I am afraid that message has to go to those organisations out there who believe it does. They have to live in hope because this legislation does not have the teeth it should have right now and which the Greens would give it. The legislation is missing those teeth. The strongest teeth the legislation can have is giving not only legislative protection to these areas but also parliamentary protection. If there is an argument for taking something off the list then have the parliament take it off and have the debate and public input through that parliamentary system, instead of leaving it to the next minister who comes down the line and falls prey to the lobby of the sectional interest that wants to have a piece of the heritage. That is missing here.

We are effectively replacing one piece of legislation which does not have teeth with another piece of legislation which has even less teeth. There is no independent authority here to at least evaluate an area and say, ‘We should protect this.’ We are going for the values system to boot, which means anybody can make a decision that a value is what they think it is. That means any minister can diminish the protection of the heritage item that is on the list into the future. I think Minister Hill’s comment just now was straight enough. It simply meant it is too much trouble for the government to protect the current national heritage as listed and all the work of the Heritage Commission over the last 30 years because they would have the angst of some get-rich-quick developers in various places around the country saying, ‘My goodness, we are not going to be able to make a buck out of that forest, that national built monument, or this place of Indigenous significance that is on that list.’ We have the wrong legislation here: it is all gum and no teeth.
Senator ALLISON (Victoria) (5.57 p.m.)—I have an inclination to support these amendments. The government has, over time, made some commitments to placing Commonwealth places that are currently on the RNE onto the Commonwealth list, and it was certainly something we argued consistently for. Our amendments, which we will deal with later on, go to the question of strengthening the protection for Commonwealth sites. It was our view that it should not even have been six months; it should have been possible to transfer those sites across almost immediately.

I ask the minister to indicate what status he expects these sites to have six months after the bill is put in place and what commitments the government is prepared to make to transfer those sites on at an early stage. There are a number of them which are likely to escape the provisions within this bill because they are on the Commonwealth’s list of sites to be sold off, particularly Defence land, but there is also an issue with Norfolk Island which I have raised with the minister in the past. So, as I said, we are somewhat inclined to support this, although we would sooner see the Commonwealth sites transferred in a shorter time frame. The government assures me that this is likely to be the case for the vast majority of them, but perhaps the minister can spell that out.

Senator LUNDY (Australian Capital Territory) (5.59 p.m.)—I am glad Senator Allison has raised these things, because I want to follow my earlier question and ask the minister for an exact answer. There are 12,000 things on the list now; just how many will come off the list? We do not know what the number will be tomorrow if these bills pass this evening. We do not know whether the government has already worked out its preferences as to what stays and what goes. Is there a criterion? Is there a judging process by which you assess the merit of the items listed? Will the coalition only be preserving what it considers to be iconic and of importance? What are those subjective decisions going to be based on, and just how many items are going to be left on that register when we wake up tomorrow morning or the morning after that and find that this legislation has passed and protection is no longer there?

Senator HILL (South Australia—Minister for Defence) (6.00 p.m.)—The answer to Senator Allison’s question is that within the first six months the Minister for the Environment and Heritage, provided he is satisfied that it accords with the tests in the new legislation, can transfer a Commonwealth owned asset from the Register of the National Estate to the new Commonwealth list without the need for the comprehensive evaluation process that is otherwise provided for. I am advised that a great deal of work has already been done in relation to existing Commonwealth assets and the minister should be able to complete within that time frame the task of transferring Commonwealth assets that meet the criteria.

Senator ALLISON (Victoria) (6.01 p.m.)—Minister, I raised the matter of those sites. I do not have the document in front of me, but I did raise with the minister the question of those Norfolk Island sites specifically and I have not had a response to that. Perhaps that can be provided.

Senator HILL (South Australia—Minister for Defence) (6.01 p.m.)—For the benefit of Senator Brown, I am told that officials believe that Recherche Bay has still not been provisionally listed under the Tasmanian legislation and that the evaluation process is still taking place.

Senator McLUCAS (Queensland) (6.02 p.m.)—Minister, I understand that in transferring current listings to the new list it is proposed that the level of significance of a
site or place will be the determinant of whether or not it appears on the new list. What happens to those sites whose level of significance is not deemed to be national but which are very important to communities around Australia? What will happen in terms of the protection of those sites under your proposed regime?

**Senator BROWN (Tasmania) (6.03 p.m.)**—While the minister is considering that, I want to go back to Recherche Bay and inquire of the minister specifically—and this comes from Dr Kemp’s letter to me—what progress there has been on the independent assessment of the heritage values of Recherche Bay by the Tasmanian Heritage Council. Have the people doing the independent assessment been appointed? If so, how far has their work progressed? That is a very specific question I want answered, and of course we can come back to it later in the debate.

**Senator HILL (South Australia—Minister for Defence) (6.03 p.m.)**—I am advised that about 500 Commonwealth sites have already been assessed and overwhelmingly meet the criteria for listing on the new Commonwealth list. So it seems that, largely, the assets on the current Register of the National Estate that are owned by the Commonwealth are likely to be included on the new Commonwealth list. The small number that are not remain on the existing Register of the National Estate, but of course this will not attract the very limited section 30 protection that exists in the current legislation. Those assets tend to be of a nature that is not believed to be of significant heritage importance and therefore are to be disposed of by the Commonwealth.

**Senator BROWN (Tasmania) (6.05 p.m.)**—Senator Allison asked specifically about some Norfolk Island properties and whether they might be on or off that list, and I want to make sure the minister picked up on my question about Recherche Bay.

*Senator Hill interjecting—*

**Senator BROWN—**I thought not. I will repeat it. The commitment in Minister Kemp’s letter to me in March was that the Tasmanian Heritage Council was establishing an independent assessment of the heritage values at Recherche Bay. Have those independent assessors been appointed and, if so, is their assessment under way or complete? The question is very specific. Has the Tasmanian Heritage Council appointed the independent assessors, as the minister assured me it would, and is their work under way or complete?

**Senator HILL (South Australia—Minister for Defence) (6.06 p.m.)**—We do not know the answer to that specific question. We will find out the answer and I will advise the Senate of it.

**Senator ALLISON (Victoria) (6.06 p.m.)**—Pursuing the point about Norfolk Island, Minister, I have found the document. You responded to my question about it today. I have just had a chance to look at this section of your letter. For the benefit of colleagues in the chamber, essentially there are nine areas containing Commonwealth land on Norfolk Island nominated for listing in 1997 that do not appear on the list of 106 properties that remain to be assessed for transfer to the new Commonwealth heritage list. Those properties were listed by me. They are the Norfolk Island coastline, Red Road, the Cascade area, Ball Bay landscape, Steels Point landscape, Bloody Bridge landscape, western landscape, Duncombe Bay landscape, Bumburas landscape and Mission Road and landscape area.

You have responded to my question about these sites by saying that the heritage values on the lands are already protected through sections 26 and 28 of the EPBC. The most
expeditious way the lands nominated to the Register of the National Estate could be protected would be by nominating the places to the Commonwealth Heritage List, thus consolidating the existing heritage protection provisions. What the Democrats are looking for here is an undertaking on the part of the government to see that that happens and to make sure that we have in place covenants, because, as I said, these are sites which are proposed, as I understand it, to be sold. So either they are quickly put onto the Commonwealth register or they have covenants and other protections applied to them so that they cannot be damaged. I think this is an important matter to resolve. I must say that I am not entirely happy with the response that we have had with regard to that protection.

Senator LUNDY (Australian Capital Territory) (6.08 p.m.)—The minister has not responded to my specific questions, but his answer to another senator has given rise to many more. In particular, as I understood it, the minister said that, out of the current Commonwealth assets on the register at the moment, there are some 500 sites that are affected but that the government asset sales program will somehow help the government determine which of those items listed on the register will actually be transferred to the new list. So my question goes to the issue of the government's asset sales program and whether that asset sales program will cease or be delayed until the merits of the affected Commonwealth sites that are on the register are assessed for the purposes of this legislation and transferred to the new list. The obvious implication is: what changes with respect to that land and the opportunities beyond its current purpose for the purchaser, the new owner of that land, under this act? I am looking for information on the timing of those two processes.

Senator HILL (South Australia—Minister for Defence) (6.09 p.m.)—I will deal with Senator Allison’s comments first. As I understand it, she is referring to nine pieces of land on Norfolk Island that have been nominated but are not currently listed on the Register of the National Estate. Assuming this legislation is passed, they would be eligible, as I understand it, for listing on the Commonwealth list if they meet the criteria and there is a process to have them nominated and evaluated. So I do not quite see how that differs from any other piece of Commonwealth property that is not on the list, except for the fact that we know that there are some within the community who do believe that they are of particular heritage value. We can assume that because there has been a nomination, even though there has not been an evaluation of that nomination.

In relation to Senator Lundy’s question, I do not think the new legislation affects the Commonwealth’s disposal program as such. There are two stages. The first stage, as I have already said, is that a large number of the Commonwealth assets that are on the Register of the National Estate have already been assessed and have been found to be eligible for listing on the Commonwealth list. If that occurs and the Commonwealth then determines to sell those properties, it is not prohibited from doing so under this legislation. But, as I understand it, there are obligations on the Commonwealth to ensure that, notwithstanding the sale, the heritage values are still protected.

Senator LUNDY (Australian Capital Territory) (6.11 p.m.)—To follow up, this begs the question about the potential for political influence of decision making of this nature, because what we are hearing now is that these decisions will be made in the midst of that sell-off process. I think it is pertinent to make that observation, because suddenly we are talking in the context of the sale of Commonwealth assets and how heritage values are attributed to them and the decision
making process about that. It potentially affects the sale price, the perceived value of that land, its potential future use and all those kinds of issues.

Also, Minister, you are talking about this as though many decisions have been made and that in fact you are close to having almost resolved, if you like, what is going where, but information has not been made available about what sites in the context of this debate. So, as participants in the parliamentary debate, we are not informed about exactly what Commonwealth sites are affected and in what way. You are expecting everyone in this chamber to act in good faith and trust that decision making process, and I ask you to respond to that.

Senator HILL (South Australia—Minister for Defence) (6.13 p.m.)—The first point to make is that the existing legislation does not preclude the Commonwealth from selling its assets that are on the Register of the National Estate but, in doing so, it must satisfy itself of certain things. Under the new system, if the asset is on the Commonwealth list then the obligation to protect the Commonwealth heritage values is set out specifically in clause 341ZE at the bottom of page 63 of the Environment and Heritage Legislation Amendment Bill (No. 1) 2002 before the Senate. In relation to the process of transferring the assets to the Commonwealth list, yes, work has been done on that and I would have thought that would be something that honourable senators would be applauding, because the undertaking given by the minister was that this would be done expeditiously. As we have said earlier in this debate, it has been a six-year process to get to where we are today and therefore there has been plenty of time to give consideration to some of these matters. I am pleased to hear that the minister has been doing it.

Senator ALLISON (Victoria) (6.14 p.m.)—I think at this point in time it would be useful if the chamber had some sort of commitment from the government about the Commonwealth sites that are currently on the RNE. What is the time frame within which the commitment is to transfer them onto the Commonwealth list? We did request a list of the sites that are currently not in the position of having been assessed for transfer. We have not received that list. We also asked for a list of the interim sites and an indicative list of sites, and those lists have not yet been forthcoming.

Firstly, can the minister give the Senate a commitment that all Commonwealth sites on the RNE will be transferred; and, if so, when? In the meantime, can we have a list of the sites that will not be transferred immediately—that is, the interim list; and also a list of those sites that are nominated—that is, the indicative list, which would include the Norfolk Island sites, would it not? I raise this matter of the Norfolk Island sites because it was raised with me. As I said before, these were nominated in 1997. It is 2003 now—six years on. Why has there been no assessment in that time? Again, I am looking for commitments to making sure that these sites are protected.

Senator LUNDY (Australian Capital Territory) (6.16 p.m.)—I think the minister has already said that they will not be. I distinctly heard him say earlier that there were some assets that were scheduled for sale that would not be transferring across. I ask the minister to tell the Senate: which ones are they?

Senator BROWN (Tasmania) (6.17 p.m.)—Not only is it very important that we hear Senator Hill, representing the Minister for the Environment and Heritage, lauding the minister’s work; it is also very important that the government is open with the com-
mittee about that. It is its duty to the Senate, and the question that has been asked is very reasonable: what is the indicative list of the Commonwealth properties that are going to be protected and what is the indicative list of the Commonwealth properties that will not make it and can be sold? Senator Allison is asking about some specific properties—and she has listed them—on Norfolk Island. It is important for the government to give the committee that information. If it has it, it should give it to us. I do not think it is going to change the course of this debate, except that it will give us an idea, as Senator Lundy has indicated, of the criteria and thinking of the government or its current advisers. The worst thing is for the minister to simply sit there and not respond at all to important questions like that. That is no way to treat the Senate committee process on a matter of public importance such as this.

Senator HILL (South Australia—Minister for Defence) (6.18 p.m.)—I accept from the outset that I will never satisfy Senator Brown; he has a very different approach to these matters. But I think I should repeat what I have said, and that is that, in an informal way—so there is not an indicative list as such, I am assured—the department, although I said ‘the minister’, have been trawling through the Commonwealth list to see whether the properties meet the new criteria and have found overwhelmingly that they do. The figure that has been given to me is that they should very quickly be able to transfer about 500 sites. That is not a formal process that flows from this legislation, and therefore there are not lists that can be put on the table. But I think it is encouraging to learn that efforts are being made to ensure that, provided the legislation passes, the protection afforded under the new legislation will be afforded very quickly. In relation to Senator Allison’s questions, I do not know that I can say much more. As I understand it, the properties that she is referring to have not been assessed. They were not assessed under the old legislation and they have not yet been assessed under the new legislation, because it has not passed.

Senator BROWN (Tasmania) (6.20 p.m.)—There is a list of Commonwealth properties in the department and they are being assessed. Whatever adjective you put to that list, it is available and should be put before this chamber. What the minister is doing here is obfuscating, and we know why: he is not prepared to present that list to Senator Lundy or to Senator Allison or to anybody else because it will show those properties that are not going to be listed—but I doubt it will show why—and we would be able to correlate that short list of properties with their saleability as Commonwealth assets. We would be able to assess what is really driving the process here: environmental and heritage considerations or commercial considerations as well. So very early in the piece, while this legislation is being considered, we get the drift that it is not just heritage considerations that are involved here. If it were, the minister would bring up the list and be able to say, with the assistance of his good advisers, why, on heritage grounds, certain places were not going to make it.

Senator HILL (South Australia—Minister for Defence) (6.21 p.m.)—The flaw in Senator Brown’s argument, of course, is that, if that were the case, the properties could equally be sold under the existing system and there would not be the need to act in the way that he is suggesting. And why would we? With great respect to Senator Brown, he will not accept this but, when we sell assets, we certainly are interested in the financial return because it is taxpayers’ money and we think that is important and we are also very interested in conservation of heritage values. If we were not, we would
not be bringing before the parliament this new regime that will much better protect built and cultural heritage than anything that has existed under Commonwealth law to date.

Senator BROWN (Tasmania) (6.22 p.m.)—Very briefly, on the first matter of making sure that taxpayers have a return, I have to point to the Brighton Army Barracks in Tasmania valued at over $2 million where this minister got a return of $135,000, less than five per cent of valuation, and that was within the last 12 months. So the minister’s performance there is not very good. That aside, his argument also corroborates the point of view that I have been putting forward, that there is not an advantage in this new piece of legislation. He says, ‘Senator Brown’s argument points to the fact that the old legislation was no good.’ I have agreed with that: it did not have teeth. But equally, he is failing to bring forward this list because there is not an advantage in this new piece of legislation. He says, ‘Senator Brown’s argument points to the fact that the old legislation was no good.’ I have agreed with that: it did not have teeth. But equally, he is failing to bring forward this list because it shows that this legislation does not have teeth and that it does not guarantee protection. If there is no worry from the minister about heritage considerations being 100 per cent behind the putative list that is being dealt with in the department, he should produce it.

Senator LUNDY (Australian Capital Territory) (6.23 p.m.)—I think we really have flushed out the government very early on in this debate. I would like to take the minister to task about his claim that he could sell those assets anyway with the old act in place. Absolutely they could but what is changing here is something that is going from being on the register to not being on the register in the midst of the process of that asset going on the market. That is what is changing. We have a process of the sale of Commonwealth assets that is incredibly political. I do not think we should even begin the debate about what is fair value and how that process is being managed around the country, because it has been an absolute disgrace. What we have here is a system where we can see how the political influence starts to come into this decision making process.

I will persist in trying to extract from the government information that they obviously already have about the nature of this decision making and the subjective basis upon which these decisions about what is in and what is out actually occur to try to take it to the next level. The minister has nominated that around 500 sites are being transferred. Can the minister tell me specifically how many Commonwealth assets are on the current list so that I can get an idea of the proportion of the 500 sites that that actually represents? We will see if we can narrow it down a little further. We might get to the point of actually getting the names of the assets that are on the current list but will not be included on the new list and hence the ones that are going to miss out on that protection in the future. This can be a very slow, painful process, which will be a bit like pulling teeth, to get this information from the minister—very reminiscent I have to say of Senate estimates—or he could just provide the information up front that many senators around this chamber, including me, have requested.

Senator HILL (South Australia—Minister for Defence) (6.26 p.m.)—If I may have a moment to seek advice, it should just be a matter of adding them up. I very much regret the deliberate intention of Senator Brown to again mislead the Senate. He knows, as well as I know, that the market valuation of that property at Brighton was not as he just said to the Senate and that the property was sold for a sum slightly less than the market valuation. There was not a distortion of the type that he mentioned. He knows that. He knows that the figure that he was referring to was a valuation for a different purpose other than market: it was an asset valuation. I regret, having sat through the
estimates and having that clarified for Senator Brown’s benefit, that he comes in here and continues to deliberately mislead the Senate and the Australian people in that way. I hope that within that time I now have an answer.

The TEMPORARY CHAIRMAN (Senator Marshall)—Order! I ask you to withdraw the term ‘deliberately misleading the Senate’.

Senator HILL—I withdraw my statement that he deliberately sought to mislead. He unfortunately misrepresents the position, which causes people to be misled.

Senator BROWN (Tasmania) (6.27 p.m.)—No, I do not. I stand by exactly what I said. The minister, through his introduction of the adjective ‘asset’, makes no difference to the fact that he sold that property for five per cent less than he should have got for it. It was a public property and the public is out of purse because of that and he knows as well that he is using a terminology which is different to escape from that reality. It is appalling that that great property on the edge of urban Hobart was sold off to people who will now realise the real value of the property. I do not want to go any further into that but the minister is wrong and I stand by what I said.

Senator LUNDY (Australian Capital Territory) (6.28 p.m.)—I am hoping that we are going to get a figure soon, but I make the point again that we actually want to know which of the items on the list are going to be affected. We would like to see that comprehensive list, because it is obviously available. I trust the minister has initiated a process forthwith that will have all that information in this chamber as soon as possible.

Senator HILL (South Australia—Minister for Defence) (6.29 p.m.)—It is believed that there are about 500 assets on the Register of the National Estate that are Commonwealth owned.

Senator LUNDY (Australian Capital Territory) (6.29 p.m.)—Thank you. From the minister’s answer I will take it that he is not prepared to bring factual information here about the number of Commonwealth assets on the list.

Senator Hill—You can go and look it up yourselves.

Senator LUNDY—No. If that is the level of contempt that you are going to bring into this chamber, you are not actually facilitating debate.

Senator Hill—I am doing my best.

Senator LUNDY—You are not facilitating the debate. You have got all of your very competent advisers here; it is a very basic question of fact. We have asked the question to illustrate a very important point in the middle of this debate. I ask the minister to provide the answer to the question. It is a statement of fact; you are in a position to answer it. We will be forced to interpret that you are unwilling to answer it in order to protect yourself from political embarrassment. How are we supposed to interpret this sort of obfuscation? As Senator Brown said, it is getting absurd.

Senator HILL (South Australia—Minister for Defence) (6.30 p.m.)—Officials tell me that with confidence they can say there are at least 471, and they believe with reasonable confidence the full number is about 500.

Senator ALLISON (Victoria) (6.30 p.m.)—Can the minister also confirm that 106 remain to be assessed? It is my understanding that, of those 106, some have just recently been nominated or have a just
nominated status, which takes me back to my question about Norfolk Island because they are also in this category. Why is it that the Norfolk Island sites, having been nominated six years ago, are not part of that group that you say are currently being assessed?

Senator HILL (South Australia—Minister for Defence) (6.31 p.m.)—Because I have been referring to items that have already been assessed and are on the Register of the National Estate. Why are there so many items that have been nominated and not assessed? Because under the existing system there has been a proliferation of nominations which has led to the system becoming unworkable. That has led to some within the heritage community accepting that there is a need for dramatic reform. That is part of the reason we are here today. We do not have a figure for sites that have been nominated but not listed that are in Commonwealth ownership. I do not know how difficult it would be to get that number but we will seek it.

Senator ALLISON (Victoria) (6.32 p.m.)—I suggest that perhaps the proliferation of nominations has something to do with the number of sites that the Commonwealth has on its list to sell. I think I asked before about the interim list and the indicative list. Is it possible to indicate by what date those lists of sites will be available?

Senator HILL (South Australia—Minister for Defence) (6.32 p.m.)—I do not want to be seen to be avoiding the question but I am not sure that I understand it. I am advised that the Commonwealth items should be able to be transferred to the Commonwealth list expeditiously and certainly within the six-month time frame. My officials nod so that should be so recorded. I am not sure whether that answers the question or whether Senator Allison is referring to something else that I do not appreciate.

Senator ALLISON (Victoria) (6.33 p.m.)—Let me ask specifically about those Norfolk sites.

Senator HILL (South Australia—Minister for Defence) (6.33 p.m.)—The Norfolk sites are not within the category that I have been talking about. They are sites that have been nominated but have not been assessed. It is therefore a more complex process than dealing with sites that have been assessed. I will seek advice on how long it might take to give consideration to Commonwealth assets that have been nominated for the RNE but have not been assessed, but my guess is that that will take considerably longer. My officials tell me that we do not know how long that process will take. It obviously depends on the length of the list. If, as I suspect, there are many sites that have been nominated but not listed because they have not been assessed, then obviously an assessment process will take some time.

Senator ALLISON (Victoria) (6.35 p.m.)—Just to be clear and to give you an example, Minister, of what I am talking about, you provided us with a list of eligible Commonwealth places not yet assessed for the Commonwealth list. I think there are altogether 128 or so of those sites and, of that list, there are a number, such as the Australian Federal Police cottage near Yarralumla, which have only been nominated and not been placed on the list. What we are trying to understand is why some are only nominated on that list and why some are not. Again, I will come back to Norfolk because it seems a good example of the sorts of sites that might fall through the cracks, as it were. Since we asked you this question some days ago, I would have thought there was enough time for you to be able to answer it. I would not be wasting the time of the Senate if you had given us the answer in the first place but you have not yet done that. I wish to pursue the reason for this being the case. If we are to
have confidence in the government’s so-called commitments to getting sites onto the Commonwealth list then it would be useful to get responses to the questions that have been put already.

Senator LUNDY (Australian Capital Territory) (6.36 p.m.)—Absolutely. So far we have been given information by the minister in which he says about 500 sites will be transferred but the best he could do on actual figures of Commonwealth sites on the existing register was 471, with perhaps a few more up to 500. I am not that good at maths but—

Senator Hill—So, that is good news.

Senator LUNDY—I am pretty good at maths. We also know that some of them are not going to make it, so why don’t you make it easy for yourself and just tell us which ones are not going to make it, within your dodgy maths? Also, while you are at it, tell us about this issue of the police cottage at Yarralumla Bay. That asset has already been sold under the Commonwealth asset sales program. So what happens to that particular site, given my understanding that it does not have status under the existing register? What is going to happen to that application?

Senator HILL (South Australia—Leader of the Government in the Senate) (6.37 p.m.)—In relation to what has been ungenerously referred to as my dodgy maths, my interpretation is that it means that very few sites will not be transferred, which I would have thought—

Senator Lundy—Tell us which ones.

Senator HILL—We do not know because it is an internal process at the moment and it has to have a formal process subsequent to the legislation passing. It seems to me that it is good news and something that honourable senators should be pleased about. In relation to the police cottage, I do not know the details of that cottage. I do not know whether that is listed on the Register of the National Estate or whether it has been nominated. I do not know whether it is in Commonwealth ownership but I am prepared to seek detail on that and advise the Senate.

Senator ALLISON (Victoria) (6.38 p.m.)—Just to clarify the point, I do not wish to have the details of the police cottage—it is not of interest. It is on the list that you have already identified as currently being assessed. Clearly, we are not going to get an answer to this. I make the point that my question was about Norfolk, because they are not on the list despite having been nominated six years ago. I just wanted to clarify that.

Senator LUNDY (Australian Capital Territory) (6.39 p.m.)—It is obvious that there is a list of assets out there that are not going to move across. The government knows what they are. The issue relates to the saleability of those assets and they are not prepared to come clean in this debate, which I think is highly unfortunate. It absolutely proves the points that I have made in this debate so far about how this process can be politicised. We have not had to wait until the act has been put in place and subsequent Senate estimates programs to do the forensic because we have managed to do it here.

Question put:
That the amendments (Senator Lundy’s) be agreed to.

The Senate divided. [6.44 p.m.]

( The Deputy President—Senator Hogg)

Ayes……….. 32
Noes……….. 33
Majority…….. 1

AYES

Allison, L.F. Bishop, T.M. Bolkus, N.
Buckland, G. * Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.51 p.m.)—I wish to advise the Senate that the Minister for Immigration and Multicultural and Indigenous Affairs has today issued notice to Mr Geoff Clark suspending him from office as a commissioner of the Aboriginal and Torres Strait Islander Commission and consequently as Chairman of ATSIC for misbehaviour pursuant to section 40(1) of the Aboriginal and Torres Strait Islander Commission Act 1989. The suspension is effective from today. Pursuant to a requirement under section 40(3) of that act, on behalf of the minister I table before the Senate a statement identifying Mr Clark and setting out the grounds of his suspension.

PERSONAL EXPLANATIONS

Senator BOLKUS (South Australia) (6.52 p.m.)—I seek leave to make personal explanations with respect to two different migration matters.

Leave granted.

Senator BOLKUS—On 8 March 2003 the West Australian newspaper, under the headline ‘Brutal rapist stays here’, claimed that the department of immigration wanted to deport a Colombian man who had been found guilty of rape and abduction in 1988, and it said:

But Labor immigration minister Nick Bolkus decided not to deport him unless he committed another crime.

The crikey.com web site, in their own peculiar manner, compounded these allegations—adding, of course, their colourful interpretive language—when on 26 March 2003 they reported:

Bolkus decided that, following the horror abduction and repeated rape of a young Perth woman by a Colombian citizen, the criminal responsible did not deserve to be deported.

They went on to say:

Bolkus decided that, following the horror abduction and repeated rape of a young Perth woman by a Colombian citizen, the criminal responsible did not deserve to be deported.

And in the last paragraph of their article they said:

Mr Ruddock’s spokesman Steve Ingram said the minister looked at deporting the man in late 2001, however he had legal advice that assurances
given to the man by Senator Bolkus prevented him doing so.

As a consequence of those articles, and given the fact that I had absolutely no recollection of being involved in these matters, I sought from the Department of Immigration and Multicultural and Indigenous Affairs the documents to which I had access as minister in respect of this case. I received a reply from the secretary of the department, Mr W. J. Farmer, on 28 April 2003 in which he says:

Thank you for your letter of 31 March with regard to the recent article that appeared in the Internet site crikey.com.au. The article refers to an instance in which, as the then Minister for Immigration and Ethnic Affairs, you had allegedly decided against deportation of a convicted criminal.

Having now reviewed the relevant files relating to the case cited in the crikey article—

and I must say also in respect of the West Australian article—

I can advise that on that occasion the decision to which the article alludes was taken by a departmental officer. I can find no evidence to suggest your personal involvement in this matter. I trust that this information is of assistance.

Yours sincerely

W. J. Farmer.

So I think in that respect my recollection was substantiated by departmental records.

Over the last few days there has also been some quite sensational reporting in the media, in Melbourne and Adelaide, with respect to an application by Mr John Ng for a temporary entry visa in 1996. In the Melbourne Herald Sun of the 12th of this month there was the hysterical headline ‘Controversial decision revealed: Bolkus gave killer a visa’. The article follows on from that to say in the first paragraph:

... Bolkus personally intervened to allow a convicted killer into the country despite three earlier rejections by the Immigration Department.

It went on to say:

... Bolkus ... gave him—

Mr Ng—

the ministerial tick of approval for temporary residency in Australia in 1996.

Later on the article says:

As immigration minister from 1993-96, Senator Bolkus had the power to intervene in visa cases.

In Adelaide there have been a series of articles in the Messenger, and I must say they have been a bit more careful in their language. And in today’s Advertiser, under the headline ‘Panel to pursue Bolkus over visa for killer’, there was the following assertion:

South Australian Senator Nick Bolkus’ decision to grant a visa to a convicted killer will be investigated by a Senate committee.

They go on to say:

The former Labor immigration minister approved temporary residency for Kong-Shan “John” Ng in 1996 ...

Once again I have sought from the department documents to which I had access in respect of this decision. I have been advised this afternoon by the relevant departmental officer that (1) there are no documents that came to me as minister in respect of Mr Ng’s application; (2) the decision was taken by a departmental officer, and the department advised me; and (3) there was no instruction from the minister in this case.

I did not have a legal right to interfere in this type of case. I had no discretion which could have been or was in fact used or exercised. It is not unusual for the department to inform or to advise the minister of its intention or decision, particularly where you have a potentially controversial case that has been dealt with. As such, my recollection was that I was advised verbally that the department had decided to grant a temporary visa, and I accepted that decision, as of course I would under the law. So once again I think we have
a misstatement of facts in both the Melbourne Herald Sun and the Adelaide Advertiser.

**DOCUMENTS**

**Consideration**

The following government documents were considered:

- Advance to the Finance Minister—Supporting applications for funds for March and April 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.
- Advance to the Finance Minister—Supporting applications for funds for May 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.

**ADJOURNMENT**

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Foreign Affairs: Australia-Japan Bilateral Relationship

Senator PAYNE (New South Wales)

(6.59 p.m.)—I rise this evening to add some remarks to those I have delivered previously on the subject of strengthening partnerships in our region, in particular focusing on the Australia-Japan bilateral relationship. It is one into which a great deal of work has gone in recent times. We have had regular ministerial visits. Most notably, Prime Minister Koizumi’s visit last year and Prime Minister Howard’s recent visit to Japan demonstrate that we have a very strong desire between the two countries to continue to foster what is already a very strong partnership. Underneath all of that, of course, there is always a great deal of work going on. I think it is important to recognise and acknowledge the efforts of Japan’s ambassador, Atsushi Hatakenaka, who is departing Australia at the end of this month after a very impressive term of service here, and also our own ambassador in Tokyo, John McCarthy. They have particularly tried to ensure that both countries get the most from the Australia-Japan Creative Partnership Dialogue, which the prime ministers have launched.

In the last three years, for example, Australia and Japan have each hosted one of the Australia-Japan conferences that have brought together leading representatives from the private and public sectors, from academia and from the arts and sciences in both countries. They have been the subject of wide-ranging discussions, which have covered not only the obvious—the economic, the political and the strategic—but also, importantly, cultural ties, and I do not think we can underestimate the importance of those.

I was honoured to have the opportunity to participate, with a number of parliamentary colleagues, in both conferences and I think they have been marked by their success in identifying a range of practical measures and setting time frames for achieving those goals. The most recent AJC—Australia-Japan Conference—was held in Tokyo at the end of last year. It operated with four separate groups—politics and security, economics, education exchange, and science and technology—which have each set out a range of objectives.
I was very lucky to be invited to return to Japan shortly after AJC2 at the invitation of the government of Japan to hold a series of meetings with agencies and parliamentarians, including with their Senior Vice-Minister for Foreign Affairs, Vice-Minister Yano, who is visiting Australia next week. It is fair to say that they are equally driven and equally excited about the progress that the bilateral conferences have been achieving.

I want to comment briefly on the work of the AJC2 Political and Security Working Group, in which I participated. It recommended some areas that we should pursue further and in which more work should be done: the broad regional security environment in our region; transnational security threats and cooperation; practical support for regional neighbours focusing on institutions and capacity building; and enhancing defence cooperation. The discussions involved both academics and non-officials in the process. They are also now pursuing what are broadly known as 1.5-track discussions. They are an important part of relationship building and important in creating an understanding between nations of different cultures so that we can, as far as is ever possible in these cases, see the world in the same light and, more colloquially, ‘know where the other is coming from’ to try to fix problems and achieve our strategic goals. The process has the strong support of Gaimusho, the Japanese foreign ministry, which funds the Japan Institute of International Affairs to drive this process. The new head of the institute, Yukio Satoh, is a former Ambassador to Australia and the UN. Together with the Director of the Australian Strategic Policy Institute, Hugh White, both deserve an enormous amount of credit for the good work they are doing.

I think it is fair to say if you talk to older Japan hands that conversations with the bureaucracy in the past were a little rigid, but many now describe it as a much more free-flowing process and more productive, showing a genuine trust and desire to work towards our shared goals. At the end of the day that can only help Japan’s strategic policy development, which in itself is becoming more fluid; for example, the bill allowing Japanese forces to be sent to Iraq and Japan’s deployment of 700 Self Defence Force engineers to the UNMISSET operation in East Timor are very good indications of that change and that fluidity.

It has been painful for Japan to ‘come out of its shell’, if you like, in terms of contributing military forces to regional security, but it is an innovation that the Australian government has welcomed. Far from seeing Japanese involvement in military activities through the prism of World War II, we are reassured by the prospect of a fellow liberal democracy contributing to regional security.

I think it is fair to say that Japan is also very interested in the South Pacific. The next 1.5-track security dialogue, to be held in March of next year, will look at regional cooperation. I believe there is interest, for example, in the Australian government’s assistance to the Solomon Islands.

We already have in the defence area a relationship which includes strategic dialogue, reciprocal high-level visits, service-to-service contact and working level policy exchanges, staff college exchanges and regular ship and aircraft visits. Recently, preliminary discussions have taken place between the Australian Incident Response Regiment, the Defence Science and Technology Organisation and the Japanese military on possible future cooperation on counter-terrorism and training exchanges. In light of recent events, I think there cannot be a great enough emphasis on that level of cooperation between our countries and, broadly speaking, within the region.
The AJC2 Economic Working Group supported a very broad-based integration between our two economies to, effectively, boost economic growth in both. The working group promoted official dialogue for deepening and extending the economic relationship; the finalisation of a balanced trade and economic agreement; the enhancement of mutual recognition, regulatory linkages and cooperation in emerging areas; and the making of efforts towards economic integration in the region and also further engagement with the private sector. It is about our two countries wanting to work together as partners to promote economic and financial stability in East Asia by establishing a mechanism like an Asian monetary fund to enhance policy dialogue, surveillance and financial cooperation to prevent and resolve financial crises in the region. Both countries also want to capitalise on exciting commercial opportunities in some very interesting sectors like biotechnology, nanotechnology and information and communications technology and in the more obvious ones of manufacturing, education, health and other services. We want to assist small and medium enterprises involved in these technical sectors, in particular. There is broad consensus that the region needs better policy dialogue and surveillance and that there is scope for developing a more coordinated regional approach to preventing and dealing with financial crises. Currently there is no consensus about the scope or desirability of greater cooperation in setting monetary policy or exchange rates in East Asia, for example.

The third working group of the AJC was that on education exchange. They recommended three particular approaches: a joint review of e-learning programs in Australia and Japan; a broadening of this process into the Asia Pacific region; and increasing cultural, and not just language, awareness. I understand that since the conference a delegation from Japan’s National Institute for Multimedia Education visited Australia some months ago and had very constructive discussions with Professor Shirley Alexander, also a participant in AJC2 and a member of the Australian University Teaching Committee, who is now working with DEST to move forward recommendations on our side.

The fourth working group of the AJC2 addressed science and technology issues and also made some important recommendations: that a multidisciplinary Australia-Japan panel on ageing be established to explore opportunities for bilateral links for research and development on ageing; that population ageing be discussed in the next meeting of the Australia-Japan Joint Committee on Science and Technology; that both governments strengthen bilateral exchanges and research activities to explore options to maintain and promote healthy and productive ageing; and that the proposed panel explore initiatives for developing and evaluating assistive technologies, service delivery models, life-long learning programs and e-health for the aged.

Given the very common demographics in our countries, I think these are very important initiatives. In fact, I was struck, when reading an edition of the *Weekend Australian* in June of this year, by a story entitled ‘Long life everybody’s cup of tea’ which indicates that a corporation in Japan has come up with an electric kettle that sends a concerned child an email or a text message every time their parent pours water from it. It is a sort of built-in check that their parent is still making cups of tea at home. It costs ¥15,000 and you pay another ¥3,000 a month for the message service. Apart from anything else, it is an interesting indication of how you struggle with an ageing population in a diversely populated nation. I do not know if it will take on here but, given Australians’ take-up of technology, anything is possible.
I should also comment this evening not just about the ideas generation that has come from the AJC but also about the importance of our trade and economic linkages. The engagement between Prime Minister Howard and Prime Minister Koizumi, in signing the new trade and economic framework, reflects our very strong commitment to further developing trade and investment linkages, and to liberalisation. That does not ignore our disappointment about things like the Japanese decision on the tariff on chilled beef exports known as the ‘snapback’, which is going to have a very significant impact on Australian producers. It is a decision about which we are concerned.

Our engagement with Japan is very broad and it is deepening through the work of these very successful bilateral conferences and by very effective ministerial visits to and from Australia and Japan. I think it is one of the success stories of Australia’s engagement in the region. In many ways it provides a benchmark by which we can measure our engagement with other countries in our region and around the world.

Will Dyson

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.09 p.m.)—Almost two years ago it became apparent that Will Dyson, Australia’s first official war artist, was resting in an unmarked grave in London’s Hendon cemetery. When this discovery was made a number of Will Dyson admirers—and I count myself among them—felt it was necessary to draw attention to this wrong, and work to rectify the situation. A few months ago I informed the Senate that work was well underway to restore Will Dyson’s grave at London’s Hendon Cemetery. Tonight I am happy to inform the Senate that the project has been completed. Will Dyson and his wife, Ruby Lind, no longer rest in an unmarked grave.

Dyson, who died in 1939, and his wife Ruby, who died in 1919, were both buried at London’s Hendon Cemetery. By the late 1960s the headstone of their grave had fallen into disrepair. By 1969 the cemetery authorities had decided to dismantle the headstone because it had become a danger to public safety. In 2001 I alerted the C.E.W. Bean Foundation to the situation of Will Dyson’s unmarked grave and urged them to consider assisting in the restoration of the Dysons’ gravesite. The C.E.W. Bean Foundation became a strong supporter of the restoration of Will Dyson’s grave.

Will Dyson, who was born in Ballarat, had many talents. Not only was he an extremely gifted artist but he was also a political satirist and writer. Ruby Lind—Norman Lindsay’s sister—whom Will Dyson married, was also a talented artist and they had one child together, named Betty. In 1910 Dyson and Ruby moved to London and by 1916 Dyson was famous for his artwork and had published a number of books including his best-seller Kultur Cartoons, which included a forward by H.G. Wells. But for many Australians, Will Dyson is best remembered for his graphic depictions of war on the Western Front. His artwork, which is displayed in the Australian War Memorial, depicts the shocking realities of war.

Commissioned by the Commonwealth in 1916 to be the first official Australian war artist, Will Dyson lived with the soldiers on the Western Front for two years despite being wounded twice during that time. His work paved the way for other official war artists. Good friend Charles Bean, who met Dyson on the Western Front, wrote of Dyson:

No official artist, British or Australian, in the Great War saw a tenth part as much of the real Western Front as did Will Dyson.

Just after the war Dyson’s wife, Ruby, died suddenly, aged only 32—a victim of the in-
fluenza epidemic. Dyson, like many of his
generation, was changed forever by the war
and by the tragic death of his young wife. In
January this year I was able to visit Will
Dyson’s unmarked gravesite at Hendon. Al-
though there were no remnants of the origi-
nal grave and headstone to be seen, it was
still possible to be precise about its location
through cemetery records and a well-
maintained adjacent war grave. On Anzac
Day this year a small group assembled at the
Hendon Cemetery in London for a Will
Dyson dedication ceremony. I was unable to
attend that ceremony, but Robin Ollington,
who did, indicated it was a ‘superb memo-
rial’ for a great man.

John Jensen, who spoke at the ceremony,
depicted Dyson as ‘an extraordinary figure
who rose up, had this tremendous burst of
vitality and intelligence and anger and com-
passion, all rolled up into one’. The new
Dyson headstone was made at London’s
Lambeth College and carries an adapted An-
zac symbol engraved with a pencil and a
stem of wattle. Also engraved on Will and
Ruby’s headstone is a poem Dyson wrote at
the time of Ruby’s death:
A little land eternal, and mine own, where we
forever go.

This grave would have remained unmarked
and unrecognised if it were not for the efforts
of a number of Will Dyson enthusiasts, lead
by Mr Robin Ollington, and a number of
donors, in particular Dame Elisabeth Mur-
doch. Dame Elisabeth recently told the Her-
ald Sun how important she felt this project
was. She said:
I’m so glad the effort has been made to restore the
gravestone and to perpetuate Will Dyson’s mem-
ory. He was a very important and an impressive
war artist.
I also believe that this has been a very impor-
tant project. Will Dyson and his wife Ruby
now rest in a marked grave. They surely de-
serve such respect and recognition.

**Business: Trade Practices Act**

*Senator MURRAY (Western Australia)*

(7.15 p.m.)—Workplace, tax, corporations,
finance and trade practices laws are the main
laws affecting the functioning of the market
and the regulation of the behaviour of corpo-
rations. In matters of competition and con-
csumer interest, all over the world the law
restrains great commercial power because of
the known abuse of power that often accom-
panies it. When it comes to the size and be-
haviour of corporations, the Trade Practices
Act 1974 is Australia’s prime protective de-
vice. Yet the act is weaker and deficient in its
protective capabilities in comparison to
countries like the United Kingdom and the
United States.

The Democrats, Labor and the coalition
have been of one mind in key areas of tax
reform, such as the consolidation measures,
and Corporations Law reform, such as the
merger and takeover provisions. They have
recognised that a dynamic, modern market
economy means that the efficiency and com-
petitiveness of the market should be facili-
tated and that mergers, acquisitions and
takeovers should be made easier. The flip
side of easing the market for mergers, take-
overs and acquisitions is a need to ensure
that the overmighty and abusive are properly
constrained. I have said before that big busi-
ness roars approval at the dynamism of the
American market but fiercely condemns a
major contributor to that dynamism—that is,
the effects of antitrust or divestiture laws. We
need those regulatory tools in Australia. Bal-
anced divestiture laws are the corollary of
balanced merger laws. We do not have effec-
tive divestiture laws. It is a strange and il-
logical policy that can prevent mergers to
maintain effective competition but cannot
require divestiture also to maintain effective competition.

Section 50 of the Trade Practices Act currently prohibits corporations from making acquisitions that would have the effect of substantially lessening competition. Divestiture can be ordered to remedy a breach of section 50. However, this provision is limited in scope. One limitation is the difficulty of applying it to creeping acquisitions. It is difficult to establish that a smaller, more recent acquisition finally tips the balance to create a substantial lessening of competition. Creeping acquisitions can allow large corporations to achieve a market size that might have been prohibited by the ACCC if those acquisitions had been aggregated into one purchase, which could therefore have fallen foul of the existing merger provisions in the Trade Practices Act.

In Australia, many markets are experiencing oligopolisation—a concentration of power in the hands of a small number of competitors. This is partly a natural result of economies of scale: the big get bigger and as they do they develop the ability to operate more cheaply and efficiently. Over time, the smaller players are forced out of the market. That is the way of the market, and it is valuable while it promotes efficiency, innovation and competition—but only up to a point. Eventually, the destruction of competitors results in the destruction of competition, or the predatory intimidation of competitors reduces effective competition. Where that has occurred or will occur, the state must intervene to save the market from eating itself. By its very nature, the power to order divestiture should be regarded as largely a reserve power. As international precedents indicate, it would be seldom employed. It should be used rarely and used responsibly. Its great virtue is as a cautionary power, making oligopolies careful of abusing their market power. It would be used only where necessary to maintain or restore competition.

The United States Federal Trade Commission’s 1999 study of the divestiture process found that about three-quarters of divestitures appear to have created viable competitors in the relevant market. It further found that divestitures of ongoing businesses tended to succeed more frequently compared to asset divestiture. The ACCC has indicated that it is not supportive of an open-ended divestiture power, but it has supported consideration of a divestiture power where there is a breach of the section 46 prohibition on the abuse of market power. Examining divestiture in the context of section 46 would certainly be worth while. However, given recent setbacks concerning section 46—in particular, the Boral decision in the High Court—the debate about divestiture must be broader in scope.

Where a corporation is of sufficient size or market power, it must include a consideration of pre-merger notification requirements and specific provisions relating directly to size of ownership. In relation to pre-merger notification requirements, the 1976 United States Hart-Scott-Rodino legislation serves as a useful example. In the United States, parties to mergers who exceed stated market size thresholds must announce to the regulator their intention and hold the merger in abeyance until the regulator grants clearance to proceed. The policy behind the pre-merger notification law was to address the difficulties and disruption caused when United States antitrust agencies had to deal with corporate mergers that had already occurred. Post-merger litigation may produce a successful result for the antitrust regulator, but the victory is illusory if the market is harmed by a failed action or failed divestiture or if it takes a number of years for the divestiture to become fully effective.
In relation to the size of ownership issue, the ACCC has argued that a divestiture power aimed at size of ownership alone would be inconsistent with the focus on conduct in the other provisions of the Trade Practices Act. A dominant overmighty share in a market could be innocently obtained because of the exit of a major competitor. Creeping acquisitions could deliver a similar dominant overmighty share of market. That our competition law has no regulatory means to deal with such circumstances offers little solace to smaller competitors in highly concentrated markets, nor does it offer any solution to the consumers who ultimately bear the cost of an uncompetitive market. At the very least, I believe that concentrated industry sectors need a trigger market share percentage at which the ACCC takes formal and public note of potential danger, similar to that used in Europe.

Such thresholds recognise market power but do not constitute an automatic declaration of market dominance, nor are they an automatic signal as to the existence of anti-competitive prices or an abuse of power. They act instead as a trigger to the regulator to maintain a watching brief on the company concerned. I consider the figure of 25 per cent used under the United Kingdom Fair Trading Act as constituting a fair market power measure. If such a measure were adopted in Australia, the ACCC would thereafter notify a company so identified that it needed to keep the ACCC advised on all market acquisition activity, with a specific requirement to report to the ACCC annually on the concentration of market power in the markets it operates in. The ACCC could then, of its own volition, review the company or the industry concerned. I have previously moved amendments to allow the ACCC to order divestiture where an ownership situation has the effect of substantially lessening competition. This is necessary to ensure that the ACCC can effectively break up monopolies that substantially inhibit competition and can reduce monopolies' market power, particularly in regional markets, by requiring limited and selective divestiture. The government turned down those amendments.

Now the government plans further modest change to the Trade Practices Act. That is not enough. It simply cannot avoid the challenge facing it of excessive concentration and oligopolisation in certain industry sectors. Nor can it avoid facing up to the probability of major sector changes being demanded after the next election or thereafter. There are great dangers in contemplating media ownership reform, the sale of Telstra or an end to the four pillars banking policy without a divestiture power as a necessary safeguard. We know from experience that market forces will not guarantee competition in highly concentrated industry sectors. Regulatory powers are necessary safeguards for efficient, effective and diverse competition. Current divestiture provisions in the Trade Practices Act are very limited and should be expanded. We must look to the success of divestiture laws in other dynamic and productive markets such as the United States. Without them, changing current policy in key market areas such as telecommunications, media and banking raises immense difficulties.

Science: Radiopharmaceutical Chemistry

Senator TIERNEY (New South Wales) (7.25 p.m.)—I rise tonight to make this chamber aware of some of the outstanding opportunities that are presenting themselves thanks to some of Australia’s leading scientists. We are currently in a time of great advances in the field of radiopharmaceutical chemistry. The Australian Nuclear Science and Technology Organisation, ANSTO, is at the forefront of the field of radiopharmaceutical chemistry and will have a greatly ex-
panded capacity with the completion of the new reactor at Lucas Heights and the expansion of the radiopharmaceutical building. It is critical for the further advancement of this important industry that we make sure that the value of its work is widely known.

As the chair of the government members committee on education, science and training, I was delighted to open the 15th International Symposium on Radiopharmaceutical Chemistry on behalf of my colleague the Minister for Science, the Hon. Peter McGauran, last Saturday and to have the opportunity to welcome the Australian and international delegates to that symposium. The conference concluded in Sydney today. Radiopharmaceutical chemistry is an industry that offers increasingly efficient ways to detect and treat many diseases. Through the efforts of these dedicated scientists, communities like ours are managing to reduce human suffering, save millions of dollars in health costs and allow many people to live longer and more fulfilling lives.

There were over 430 science and industry leaders from 37 countries at the symposium in Sydney, and they met for the first time in the Southern Hemisphere. As an Australian parliamentarian I am delighted that Australia was identified by the international group as the destination of choice for the symposium. This conference took place at an important stage in radiopharmaceutical research and development, both internationally and in Australia. Internationally, these life-saving products are experiencing growth of six to 15 per cent per year. Meanwhile, research is creating exciting new possibilities to extend the capabilities of the technology to further improve the quality of human life. This research into new applications has placed radiopharmaceuticals in a position to become a leading specialty in the diagnosis and treatment of both cardiological conditions and cancer. New products now waiting for market clearance could treat an even greater number and receive greater success in this area.

Here in Australia we have made major advances in our capacity for the production and use of radiopharmaceuticals. A $300 million replacement for our old reactor, which was built in 1958, is now under construction. It will dramatically increase our scientific capacity in this area and make sure that Sydney remains one of the premier nuclear science research centres in the Asia-Pacific region. I had the opportunity to observe first-hand the technology of INVAP, the main contractor for Australia’s new reactor, when I was part of a parliamentary delegation to Argentina in 2000. The delegation had the opportunity to question the senior scientists at INVAP on the new technology and observe its plans and facilities. The cross-party delegation came away from that inspection with confidence in the new reactor’s capability.

The new reactor will be a multipurpose facility for radioisotope production, irradiation services and neutron beam research. It will also give Australia the opportunity to become a regional centre in such fields as the supply of diagnostic and therapeutic medical radioisotopes, research and training in cold neutron science, and reactor and radiation safety. As the reactor will give us a substantially improved radioisotope production capacity, we are expanding our radiopharmaceutical manufacturing capacity. This will allow us to meet foreseeable demand for radioisotopes and to promote research into new radiopharmaceutical products for the diagnosis and treatment of cancer and other diseases.

ANSTO currently produces over 400 radiopharmaceutical products for use in more than 200 nuclear medicine centres throughout Australia and for supply to over 12 countries in other areas of the world. Demand for
these products is growing at record levels. ANSTO estimates that more than half a million nuclear medicine procedures take place in Australia each year. The majority of the medicines used can only be produced in a nuclear reactor. In Australia we are reaching the point where, on average, every Australian will benefit from a reactor-sourced radiopharmaceutical during the course of their life. The replacement reactor will make sure that we can meet that demand.

The topics discussed at the symposium in Sydney can help improve the health and quality of life of all members of our community. For example, delegates viewed presentations on new imaging techniques that offer the prospect of a very early diagnosis leading to more effective treatment of Alzheimer’s disease. That is important for countries like Australia with ageing populations, because by 2040 the number of Alzheimer’s disease sufferers in Australia will treble. Another paper reviewed work at ANSTO on a simple imaging test that can identify whether a cancer drug is actually working within 24 hours of its administration. This will allow patients to avoid months of debilitating treatment to find out whether chemotherapy will be successful. Early reports suggest that the test will speed up treatment, improve the patient’s quality of life and save millions of dollars in long-term treatments.

Nuclear medicine is critical to improving the lives of people in our community. Communicating this message has been an integral part of creating community acceptance of the necessity to build our replacement reactor. There is no argument about the enormous value of the work of radiopharmaceutical scientists and the products they help create. Effectively communicating that message to the community and to this parliament is important to make sure that their work gains the support it deserves in terms of funding of facilities and research and in terms of recognition through the rapid take-up of emerging radiopharmaceutical products and techniques.

These scientists are helping to improve human health and happiness and they are very welcome in our country. It was my pleasure on behalf of the Hon. Peter McGauran, the Australian Minister for Science, to welcome the international delegates and to thank them for coming to Sydney and to Australia. Like all Australians, I look forward to further advances in the field and to ANSTO continuing the great work that it is doing in elevating Australia to a position of pre-eminence in the important field of radiopharmaceutical chemistry.

Senate adjourned at 7.33 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Advance to the Finance Minister—
Statements and supporting applications for funds for—

March and April 2003.
May 2003.


The following documents were tabled by the Clerk:

Christmas Island Act—Utilities and Services Ordinance—Water and Sewerage Services Fees Amendment Determination No. 1 of 2003.

Cocos (Keeling) Islands Act—Utilities and Services Ordinance—Water and Sewerage Services Fees Amendment Determination No. 1 of 2003.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Attorney-General’s: Legal Services Directions
(Question No. 1442)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 9 May 2003:

(1) How many breaches of the Legal Services Directions has the Office of Legal Services Coordination (OLSC) identified since the directions were first issued.

(2) On what date was each breach identified by the OLSC, and which agency and law firm was involved.

(3) In each case, what was the nature of the breach identified by the OLSC.

(4) In which cases was voluntary compliance achieved and in which cases was enforcement action taken.

(5) What systems does the OLSC have in place to monitor compliance by Commonwealth agencies with the directions.

(6) In each financial year, how many approvals have been sought for counsel fees above the thresholds in the directions.

(7) In each financial year, how many such approvals have been granted by: (a) the OLSC; and (b) the Attorney-General.

(8) In each financial year, how many such approvals have been ‘one-off’ and how many are ongoing.

(9) Has the OLSC attempted to update the estimate of the total Commonwealth legal services market since the March 1997 report, The Review of the Attorney-General’s Legal Practice; if not, why not; if so, what is the current estimate.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) Twenty-five.

(2), (3), and (4*) See Table below.

* In all cases where voluntary compliance is indicated, the breach was discussed with the relevant agency and was resolved in a manner that was acceptable to OLSC.

<table>
<thead>
<tr>
<th>Date</th>
<th>Agency</th>
<th>Law Firm</th>
<th>Nature of breach of LSDs</th>
<th>Voluntary Compliance?</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Sept 1999</td>
<td>Insolvency Trustee Service Australia (ITSA) (Qld)</td>
<td>Not recorded</td>
<td>Counsel fees policy</td>
<td>Voluntary Compliance</td>
</tr>
<tr>
<td>18 Oct 1999</td>
<td>Australian Taxation Office (ATO)</td>
<td>Not recorded</td>
<td>Counsel fees policy</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>19 Oct 1999</td>
<td>ATO</td>
<td>Not recorded</td>
<td>Counsel fees policy</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>Jan 2000</td>
<td>Department of Health and Aged Care (DHAC)</td>
<td>Clayton Utz</td>
<td>Tied work</td>
<td>Not recorded</td>
</tr>
<tr>
<td>17 Feb 2000</td>
<td>Reserve Bank of Australia (RBA)</td>
<td>Not recorded</td>
<td>Failure to report constitutional litigation</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>17 April 2000</td>
<td>Department of Finance and Administration (DOFA)</td>
<td>Blake Dawson Waldron</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>5 July 2000</td>
<td>Stevedoring Industry Finance Committee</td>
<td>Not recorded</td>
<td>Failure to report constitutional litigation</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>Date</td>
<td>Agency</td>
<td>Law Firm</td>
<td>Nature of breach of LSDs</td>
<td>Voluntary Compliance?</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------</td>
<td>--------------------</td>
<td>----------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>19 Feb 2001</td>
<td>Australian Communications Authority (ACA)</td>
<td>Not recorded</td>
<td>Model litigant</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>1 August 2001</td>
<td>DHAC</td>
<td>Clayton Utz</td>
<td>Tied work</td>
<td>Voluntary Compliance</td>
</tr>
<tr>
<td>21 August 2001</td>
<td>Department of Finance and Administration (DOFA)</td>
<td>AGS</td>
<td>Failure to consult Attorney-General’s Depart- ment (AGD)</td>
<td>Voluntary Compliance</td>
</tr>
<tr>
<td>21 August 2001</td>
<td>Department of Immigration and Multicultural Affairs (DIMIA)</td>
<td>AGS</td>
<td>Failure to consult AGD</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>21 August 2001</td>
<td>Department of Prime Minister and Cabinet (DPM&amp;C)</td>
<td>AGS</td>
<td>Failure to consult AGD</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>23 November 2001</td>
<td>DOFA</td>
<td>Blake Dawson Waldran</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>30 November 2001</td>
<td>Private Health Insurance Administra- tion Council (PHIAC)</td>
<td>Phillips Fox</td>
<td>Counsel fees policy</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>5 April 2002</td>
<td>DOFA</td>
<td>Blake Dawson Waldran</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>9 April 2002</td>
<td>Department of Agriculture Fisheries and Forestry (AFFA)</td>
<td>Minter Ellison</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>26 April 2002</td>
<td>National Crime Authority (NCA)</td>
<td>In-house counsel</td>
<td>In-house counsel and tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>5 June 2002</td>
<td>Department of Employment and Workplace Relations (DEWR)</td>
<td>Phillips Fox</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>13 August 2002</td>
<td>Australian Maritime Safety Authority (AMSa)</td>
<td>Not recorded</td>
<td>Counsel fees policy</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>19 September 2002</td>
<td>ITS(A/Vic)</td>
<td>Not recorded</td>
<td>Counsel fees policy, tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>24 September 2002</td>
<td>Australian Securities and Investment Commission (ASIC)</td>
<td>Not recorded</td>
<td>Counsel fees policy, tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>26 September 2002</td>
<td>DOFA</td>
<td>Minter Ellison</td>
<td>Tied work</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>30 January 2003</td>
<td>Department of Defence</td>
<td>AGS</td>
<td>Breach of LSD 4.6 objection to jurisdiction</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>12 February 2003</td>
<td>Department of Family and Community Services (FACS)</td>
<td>Not recorded</td>
<td>Breach of LSD 10 advice on legislation admin- istered by other agencies</td>
<td>Voluntary compliance</td>
</tr>
<tr>
<td>02 April 2003</td>
<td>Indigenous Land Corporation (ILC)</td>
<td>Not recorded</td>
<td>Counsel fees policy</td>
<td>Voluntary compliance</td>
</tr>
</tbody>
</table>

(5) OLSC maintains a website of information about the directions and other material to assist agencies and their advisers on issues that can arise in Commonwealth legal work. The website contains information about the Office’s compliance policy. The website address is www.ag.gov.au/olsc. OLSC has access to a database, the Counsel Engagement System (CES), to assist the Office in administering the counsel fee policy. The CES database is administered by the Australian Government Solicitor.

OLSC can assist agencies and their advisers where they may be uncertain as to the effect of the Directions on a proposed course of action to avoid a possible breach. Where OLSC becomes aware that an agency is seeking legal services in a way that would breach the Directions, OLSC will take the matter up with the agency.

OLSC assists agencies and their legal advisers in any day to day queries they may have about the effect of the Directions in relation to a particular matter. The Office also welcomes the opportunity
to speak to agencies or legal service providers to raise awareness and understanding of the LSDs.
The Office’s website also has an e-mail address to which queries can be sent.

(6), (7), (8) and (9) see table below.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of approvals sought by Counsel or on behalf of Counsel above threshold in the directions</th>
<th>Number of approvals above the threshold in the directions approved by the OLSC</th>
<th>Number of approvals above the threshold in the directions approved by the Attorney-General</th>
<th>Number of approvals above the threshold in the directions approved on an ongoing basis</th>
<th>Number of approvals in excess of $3,800.00 per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999/2000</td>
<td>43</td>
<td>41</td>
<td>2</td>
<td>27</td>
<td>16</td>
</tr>
<tr>
<td>2000/2001</td>
<td>81</td>
<td>78</td>
<td>3</td>
<td>29</td>
<td>52</td>
</tr>
<tr>
<td>2001/2002</td>
<td>65</td>
<td>61</td>
<td>0</td>
<td>42</td>
<td>19</td>
</tr>
<tr>
<td>2002/2003</td>
<td>61</td>
<td>47</td>
<td>0</td>
<td>21</td>
<td>26</td>
</tr>
</tbody>
</table>

* One off approval for a particular matter by Secretary pursuant to delegation by Attorney-General

(10) The Attorney-General’s Department engaged an external consultant to conduct a review of the functions, powers and resources of OLSC and to survey the impact of the 1999 reforms upon the Commonwealth’s expenditure on its legal services needs. I wrote to each Minister at the end of 2002 seeking information about the purchase of legal services within each portfolio. The response rate to that letter was very high. The consultant analysed the information in mid April 2003. As was the case for the March 1997 “Report of the Review of the Attorney-General’s Legal Practice” (the Logan Report) it was not possible to calculate a precise figure for the size of the legal services market. However, the figure calculated by the consultant was based on responses to a survey form rather than an extrapolation as was done in the Logan report. Those responses indicate that the total amount spent on legal costs was $242,967,510 in 2001-2002. The consultant’s report was provided to the Attorney-General’s Department in June. I am now considering that report.

**Attorney-General’s: Judiciary**

(1516)

**Senator Sherry** asked the Minister representing the Attorney-General, upon notice, on 13 June 2003:

(1) What was the cost of the arrangements for providing pensions to former federal judges in the past 5 financial years in both cash and accrual terms.

(2) What is the estimated or projected cost of these arrangements in the 2002-03 financial year and each of the years over the forward estimate period.

(3) What is the Commonwealth’s current unfunded liability in relation to these arrangements.

(4) When was the last actuarial review conducted of the long-term cost of these arrangements.

(5) What is the average effective annual Commonwealth contribution as a percentage of salary represented by these arrangements.

(6) Are current federal judges required to make contributions to the Commonwealth as part of their pension arrangements.

(7) Has the department sought advice in the past 12 months on superannuation surcharge liabilities arising from these arrangements; if so, what was that advice.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator’s question:

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**QUESTIONS ON NOTICE**
(1) The cost of the arrangements for providing pensions to former federal judges in the past five financial years in both cash and accrual terms is set out below. The figures are taken from the Department’s financial statements published in the Annual Reports for those years. The cash figures are the actual pension payments made in the financial year. The accrual figures represent the annual net increase in the total judges’ pension liability.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Cash $’000</th>
<th>Accrual $’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-98</td>
<td>8,056</td>
<td>Not available</td>
</tr>
<tr>
<td>1998-99</td>
<td>9,601</td>
<td>Not available</td>
</tr>
<tr>
<td>1999-2000</td>
<td>10,390</td>
<td>57,980*</td>
</tr>
<tr>
<td>2000-01</td>
<td>11,313</td>
<td>27,280</td>
</tr>
<tr>
<td>2001-02</td>
<td>12,023</td>
<td>28,154</td>
</tr>
</tbody>
</table>

* This amount includes a revaluation adjustment made in 1999-2000.

(2) The estimated annual pension payments (cash) are set out in the table below. The estimates are based on payments made in 2002-03 adjusted by 4% each year. The accrual estimates are also set out in the table below. These estimates were prepared in the 2002-03 Budget process on the basis of the liability estimated by the Australian Government Actuary as at 30 June 1999. The estimates will be revised during the 2003-04 financial year in accordance with the judges’ pension liability as at 30 June 2003 that will be reported in the Department’s 2002-03 financial statements.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Cash $’000</th>
<th>Accrual $’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>14,378</td>
<td>29,354</td>
</tr>
<tr>
<td>2003-04</td>
<td>14,953</td>
<td>30,488</td>
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<tr>
<td>2004-05</td>
<td>15,551</td>
<td>31,690</td>
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<tr>
<td>2005-06</td>
<td>16,173</td>
<td>31,690</td>
</tr>
</tbody>
</table>

(3) The unfunded judges’ pension liability as at 30 June 2002 was $319.9m as estimated by the Australian Government Actuary. The estimated liability as at 30 June 2003 will be reported in the Attorney-General’s Department 2002-03 financial statements. The statements will be published in the Department’s 2002-03 Annual Report to be tabled by 30 October 2003.

(4) An actuarial review of the long term costs of the judges’ pension scheme was conducted by the Australian Government Actuary in June 2000. A further review was conducted by the Actuary in July 2003.

(5) The notional employer contribution rate, or average effective Commonwealth contribution rate, calculated by the Australian Government Actuary was 55.3% of salaries as at 30 June 2002.

(6) Federal judges are not required to make contributions to the Commonwealth as part of their pension arrangements.

(7) The Department has not sought advice in the past 12 months on the amount of superannuation surcharge liabilities arising from federal judges’ pension arrangements.

Parliamentary Departments: Overseas Travel

(Question No. 1577)

Senator Carr asked the President of the Senate, upon notice, on 23 June 2003:

(1) In respect of the Department of the Senate and each of the joint parliamentary departments: (a) can details be provided of overseas travel undertaken by the secretary and each senior executive service (SES) officer or SES-equivalent officer in each parliamentary department, from 1 January 1996 to 31 May 2003, as follows: (i) date of travel, (ii) purpose, (iii) time overseas, and (iv) total cost; and

QUESTIONS ON NOTICE
(b) in each case, did a spouse or partner accompany the officer; if so, what costs were paid out of departmental funds for the spouse or partner.

(2) Can the President request the Speaker to provide answers to the above questions in respect of the Department of the House of Representatives.

The PRESIDENT—The answer to the honourable senator’s question is as follows:

With respect to the Department of the Senate, the following information is provided:

(1) (a) (i) to (iv):

The Clerk of the Senate (secretary of the Department of the Senate) did not undertake any official overseas travel between 1 January 1996 and 31 May 2003.

Official overseas travel undertaken by the SES officers of the Department of the Senate 1 January 1996 to 31 May 2003

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Purpose</th>
<th>Duration</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 October 1996</td>
<td>Mr C Elliott Clerk Asst</td>
<td>Government Minorities in Legislative Assemblies Conference, New Zealand</td>
<td>23 - 27 October 1996</td>
<td>$2,284.80</td>
</tr>
<tr>
<td>16 May 1997</td>
<td>Miss A Lynch Dep Clerk</td>
<td>Conference of Presiding Officers of Upper Houses, Tokyo</td>
<td>16 - 25 May 1997</td>
<td>$6,254.92</td>
</tr>
<tr>
<td>31 May 1997</td>
<td>Mr C Elliott Clerk Asst</td>
<td>Conduct a training seminar and workshops for MPs and staff of the Parliament of Vanuatu</td>
<td>31 May - 8 June 1997</td>
<td>Sponsored by the CPA Education Trust Fund $3,843.79</td>
</tr>
<tr>
<td>24 July 1997</td>
<td>Miss A Lynch Dep Clerk</td>
<td>Presiding Officers and Clerks Conference, Nauru</td>
<td>24 - 30 July 1997</td>
<td>$3,037.15</td>
</tr>
<tr>
<td>2 May 1998</td>
<td>Mr C Elliott Clerk Asst</td>
<td>Conduct a training seminar and workshops for MPs and staff of the Parliament of Fiji</td>
<td>2 - 10 May 1998</td>
<td>$3,169.82</td>
</tr>
<tr>
<td>15 March 1999</td>
<td>Mr C Elliott Clerk Asst</td>
<td>Conduct a training seminar and workshops for MPs and staff of the Parliament of Papua New Guinea</td>
<td>15 - 19 March 1999</td>
<td>Sponsored by the CPA Education Trust Fund $3,962.89</td>
</tr>
<tr>
<td>16 July 1999</td>
<td>Miss A Lynch Dep Clerk</td>
<td>Presiding Officers and Clerks Conference, Suva</td>
<td>16 - 24 July 1999</td>
<td>$3,651.94</td>
</tr>
<tr>
<td>30 July 2000</td>
<td>Dr R Laing Clerk Asst</td>
<td>Presiding Officers and Clerks Conference, Norfolk Island</td>
<td>30 July - 5 August 2000</td>
<td>$2,560.15</td>
</tr>
<tr>
<td>30 June 2001</td>
<td>Miss A Lynch Dep Clerk</td>
<td>Presiding Officers and Clerks Conference, Wellington, New Zealand</td>
<td>30 June - 6 July 2001</td>
<td>$3,554.77</td>
</tr>
<tr>
<td>16 May 2003</td>
<td>Mr C Elliott Clerk Asst</td>
<td>Conduct a training seminar and workshops for MPs and staff of the Cook Islands Parliament</td>
<td>16 - 23 May 2003</td>
<td>Sponsored by the CPA Education Trust Fund $5,426.32</td>
</tr>
</tbody>
</table>

TOTAL $37,746.55

Note: Does not include Senior Adviser to the President, a MOPS Act employee - SES equivalent. This officer’s travel costs, together with all departmental travel costs are tabled by program/output group each financial year. Details of overseas travel by staff of the President for the period 20 August 1996 to 22 March 2002 were provided in the answer to Senate Question on Notice No. 213, published in Hansard on 26 September 2002.

(1) (b):

There has been only one occasion from 1 January 1996 to 31 May 2003 where an officer was accompanied by a spouse (Cook Islands, May 2003) and all costs were paid by the officer.

With respect to the Joint House Department (JHD), the following information is provided:

(1) The Secretary of JHD undertook the following overseas travel:

QUESTIONS ON NOTICE
 QUESTIONS ON NOTICE

(a) (i) 4 - 24 April 1997
(ii) Building Management Study Tour with representatives from Australian State Parliaments and industry representatives to five cities and 16 sites in the United States of America.
(iii) 20 days
(iv) $16,995
(b) No accompanying spouse or partner.

(2) The Secretary of JHD and the Executive Leader (Support) undertook the following travel:
(a) (i) 14 - 18 May 2000
(iii) Four days
(iv) $6,431
(b) No accompanying spouse or partner.

With respect to the Department of the Parliamentary Reporting Staff, the following information is provided:

The following overseas travel has been undertaken by the Secretary and SES officers for the period 1 January 1996 to 31 May 2003:

(1) (i) 5 October 1997;
(ii) The Manager, Sound & Vision Office, Mr Sharp, travelled to Nauru to meet with officials of the Nauru Parliament;
(iii) 4 days;
(iv) Total Cost = $2,534.65 - no accompanying spouse or partner.

(2) (i) 13 September 1998;
(ii) The General Manager, Parliamentary Information Systems Office, Mr Ward, travelled to Japan to attend IBM Asia/Pacific Executive Conference and meet with executives from NEC, the Parliament’s PABX supplier;
(iii) 7 days;
(iv) Total Cost = $7,340.27 - no accompanying spouse or partner.

(3) (i) 7 April 1999;
(ii) The Assistant Chief Reporter, Ms Barrett, travelled to London, Ottawa and Singapore as part of an SES Fellowship, awarded by the (then) Public Service and Merit Protection Commission;
(iii) 61 days;
(iv) Total Cost = $18,361.57 - no accompanying spouse or partner.

(4) (i) 3 April 1999;
(ii) The Secretary, Mr Templeton, travelled to the United Kingdom and Hong Kong to attend the Commonwealth Association of Public Administration and Management Conference and to visit the United Kingdom Parliament, the Scottish Parliament then being established and the Welsh Assembly then being established;
(iii) 15 days;
(iv) Total Cost = $15,547:00 - As Mr Templeton has no spouse, the then President and Speaker approved Mr Templeton’s son travelling with him using the entitlements for family members’ accompanied travel applying to Secretaries. The airfare for Mr Templeton’s son was $5299:00. No travel allowance is paid for accompanying family members.

(5) (i) 31 January 2003;
(ii) The Group Manager, Client Services, Ms Barrett, travelled to New Zealand to attend the Australasian and Pacific Hansard Editors Association Conference;
(iii) 9 days;
(iv) Total Cost= $2,256:49 - Ms Barrett was not accompanied by a spouse or partner.

With respect to the Department of the Parliamentary Library, the following information is provided:

Attached are details of overseas travel undertaken by the acting secretary and each senior executive service officer or SES- equivalent in the Department of the Parliamentary Library from 1 January 1996 to 31 May 2003.

<table>
<thead>
<tr>
<th>(a)</th>
<th>(i)</th>
<th>(ii)</th>
<th>(iii)</th>
<th>(iv)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Head, Information and Research Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 October 2000</td>
<td>APLAP 2000 - Japan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 August 2002</td>
<td>IFLA 2002 - UK</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29 April 2002</td>
<td>CDI Assistance - Indonesian Parliament</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 August 2001</td>
<td>IFLA 2001 - USA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 August 2000</td>
<td>IFLA 2000 - Israel &amp; Greece</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 August 1999</td>
<td>IFLA 1999 - Thailand</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 March 1998</td>
<td>Legislative: Research Librarian Professional Development Seminar &amp; Online World Conference - USA &amp; Canada</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant Secretary, Resource Management</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 August 1998</td>
<td>IFLA 1998 - Netherlands, Belgium &amp; UK</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**APLAP** = Association of Parliamentary Libraries of Asia and the Pacific.

**IFLA** = International Federation of Library Associations and Institutions.

The Department of the House of Representatives has supplied the following information in the form of a table answer to the questions. It should be noted that the Clerk and all staff mentioned have entitlements to spouse-accompanied travel, under certain circumstances:

QUESTIONS ON NOTICE
<table>
<thead>
<tr>
<th>Persons travelling</th>
<th>Dates of travel</th>
<th>Purpose of travel</th>
<th>Time overseas</th>
<th>Total cost of travel and cost for spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk &amp; spouse</td>
<td>1-19 January 1996</td>
<td>13th Conference of Speakers and Presiding Officers in Cyprus 4th APPF Annual Meeting, Thailand</td>
<td>18 days</td>
<td>Cost of travel for Clerk $18,614 Cost of travel for spouse $9,628</td>
</tr>
<tr>
<td>Clerk</td>
<td>5-11 September 1996</td>
<td>APPF Executive Committee Meeting in Ottawa, Canada</td>
<td>6 days</td>
<td>Cost of travel for Clerk $6,246</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>7-11 January 1997</td>
<td>5th APPF Annual Meeting in Vancouver, Canada</td>
<td>3 days</td>
<td>Cost of travel for Clerk $7,662 Cost of travel for spouse $5,951</td>
</tr>
<tr>
<td>Clerk</td>
<td>27 June to 9 July 1997</td>
<td>CPA post-election seminar, Zambia, London</td>
<td>13 days</td>
<td>Cost of travel for Clerk $9,192 (partly offset by CPA funding) Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Clerk</td>
<td>1-20 January 1998</td>
<td>Commonwealth Speakers and Presiding Officers Conference, Trinidad and Tobago/bilateral visit to Singapore</td>
<td>21 days</td>
<td>Cost of travel for Clerk $22,233 Clerk’s spouse joined him in Singapore and return to Australia at private expense</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>16 July to 17 August 1998</td>
<td>CPA post-election seminar, Kenya, SADC seminar for committee staff, Zimbabwe</td>
<td>22 days</td>
<td>Cost of travel for Clerk $25,968 (partly offset by CPA funding) Cost of travel for spouse $9,298</td>
</tr>
<tr>
<td>Clerk</td>
<td>18-22 October 1998</td>
<td>44th Annual CPA Conference, Wellington New Zealand</td>
<td>4 days</td>
<td>Cost of travel for Clerk $3,077</td>
</tr>
<tr>
<td>Clerk</td>
<td>5-14 January 1999</td>
<td>Conference of the Standing Committee of the Commonwealth Speakers and Presiding Officers, Ottawa, Canada and appearance on invitation before House of Commons, UK, Procedure and Modernisation Committees</td>
<td>9 days</td>
<td>Cost of travel for Clerk $23,239 Cost of travel for spouse $9,706</td>
</tr>
</tbody>
</table>
### QUESTIONS ON NOTICE

<table>
<thead>
<tr>
<th>Persons travelling</th>
<th>Dates of travel</th>
<th>Purpose of travel</th>
<th>Time overseas</th>
<th>Total cost of travel and cost for spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk</td>
<td>16-24 July 1999</td>
<td>30th Regional Conference of Presiding Officers and Clerks, Suva, Fiji</td>
<td>8 days</td>
<td>Cost of travel for Clerk $4,003 Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>27 April to 6 May 2000</td>
<td>IPU Conference, Jordan and ASGP meetings</td>
<td>10 days</td>
<td>Cost of travel for Clerk $12,847 Cost of travel for spouse $10,531 Clerk’s spouse attended meetings of the IPU’s Finno-Ugric Group, ASGP meetings and held discussions about Australia’s ASGP Executive Committee Representation Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Clerk</td>
<td>14-20 October 2000</td>
<td>IPU Conference, Indonesia and ASGP meetings</td>
<td>7 days</td>
<td>Cost of travel for Clerk $7,367 Clerk elected to ASGP Executive Committee</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>30 March to 22 April 2001</td>
<td>IPU Conference, Cuba and ASGP meetings</td>
<td>24 days</td>
<td>Cost of travel for Clerk $17,675 Cost of travel for spouse $12,579 – Clerk’s spouse attended meetings of the IPU’s Finno-Ugric Group, ASGP general and Executive Committee to assist with the Clerk’s election as Vice President Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Clerk</td>
<td>1-6 July 2001</td>
<td>32nd Regional Conference of Presiding Officers and Clerks, Wellington, New Zealand</td>
<td>5 days</td>
<td>Cost of travel for Clerk $3,108 Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Clerk</td>
<td>5-13 January 2002</td>
<td>Conference of Commonwealth Speakers and Presiding Officers, Botswana and visit to Zambia</td>
<td>8 days</td>
<td>Cost of travel for Clerk $19,000</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>14-26 March 2002</td>
<td>107th Inter-parliamentary Conference in Marrakech, Morocco and bilateral visit to Kuwait</td>
<td>12 days</td>
<td>Cost of travel for Clerk $13,850 Cost of travel for spouse $9,040 Clerk’s spouse attended meetings of the IPU’s Finno-Ugric Group, ASGP meetings and held discussions about Australia’s ASGP Executive Committee Representation Clerk’s spouse accompanied him at private expense</td>
</tr>
<tr>
<td>Persons travelling</td>
<td>Dates of travel</td>
<td>Purpose of travel</td>
<td>Time overseas</td>
<td>Total cost of travel and cost for spouse</td>
</tr>
<tr>
<td>-------------------</td>
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<td>-------------------</td>
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<td>-----------------------------------------</td>
</tr>
<tr>
<td>Clerk</td>
<td>22-29 September 2002</td>
<td>Special session of the IPU Council, Geneva, Switzerland - as Vice-President, chaired ASGP Executive Committee meetings and general sessions</td>
<td>7 days</td>
<td>discussions about Australia’s ASGP Executive Committee representation Cost of travel for Clerk $16,542</td>
</tr>
<tr>
<td>Clerk &amp; spouse</td>
<td>29 March to 12 April 2003</td>
<td>108th Inter-Parliamentary Conference, Santiago, Chile and bilateral visit to Canada - as Acting President, chaired ASGP Executive Committee and general meetings</td>
<td>14 days</td>
<td>Cost of travel for Clerk $7,744 Cost of travel for spouse $7,365 Clerk’s spouse attended meetings of the IPU’s Finno-Ugric Group, ASGP general and Executive meetings to assist with the Clerk’s election as President (funding allocated by IPU will enable costs of the Clerk’s travel, as President of the ASPG to be recovered)</td>
</tr>
<tr>
<td>SES Band 2</td>
<td>23-31 July 1997</td>
<td>28th Conference of Presiding Officers and Clerks, Nauru</td>
<td>4 days</td>
<td>Cost of travel for SES staff member $2,937 Deputy Clerk became Clerk during Conference Cost of travel for SES staff member $3,019</td>
</tr>
<tr>
<td>SES Band 1 (A)</td>
<td>19-22 October 1998</td>
<td>44th Annual CPA Conference, Wellington, New Zealand and bilateral visit to Samoa and Fiji</td>
<td>8 days</td>
<td>Cost of travel for SES staff member $16,497</td>
</tr>
<tr>
<td>SES Band 1 (A)</td>
<td>7-25 May 1999</td>
<td>Lead a CPA team in the training of staff in the newly established Nigerian Parliament</td>
<td>18 days</td>
<td></td>
</tr>
<tr>
<td>SES Band 1 (A)</td>
<td>29 October to 18 November 2000</td>
<td>Training staff in the newly established East Timorese interim National Assembly</td>
<td>20 days</td>
<td>Cost of travel for SES staff member, $7,511, largely met by funding from AusAID</td>
</tr>
<tr>
<td>Persons travelling</td>
<td>Dates of travel</td>
<td>Purpose of travel</td>
<td>Time overseas</td>
<td>Total cost of travel and cost for spouse</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------</td>
<td>-------------------</td>
<td>--------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>SES Band 1 (A)</td>
<td>4-19 August 2002</td>
<td>Canadian Serjeant-at-Arms Conference, Quebec City, Canada and short attachment to the Serjeant-at-Arms' Office, Canadian House of Commons</td>
<td>16 days</td>
<td>Cost of travel for SES staff member $13,461</td>
</tr>
<tr>
<td>SES Band 1 (B)</td>
<td>19-22 October 1998</td>
<td>44th Annual CPA Conference, Wellington, New Zealand and bilateral visit to Samoa and Fiji</td>
<td>4 days</td>
<td>Parliamentary Coopération Seminar, Ottawa, Canada</td>
</tr>
<tr>
<td>SES Band 1 (B)</td>
<td>1-16 May 1999</td>
<td>Parliamentary Coopération Seminar, Ottawa, Canada</td>
<td>16 days</td>
<td>Cost of travel for SES staff member $10,098</td>
</tr>
<tr>
<td>SES Band 1 (C) &amp; spouse</td>
<td>14 August to 8 September 1996</td>
<td>42nd Annual CPA Conference, Kuala Lumpur, Malaysia and bilateral visits to India and Pakistan</td>
<td>24 days</td>
<td>Cost of travel for SES staff member $11,784, Cost of travel for spouse $3,849</td>
</tr>
<tr>
<td>SES Band 1 (C)</td>
<td>13-23 October 1998</td>
<td>44th Annual CPA Conference, Wellington, New Zealand and bilateral visit to Samoa and Fiji</td>
<td>11 days</td>
<td>Cost of travel for SES staff member $3,207</td>
</tr>
<tr>
<td>SES Band 1 (C)</td>
<td>12-26 September 1999</td>
<td>45th Annual CPA Conference, Trinidad and Tobago</td>
<td>15 days</td>
<td>Cost of travel for SES staff member $10,137</td>
</tr>
<tr>
<td>SES Band 1 (C) &amp; spouse</td>
<td>20-29 September 2000</td>
<td>46th Annual CPA Conference, London, United Kingdom</td>
<td>9 days</td>
<td>Cost of travel for SES staff member $9,245, Cost of travel for spouse $7,026</td>
</tr>
<tr>
<td>SES Band 1 (D)</td>
<td>7-13 January 1997</td>
<td>5th APPF Annual Meeting in Vancouver, Canada</td>
<td>7 days</td>
<td>Cost of travel for SES staff member $8,751</td>
</tr>
<tr>
<td>SES Band 1 (D)</td>
<td>6-10 September 1997</td>
<td>APPF Executive Committee Meeting in Seoul, South Korea</td>
<td>5 days</td>
<td>Cost of travel for SES staff member $6,708</td>
</tr>
<tr>
<td>SES Band 1 (D)</td>
<td>6-12 January 1998</td>
<td>6th APPF Annual Meeting in Seoul, South Korea</td>
<td>7 days</td>
<td>Cost of travel for SES staff member $6,573</td>
</tr>
</tbody>
</table>

Note: Capacity exists for the Clerk’s travel costs as President of ASGP to be offset by ASGP funding.
Foreign Affairs: North Korea
(Question No. 1579)

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 24 June 2003:

(1) Did the Prime Minister, in his speech in favour of deploying troops to Iraq, argue that not deploying troops to Iraq would send a signal to North Korea that it could get away with the development of nuclear weapons, and that the consequences of doing so would be minimal.

(2) Has North Korea concluded on the basis of the demise of the Iraqi regime that it should rid itself of weapons of mass destruction.

(3) Has North Korea, in fact, concluded that, as Iraq did not appear to have weapons of mass destruction, North Korea should acquire them as quickly as possible and retain and enhance those it already has.

(4) Was this the lesson that our Government actually wanted North Korea to learn.

(5) Is it the case that at least from 1956 to 1991 North Korea faced approximately 100 tactical United States nuclear weapons immediately south of the demilitarised zone.

(6) Is it the case that in recent months memos canvassing military options including strikes on the Yongbyon nuclear complex, ‘Cuba lite’ blockades and sanctions, and actual ‘regime change’ have been canvassed.

(7) Can the Minister comment on: (a) how the North Koreans are likely to respond to the canvassing of such options; and (b) the likely response of South Korea, Japan, China, and Russia to such discussions.

(8) Can the Minister assure the Senate that: (a) the Australian Government gives no support whatsoever to such discussion; and (b) Australia will make clear its unequivocal opposition not only to such options, but to their discussion in any forum whatsoever.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) On 13 March 2003, Prime Minister Howard, in an address to the National Press Club, stated, in regard to North Korea:

‘If the world fails to deal once and for all with Iraq, it will effectively have given a green light to the further spread of chemical, biological and nuclear weapons and have further undermined the Nuclear Non-Proliferation Treaty and the Conventions on chemical and biological weapons which the world – and not least Australia – has worked so hard to build over the last thirty years or more.

The world, particularly our own region, is rightly concerned at the behaviour of North Korea. That country has blatantly violated its obligations under the Nuclear Non-Proliferation Treaty.

So, far from the challenge of North Korea overshadowing the need to address the problem of Iraq, it adds to its urgency and importance.

If the world is incapable of dealing strongly and effectively with Iraq, it will not effectively discipline North Korea.’

(2) Iraq and North Korea are fundamentally different situations and the Government cannot judge what conclusions North Korea may actually have drawn.

(3) The Government is aware of North Korean rhetoric on this issue, but cannot judge what North Korea may actually have concluded.
(4) The Government remains of the view that failure to disarm Iraq would have sent a message to other would-be proliferators that the international community lacked the resolve to deal with the proliferation of weapons of mass destruction (WMD).
(5) It would not be appropriate for the Government to comment on this issue.
(6) I (Mr Downer) am not aware of any such memos.
(7) It would be hypothetical to speculate on how North Korea and other countries might respond.
(8) The Government supports a peaceful resolution to the North Korea nuclear issue and is working actively towards that goal.

Environment: Plastic Drinking Straws
(Question No. 1580)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 25 June 2003:
With reference to drinking straws:
(1) (a) How many are distributed in Australia each year; and (b) of these, how many enter the open environment.
(2) What are the most environment-friendly options.
(3) Is the Government proposing a ban on plastic straws.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:
(1) (a) My department does not have the resources or the facilities to determine the number of plastic straws distributed in Australia each year; (b) Clean Up Australia advises that drinking straws made up approximately 1.9% of the litter picked up on Clean Up Australia Day 2003. This was down from 2.2% recorded last year. Clean Up Australia advises that 24% of the straws were found in schoolyards and 22% in parks and water front areas.
(2) The Environment Protection and Heritage Council has not identified the issue of drinking straws as a national priority and I am not aware of any lifecycle analysis that has been undertaken on drinking straws. I am therefore unable to provide information on the most environmentally friendly drinking straw.
(3) The Government is not proposing a ban on plastic drinking straws at this time.
It should be noted that under the Constitution, States and Territories are responsible for the management of waste within their jurisdiction.