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SITTING DAYS—2003

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

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- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
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- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
FORTIETH PARLIAMENT
FIRST SESSION—SIXTH PERIOD

Governor-General

His Excellency Major-General Michael Jeffery, Companion in the Order of Australia, Commander of the Royal Victorian Order, Military Cross

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert
Deputy President and Chairman of Committees—Senator John Joseph Hogg
Temporary Chairmen of Committees—Senators the Hon. Nick Bolkus, George Henry Brandis, Hedley Grant Pearson Chapman, John Clifford Cherry, the Hon. Peter Francis Salmon Cook, Alan Baird Ferguson, Stephen Patrick Hutchins, Linda Jean Kirk, Susan Christine Knowles, Philip Ross Lightfoot, John Alexander Lindsay (Sandy) Macdonald, Gavin Mark Marshall, Jan Elizabeth McLucas and John Odin Wentworth Watson
Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin
Leader of the Opposition in the Senate—Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Ian Gordon Campbell
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Leader of the National Party of Australia—Senator the Hon. Ronald Leslie Doyle Boswell
Leader of the Australian Labor Party—Senator the Hon. John Philip Faulkner
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Andrew John Julian Bartlett

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<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
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<td>Abetz, Hon. Eric</td>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.
(3) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Woodley, resigned.
(4) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Andrew Quirke, resigned.
(5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.
(6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.

PARTY ABBREVIATIONS
AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; APA—Australian Progressive Alliance; CLP—Country Labor Party; Ind—Independent; LP—Liberal Party of Australia; NATS—The Nationals; PHON—Pauline Hanson’s One Nation

Heads of Parliamentary Departments
Clerk of the Senate—H. Evans
Clerk of the House of Representatives—I.C. Harris
Departmental Secretary, Parliamentary Library—J.W. Templeton
Departmental Secretary, Parliamentary Reporting Staff—J.W. Templeton
Departmental Secretary, Joint House Department—M.W. Bolton
# HOWARD MINISTRY

<table>
<thead>
<tr>
<th>Position</th>
<th>Minister</th>
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<tbody>
<tr>
<td>Prime Minister</td>
<td>The Hon. John Winston Howard MP</td>
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<tr>
<td>Deputy Prime Minister</td>
<td>The Hon. John Duncan Anderson MP</td>
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<tr>
<td>Treasurer</td>
<td>The Hon. Peter Howard Costello MP</td>
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<td>Minister for Trade</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Deputy Leader of the Government in the Senate</td>
<td>Senator the Hon. Robert Murray Hill</td>
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<tr>
<td>Minister for Finance and Administration and</td>
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<tr>
<td>Leader of the Senate</td>
<td>The Hon. Anthony John Abbott MP</td>
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<td>Minister for Health and Ageing and Leader of</td>
<td>The Hon. Philip Maxwell Ruddock MP</td>
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<td>the House</td>
<td>The Hon. Dr David Alistair Kemp MP</td>
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<td>Attorney-General</td>
<td>The Hon. Daryl Robert Williams AM, QC, MP</td>
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<td>Minister for the Environment and Heritage</td>
<td>The Hon. Warren Errol Truss MP</td>
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<td>and Vice-President of the Executive Council</td>
<td>Senator the Hon. Amanda Eloise Vanstone</td>
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<tr>
<td>Minister for Communications, Information</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<td>Technology and the Arts</td>
<td>Senator the Hon. Kay Christine Lesley Patterson</td>
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<tr>
<td>Minister for Agriculture, Fisheries and</td>
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<td>The Hon. Kevin James Andrews MP</td>
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<td>Minister for Immigration and Multicultural</td>
<td>Let the Hon. Alexander John Gosse Downer MP PTSD</td>
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<td>and Indigenous Affairs and Minister</td>
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<td>Let the Hon. Kay Christine Lesley Patterson PTSD</td>
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<td>and Minister Assisting the Prime Minister for</td>
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<td>the Status of Women</td>
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(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

<table>
<thead>
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<th>Ministry / Position</th>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>The Hon. Peter John McGauran MP</td>
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<td>Minister for Local Government, Territories and Roads</td>
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<td>and Manager of Government Business in the Senate</td>
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<td>Minister for Children and Youth Affairs</td>
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<td>Minister for Revenue and Assistant Treasurer</td>
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<td>The Hon. Patricia Mary Worth MP</td>
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SHADOW MINISTRY

Leader of the Opposition: The Hon. Simon Findlay Crean MP
Deputy Leader of the Opposition and Shadow Minister for Employment, Education and Training and Science: Jennifer Louise Macklin MP
Leader of the Opposition in the Senate, Shadow Special Minister of State and Shadow Minister for Home Affairs: Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade, Corporate Governance, Financial Services and Small Business: Senator Stephen Michael Conroy
Shadow Minister for Employment Services and Training: Anthony Norman Albanese MP
Shadow Minister for Veterans’ Affairs and Shadow Minister for Customs: Senator Thomas Mark Bishop
Shadow Minister for Children and Youth: Senator Jacinta Mary Ann Collins
Shadow Minister for Industry, Innovation, Science and Research and Shadow Minister for the Public Service: Senator Kim John Carr
Shadow Assistant Treasurer: David Alexander Cox MP
Shadow Minister for Ageing and Seniors, Assisting the Shadow Minister for Disabilities: Annette Louise Ellis MP
Shadow Minister for Workplace Relations: Craig Anthony Emerson MP
Shadow Minister for Defence: Senator Christopher Vaughan Evans
Shadow Minister for Citizenship and Multicultural Affairs: Laurence Donald Thomas Ferguson MP
Shadow Minister for Urban and Regional Development and Shadow Minister for Transport and Infrastructure: Martin John Ferguson MP
Shadow Minister for Resources and Shadow Minister for Tourism: Joel Andrew Fitzgibbon MP
Shadow Minister for Health and Deputy Manager of Opposition Business: Julia Eileen Gillard MP
Shadow Minister for Consumer Protection and Consumer Health: Alan Peter Griffin MP
Shadow Treasurer and Manager of Opposition Business: Mark William Latham MP
Shadow Minister for Information Technology, Shadow Minister for Sport and Shadow Minister for the Arts: Senator Kate Alexandra Lundy
Shadow Attorney-General and Shadow Minister for Justice and Community Security: Robert Bruce McClelland MP
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<tr>
<th>Shadow Ministry</th>
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<td>Robert Francis McMullan MP</td>
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<td>Shadow Minister for Primary Industries</td>
<td>Senator Kerry William Kelso O’Brien</td>
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<td>Shadow Minister for Regional Services, Shadow</td>
<td>Gavan Michael O’Connor MP</td>
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<td>Minister for Local Government and Shadow Minister</td>
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<td>Nicola Louise Roxon MP</td>
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<td>Senator the Hon. Nicholas John Sherry</td>
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<td>Senator Joseph William Ludwig</td>
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<td>Parliamentary Secretary (Leader of the Opposition)</td>
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<td>Christian John Zahra MP</td>
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<td>Transport, Infrastructure and Tourism)</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

vii
## CONTENTS

**MONDAY, 13 OCTOBER**

**Business—**  
Rearrangement.............................................................................................................. 16117

**Ministerial Statements—**  
Constitutional Reform: Senate Powers......................................................................... 16117

**Questions Without Notice—**  
National Security.......................................................................................................... 16139
Immigration: People-Trafficking.................................................................................. 16140
Telstra: Email Services .................................................................................................. 16141
Bushfires....................................................................................................................... 16142
Trade: Free Trade Agreement ....................................................................................... 16143
Attorney-General’s: Child Sexual Offences................................................................. 16144
Taxation: Family Payments .......................................................................................... 16145
Immigration: Asylum seekers....................................................................................... 16146
Social Welfare: Carer Allowance................................................................................... 16147
Electoral Roll: Integrity................................................................................................ 16148
Small Business: Government Policy ............................................................................. 16149
Housing: Affordability................................................................................................... 16151
Immigration: Detainees ................................................................................................ 16152
Industry: International Resource Projects..................................................................... 16153

**Questions Without Notice: Take Note of Answers—**  
National Security.......................................................................................................... 16154
Housing: Affordability................................................................................................... 16159

**Petitions—**  
Military Detention: Australian Citizens ....................................................................... 16161
Medicare....................................................................................................................... 16161

**Notices—**  
Presentation .................................................................................................................. 16161
Withdrawal .................................................................................................................... 16165
Presentation .................................................................................................................... 16179
Postponement ................................................................................................................ 16179
Immigration: Detention Centres .................................................................................. 16179
Insurance: Medical Indemnity ....................................................................................... 16179

**Committees—**  
Rural and Regional Affairs Legislation Committee—Reference ............................... 16180

**Notices—**  
Withdrawal .................................................................................................................... 16180

**Truth in Food Labelling Bill 2003—**  
First Reading................................................................................................................ 16180
Second Reading............................................................................................................. 16180

**Documents—**  
Health: Bans on Smoking............................................................................................. 16181

**Parliamentary Zone—**  
Proposal for Works ...................................................................................................... 16181

**Committees—**  
Foreign Affairs, Defence and Trade Committee: Joint—Report .................................... 16181
Education, Science and Training: Roam Consulting—  
Return to Order............................................................................................................. 16183

**Committees—**  
Foreign Affairs, Defence and Trade Committee: Joint—Report .................................... 16185
CONTENTS—continued

Foreign Affairs, Defence and Trade Committee: Joint—Report ................................. 16188
ASIO, ASIS and DSD Committee—Report .................................................................. 16195
National Capital and External Territories Committee—Report .................................. 16196
Spam Bill 2003 .............................................................................................................. 16202
Spam (Consequential Amendments) Bill 2003—
  First Reading ............................................................................................................... 16202
  Second Reading .......................................................................................................... 16202
National Capital Plan (Gungahlin Drive Extension)—
  Motion for Disallowance .......................................................................................... 16204
Ministerial Statements—
  Constitutional Reform: Senate Powers ...................................................................... 16215
Australian Protective Service Amendment Bill 2003—
  In Committee .............................................................................................................. 16229
  Third Reading ............................................................................................................. 16232
Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003—
  Second Reading ......................................................................................................... 16232
  In Committee .............................................................................................................. 16248
Adjournment—
  Agriculture: Dowerin and Newdegate Field Days .................................................. 16254
  B’nai B’rith .................................................................................................................. 16256
  Nuclear Weapons ........................................................................................................ 16258
  Health: Mental Illness ................................................................................................. 16261
  Sir Richard Baker Senate Prize ................................................................................... 16263
Documents—
  Tabling ........................................................................................................................ 16263
Questions on Notice—
  Prime Minister: Visit to China—(Question No. 1819) ............................................... 16264
  Veterans’ Affairs: Military Compensation Scheme—(Question No. 1868) ............. 16264
  Fisheries: Research—(Question No. 1951) ............................................................... 16264
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

BUSINESS
Rearrangement
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—I move:

That government business notice of motion no. 1 standing in his name for today, relating to the consideration of legislation, be postponed till the next day of sitting.

Question agreed to.

MINISTERIAL STATEMENTS
Constitutional Reform: Senate Powers
Debate resumed from 9 October, on motion by Senator Hill:

That the Senate take note of the statement and document.

Senator NETTLE (New South Wales) (12.31 p.m.)—I spoke on Thursday about the fact that the Prime Minister’s proposal is an assault not only on our Senate but also on the Australian democracy—the Senate being the strongest brake that our country has on the absolute power of an executive government.

We have, and we continue to see, a Prime Minister with 43 per cent of the vote in the last election wanting 100 per cent of the power when it comes to setting the legislation that becomes the law of this country.

The point that I was up to was for the Australian Greens to give a word of warning to the Australian Labor Party in relation to this particular debate.

If the Labor Party believe that they will be advantaged as much by this legislation as the coalition at a point when the Australian Labor Party may be in government then they have been hoodwinked. The reason for this is that in the joint sittings of parliament that would have occurred after a 1990 or a 1993 election the Australian Labor Party would not have had a majority. Meanwhile, the Howard government would have had a comfortable majority in all joint sittings throughout the time in which Mr Howard has been the Prime Minister. This pattern is likely to continue into the future, with the Australian Greens or other minor parties winning at least one Senate seat in each state, the Australian Labor Party winning two and the coalition winning three at ordinary half Senate elections. Clearly in the future this legislation is set to advantage the coalition far greater than the Australian Labor Party.

Another word of warning needs to be issued on the conflict around the Senate’s power to block supply. It has been suggested—and mostly by the Australian Labor Party—that, as well as allowing a joint sitting of parliament to occur without a double dissolution election, the Senate should not be able to block any budget or budget related bills. This raises the obvious question of what is a budget or budget related bill. To date we have seen no explanation put forward by the advocates for that position. Almost every bill in the parliament and in the Senate is about the spending or collecting of money. The government could easily ensure that all legislation falls into that category. In fact, if the government of the day—whatever colour they were—knew they could get their legislation through without any debate, without any amendment and without any capacity to block, then surely that is what we would see. In fact the drive to put all legislation into a money bill is exactly the same drive that is pushing this proposal by the Prime Minister to be able to get legislation through without any scrutiny, without any check and without any review.

I would like to give an example that Senator Ray used in the chamber when speaking
on this issue in June of this year. In a question that he asked the Leader of the Government in the Senate, he suggested that a bill to privatise Telstra would be a budget bill but, for example, the ASIO legislation that passed the Senate earlier this year would not be a budget bill. It would be very easy for the government to make the ASIO legislation into a budget or budget related bill by simply bringing into the legislation the increased spending that would come about because of the increased power given to ASIO in that legislation. These issues have been further elaborated on in a letter from the Clerk of Senate, Harry Evans, in which he states:

Unless there is some clear and judicially enforceable distinction between ‘budget and budget related’ bills and other bills, which has not yet been revealed, Senator Ray’s proposal would effectively be no different from that of Mr Howard: the government would have power to pass any laws virtually by decree.

At this point I will seek leave to incorporate that letter from the Clerk of the Senate which was circulated to whips last week.

Leave granted.

The document read as follows—

17 June 2003
Senator Bob Brown
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Brown

Proposed constitutional alteration

Senator Ray’s suggestions

You asked for a note on the proposed scheme of constitutional alteration in relation to the powers of the Senate advanced by Senator Ray in debate in the Senate yesterday as an alternative to Mr Howard’s proposal.

Mr Howard’s proposal is that, whenever the Senate fails to pass government legislation, the government should be able to hold a joint sitting of the two Houses of Parliament to pass that legislation.

The flaw in this proposal has been readily identified: it would allow the government (except in the unusual circumstances of a government majority of only one or two seats in the House of Representatives) to pass any and all legislation without regard to the Senate. With this power, a government could pass legislation designed to avoid scrutiny of its actions and to perpetuate itself in power, for example, by altering the electoral law.

Senator Ray asked in the Senate yesterday how, under Mr Howard’s proposal, a government could be prevented from dismantling accountability mechanisms, for example, by effectively abolishing the office of Auditor-General as was done by Premier Kennett in Victoria, effectively abolishing freedom of information legislation, and tampering with the electoral law. Senator Ray’s proposal is that “budget and budget related” bills should be able to be passed by something like Mr Howard’s proposed mechanism, but that other legislation would still require the consent of the Senate. The specific example given by Senator Ray is that the bill to privatise Telstra would be a “budget or budget related” bill, whereas the government’s ASIO bill would not.

The unanswered question posed by Senator Ray’s proposal is: what are “budget and budget related” bills? Senator Ray has not put forward a definition. He says that the category would go beyond “supply” bills. Judging by the examples he has given, his category of bills would include those which appropriate money or which raise revenue. It is not clear whether all bills which appropriate or raise money would fall into the category, or only bills which appropriate or raise significant amounts of money, or only bills which are announced as part of the government’s budget.

The problem with this is that many bills appropriate money or raise revenue, and the government could easily ensure that all of its legislation fell into this category. Any bill could be announced as part of the government’s budget. Any bill could include appropriation provisions or revenue-raising provisions. To take the examples mentioned by Senator Ray, a bill effectively dismantling the office of Auditor-General could appropriate a large sum of money for contract auditing
for departments and agencies. A bill to dismantle the freedom of information legislation could contain appropriations to allow departments and agencies supposedly to upgrade access to their files and administer their own freedom of information applications on a decentralised basis. A bill to change the electoral law could be accompanied by a restructuring of the Electoral Office with appropriations for that purpose. The government’s ASIO bill could easily have contained special additional appropriations for security. All of these bills would then be “budget or budget related” bills, and could then be passed by the proposed mechanism for eliminating the Senate from the legislative equation.

Presumably a provision distinguishing between “budget and budget related” bills and other bills, inserted into the Constitution, would be justiciable. If it were not, the government could ignore the distinction in any event. If it were justiciable, the validity of bills passed at a joint sitting would depend on whether the constitutional distinction between categories of bills had been observed. Unless the distinction could be very clear, this would be a very fertile field for litigation. Every bill passed at a joint sitting could be challenged in the High Court on the basis that it was not a “budget or budget related” bill. The likelihood is that the High Court would give up attempting to determine such a political question, and would defer to the government’s prescription, so that every bill declared by the government to be a budget bill would be held to be a budget bill.

Unless there is some clear and judicially enforceable distinction between “budget and budget related” bills and other bills, which has not yet been revealed, Senator Ray’s proposal would effectively be no different from that of Mr Howard: the government would have power to pass any laws virtually by decree.

Reference was made in the debate yesterday to the other scrutiny functions of the Senate, for example, through the estimates hearings. I suggest that, if the Constitution were altered to allow the government to pass any laws without the consent of the Senate, the Senate’s scrutiny activities would not last long. The government could simply pass a law establishing a system of statutory joint committees (controlled by the government) and then announce that, for reasons of efficiency, it would no longer cooperate with any separate Senate committees.

Opportunity should be taken to refer to a point made by Senator Hill in his speech yesterday. He said that the kinds of abuses mentioned by Senator Ray did not occur in periods when there were government majorities in the Senate. Over the past 50 years, only two governments have had party majorities in the Senate, the Menzies government from 1951 to 1956 and from 1959 to 1962, and the Fraser government from 1976 to 1981. During those periods, there were government backbenchers in the Senate who were famous for their willingness to vote against their government when it attempted any assaults on the Senate or accountability. When the Fraser government proposed a Constitution alteration in 1977 to alter the term of the Senate, nine government senators voted against the proposal and succeeded in having it defeated at the referendum. The Coalition’s control over its senators was then relatively weak. Since those times, it appears that all governments have controlled their Senate backbenchers to the same extent as their House of Representatives members.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

(sign)

(Harry Evans)

Senator NETTLE—I also take this opportunity to acknowledge that in the President’s gallery sits a range of Greens MPs, all of whom have been elected on a system of proportional representation in New Zealand, in the ACT, in New South Wales, in Tasmania and in Western Australia. As the Prime Minister noted in his document that was tabled in the parliament last week, it is proportional representation that allows a diversity of voices to be represented in our parliament.

I think it is pertinent that today, whilst we debate the Senate proposal put forward by the Howard government, we have in the President’s gallery six representatives from

CHAMBER
the Greens in New Zealand, where an electoral reform campaign has taken place over and beyond the last decade to bring in a system of mixed-member proportional elections, whereby the members who sit in the house are elected on the basis of proportional representation. The campaign in New Zealand came about not because of the will of either of the two major parties in the parliament of New Zealand but because, once the debate was allowed to occur in the community, people were able to recognise the inherent flaws that existed in the electoral system and the way in which the voices of women, the voices of Maori individuals in New Zealand and the voices of other disadvantaged groups were not represented in the parliament. There was a community groundswell, and the trade unions and people who were involved in a wide variety of groups came together and were part of a push in New Zealand that changed the system and brought the capacity for all the voters of New Zealand to have their views reflected in the composition of their federal parliament.

Now, whilst we have this debate in Australia, we have a tremendous capacity to learn from the experiences of our neighbours on the other side of the Tasman in order to ensure that we bring the voices of all of the community into our parliament—and not just into this chamber, the Senate, but also into the House of Representatives. We can do this by following up the Greens’ proposal that was launched some time ago to introduce a system of proportional representation into the House of Representatives. In the Greens’ paper a number of options were outlined, one of which was the MMP system used in New Zealand and another being the Hare-Clark system used in Tasmania and the ACT. There are also parliamentarians from the Greens in the gallery today who represent those electoral systems and the capacity for a diversity of voices to be represented in those parliaments.

I now move to the issue of the terms of election for senators in the Australian parliament. This has become part of the debate not because the Prime Minister has raised the issue but because others have wanted to limit the capacity the Prime Minister currently has to manipulate and call elections for his own political advantage. We saw a clear example of that in the last federal election when the MV Tampa came over the horizon and then an election was called based on the political climate that had been created in Australia, the fear and division that had come as a result of the political campaign around that issue—a climate which clearly advantaged this divisive government in terms of putting their proposals through the parliament. So we need to ensure that, if we are to go down this path of reform, we remove the capacity for prime ministers to manipulate the situation. That is again a word of warning to the Australian Labor Party, about when the government come back and say that they want the capacity to continue to set the timing of elections and to use their ability to manipulate the political climate we are working in.

It is also pertinent to recognise the role this Senate has played in looking after and upholding the rights of working people to collectively bargain and organise, the role this Senate has played in protecting the sick and elderly from facing 30 per cent increases on their essential medicines and the role this Senate continues to play in exposing the fundamental flaws behind the government’s higher education legislation. For all of these things, this brake, this restraint on the power of the executive government of the day would not be possible under the Prime Minister’s proposal. Let us recall that over 98 per cent of the bills voted on in the Senate over the last 30 years have passed. The Senate has been cooperative. But when we look the
other way to see what pieces of private members’ legislation have been passed by the House of Representatives, we find a big zero in terms of the capacity of the House of Representatives to recognise the plurality of voices that are represented here.

The role the Senate has played is what good democracy is about. It is not about the tyranny of the majority. It is not about rubber stamping the Prime Minister’s power. Yet this is exactly what the Prime Minister wants with the so-called reform. The Clerk of the Senate was right when he said last week in response to the proposal before us—(Time expired)

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Before I call Senator Sandy Macdonald, I acknowledge the presence in the President’s gallery, as mentioned by Senator Nettle, of a group of Greens parliamentarians from a number of states, the ACT and New Zealand who are visiting Canberra for meetings this week. I welcome them to the Senate.

Senator SANDY MACDONALD (New South Wales) (12.41 p.m.)—This is an important debate. It is a discussion about section 57 of the Australian Constitution, which deals with resolving deadlocks between the House of Representatives and the Senate. Governments are elected to govern by having the numbers in the House of Representatives, but the Senate is an integral part of the parliament. It is essentially a house of review, still intensely political, no longer really a states house but operating in the governing process, sometimes with high levels of bipartisanship. This is particularly so in the accountability role that the Senate plays in the committee process which has developed year on year—and I think we would all be aware of that. In my brief time here I have seen the committee process gain in power and prestige. I think Australia is fortunate to have this chamber.

Because our Constitution was drawn up before the reform acts in the United Kingdom in, I think, 1911 or 1913, which substantially limited the power of their unelected upper house, our Senate retains the power to block supply—though I understand there was always a convention that the House of Lords did not block supply. The Senate does not have the power to initiate money bills or appropriation bills. The power of the purse is what government is all about; and that belongs, quite rightly, to the House of Representatives. With the power to block, however, ipso facto the Senate can amend almost all legislation, including matters which are of a budgetary nature. I give the examples of the pharmaceutical benefits schemes or the disability pensions arrangements which were flagged in the 2002 budget. This may be good in certain circumstances, but ultimately governments are made and unmade in the House of Representatives. Governments have programs and they are entitled to carry those programs forward, especially if there has been an intervening election. After all, if you think there is a degree of cynicism in the community amongst ordinary people that you should not trust politicians then how much more will this be reinforced if a political party or a government says it is going to do something, has an election and is then frustrated by an opposition or by loopy Independents or by other minor parties that will never ever have the responsibility of government.

After 7½ years there are a number of examples of where the government has been frustrated. The opposition and the Democrats point to the great majority of government programs having been passed—I think Senator Harradine said it was 95 per cent of the government’s program or legislation since the last election. But that is really not the
point. I give two examples—firstly, the sale of Telstra. The government has stated its intention to sell Telstra if and when services have been raised to a satisfactory level, and there are a number of other provisos as well. It said that in the 1996, the 1998 and the 2001 elections. Whether you agree with the sale or not, the government’s program has been up in flashing lights for seven years and the Senate still frustrates the government although it has a clear mandate to sell Telstra. The government retains the right to place conditions on the sale of Telstra but I do not think anybody out there would be under any misapprehension that the intention of the government is to sell Telstra for all the good reasons that have been put on the public record. Governments should be entitled to carry forward their programs, especially if they have been as honest as our government has been on this particular issue. There are some surrounding issues but they are being addressed and I think the government’s program is clearly known and it should be allowed to carry that program forward.

The other example was of course the new tax system. We fought an election on this legislation and after we were returned by the Australian people the Senate decided what parts of the total package were acceptable. I do not consider this to be good government. Others may have a different view. They may say: ‘We improved the legislation and ensured that you were re-elected at the next election. If you had imposed the total tax package as it was you may not have been elected.’ I do not believe that and it is not the point that I am making. The principle is: governments are elected to govern. It is a mark of the remarkable nature of the government’s tax changes—and congratulations to Peter Costello and the work that he did—that we now have a tax system which is a substantial improvement on what it replaced despite the fact that it was tampered with by the Senate. It should have been adopted in its entirety. The Australian people had voted for a government which, when it was returned, was then not able to do what it said it would do and had campaigned on.

I have no problem with either of the Prime Minister’s options. I do, however, believe that, before option 1 operates, legislation under consideration should be introduced into the Senate within the first six months of a government’s term. Then, after a double rejection, the legislation could be passed by a joint sitting. But having been introduced early—as I say, within the first six months—it would be better understood. Almost certainly it would have been part of a previous election campaign either as part of a party’s manifesto or as known government policy, and if that particular party was in government and was to be returned it could then exercise option 1. This will also be appropriate, I consider, for option 2, which is substantially the Lavarch proposal. I have no problem with option 2 either. An early introduction in the previous term would also be helpful for understanding that particular piece of legislation.

I make a couple of final points. In the 1980s the present opposition—as they were then, the Labor government—introduced a number of microeconomic reforms that were good policy and good for Australia. The coalition supported that program—let us never forget that. The difference now is that Labor has supported little if any of the programs we have consistently been re-elected on, be it on tax, on workplace reform, on changes to broadcasting or on the sale of Telstra. The other difference in the Labor years was that the Labor government was almost assured that their program would be supported by the Democrats, a party of the Left that found no difficulty, at the end of a little posturing, in supporting the main thrust of a Labor government’s program. We do not have that lux-
Certainly, in recent times, we cannot rely on the Democrats. Less and less can we rely on the Democrats and, if only they would listen more often to my colleague Senator Andrew Murray, we might be able to rely on their support more often. The position of the Democrats, unfortunately for good government in Australia, remains increasingly unclear on many issues.

Whilst at the time that the Constitution was drawn up it did provide a method by which a constitutional impasse could be reconciled, it remains a cumbersome way to settle a constitutional deadlock. It was a clever constitutional way at the time in 1901 but it uses a sledgehammer to squash a pea. There is nothing in terms of the Prime Minister’s option paper that alters the term of a senator and nothing that changes the voting methods. Both of the Prime Minister’s options provide simpler, easier methods for resolving deadlocks in the legislative program. This is not a grab for power by this or any other government. It is an opportunity for all of us to make a commonsense change to a Constitution that after 100 years requires a little tweaking. It needs some review and I applaud the Prime Minister for putting his option paper out into the community and I look forward with interest to hearing the debate not only in this chamber—but also in the community.

Senator MURRAY (Western Australia) (12.51 p.m.)—Let me first say that I welcome this debate; I think it is an important debate for Australia to have. I do hope that we arrive at a situation where a series of questions are put to the Australian people at the next general election. If my expectations are correct, I would think it will not be the kind of result that the government would like. I want to refer to an excellent report by the Joint Standing Committee on Electoral Matters into the 2001 federal election, which has an even more excellent set of supplementary remarks by Senators Andrew Bartlett and Andrew Murray. In there, on pages 271 to 272, are some observations which I intend to repeat here:

In 2001 Australia’s only two major parties, the Liberal and Labor parties, secured 74.9% of the HoR vote, up from 74.5% in 1998. The Labor Party secured a primary vote of 37.8%, and the Liberal Party 37.1%.

Of the minor parties, the National Party (13 members) and the (Northern Territory) Country Liberal Party (1 member), gained representation in the HoR, with 5.6% and 0.3% of the national vote respectively. Three Independents were successful.

Of the minor parties not represented in the HoR, the most notable were the Australian Democrats 5.4% and One Nation 4.3%.

Overall, over 18% of voters, nearly one in five, were not represented in the HoR at all, having given their primary votes to political parties and independents other than the Liberals, Labor or the Nationals.

Federal election after federal election shows that one quarter of all Australian voters are not major party voters. These voters largely remain unrepresented in the HoR.

This situation has led to campaigns to make the HoR more representative, with suggested reforms ranging from full proportional representation, to a ‘top-up’ party list system to adjust unequal outcomes.

The Australian Democrats have previously proposed that the present system be adjusted for the HoR with a form of ‘mixed member proportional voting’, which provides a compromise between the competing principles of local representation and fair representation.

There have been moves towards proportional voting systems in recent years in unicameral parliaments such as New Zealand, and the new parliaments of Scotland and Wales.

Although nine political parties—and those nine are the Liberal Party of Australia, the Northern Territory Country Liberal Party, the Australian Labor Party, the Coun-
try Labor Party, the National Party of Australia, the Australian Democrats, the Australian Greens, the Australian Progressive Alliance and Pauline Hanson’s One Nation Party—are represented in the two Federal houses of Parliament, many commentators still focus on bipartisan not cross-party politics. Australia is still commonly described in two-party terms.

Australia is a multi party system, but its political discourse often exhibits a two-party mentality.

Typical of multi party democracies, the Australian Federal Government is comprised of a coalition of parties—that is, the Liberal Party of Australia, the Northern Territory Country Liberal Party and the National Party of Australia: three parties—

Like many democratic governments too, its power is disproportionate to its support.

57% of voters do not give their primary vote to the Government in the HoR. Conversely and disproportionately however, it holds 54.7% of the HoR seats.

The nearly proportional representation nature of the Senate (within States and Territories) provides a useful and desirable democratic counter to the distorted nature of HoR representation.

This is reflected in the Government’s share of votes and seats. In the Senate the Government had 41.8% of the national primary vote in 2001, and held 46.0% of the seats.

The role of the Senate as a brake on the excesses of an unrepresentative House of Representatives continues to be the subject of attack. There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the HoR.

It is the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the HoR. It is the Senate that protects the sovereignty of the people, not the HoR, which is dominated by representatives of a minority of voters with a majority of seats.

After the 2001 election 95% of Australians were represented by their party of choice in the Senate. In contrast, over 18% of the HoR were not.

Next, I want to refer to the excellent publication that in my opinion should be given to every senator and member both past and present called Platypus and Parliament: the Australian Senate in Theory and Practice by an American Stanley Bach, which has just been published this month. I will refer to a few items that he mentions and I will also quote from a paper that Campbell Sharman put to the Senate in December 1998.

Governments lack the democratic legitimacy for total control of the legislative process. Governments are generally elected with well under 50 per cent of the popular vote. The Senate’s involvement makes the legislative process more inclusive, democratic and representative. Sharman writing in 1998 said:

The present situation in the Commonwealth Parliament requires governments to compromise so that a larger group than the governing party, perhaps even a body of parliamentarians representing a real majority of voters, supports a proposed measure. This means that, quite apart from any amendments that may be required, legislation is closely scrutinised and the government of the day and its supporting bureaucracy must publicly justify every proposed law to a legislative body whose support cannot be taken for granted.

Around 25 per cent of voters are non-major party voters and the Senate is the only place where they are effectively represented. Sharman said:

... minor party and independent senators speak for a quarter of the electorate and that, whatever principle of representation is used, they have a right to be heard and make their opinions felt. To undermine the legitimacy of the Senate is to deny a substantial portion of the Australian electorate the only effective voice they have in parliament.

If the Australian people wanted the government to control the passage of legislation through the Senate, they would vote in gov-
ernment majorities in the Senate. Only a powerful Senate can operate as an effective house of review and as an effective house of accountability. Sharman said:

The problem is, what is the use of review if it doesn’t include the ability to insist on change? And one person’s commitment to a reasonable amendment is another’s stubborn refusal to see sense. The whole point of reviewing legislation is to take control of the reviewing process away from the government of the day. Otherwise, the reviewing process is of limited use and subject to partisan control by the governing parties. This is graphically illustrated by the ineffectiveness of lower house committees in reviewing legislation.

The Senate has a superb committee system which does a great deal to promote the accountability of the government for its legislation and for its activities. The Senate’s various accountability functions would be undermined by reducing its powers. This is Sharman again:

It should be noted that the removal of the Senate’s power to block legislation would have major consequences for all its other functions. Its committee system, its scrutiny of bills, and its power to keep governments accountable for their actions would all be seriously impaired. A house of review is not a house of review unless it has teeth. To pretend that the reviewing function would continue to work effectively if it were entirely dependent on the sweet reasonableness of governments is a fantasy.

With the executive dominance of the House of Representatives, the Senate is the only opportunity for effective review, as Bach argues:

... the Senate is all that stands between the Australian people and an electoral parliamentary dictatorship.

The public supports the role of the Senate in holding the government accountable. Bach cites surveys conducted by Goot showing that there is no consensus that the Senate should refrain from blocking bills or that its constitutional power should be curbed. Goot concludes:

... all the evidence points to a better educated, more politically aware electorate, welcoming the check on executive power and wanting the Senate to stay.

Sharman says:

... talk of reforming the Senate to remove its potential to force governments to compromise is mind boggling, and could be ignored if it were not taken seriously by sections of the news media. Here we have an institution that is working in precisely the way most of us want our legislature to operate, the only disgruntled players being the government of the day and those interest groups who believe they can do better lobbying the government than persuading minor parties in the Senate. It is the last institution that needs reform, and I hope that there is enough vocal support for its activities to ensure that no government would be rash enough to try to change it.

When Mr Howard went to the election in 2001, he was asked about the two greatest achievements of which he was most proud. At the time, he said they were the passage of the industrial relations reforms in 1996 and of A New Tax System. The proposition put is often code for saying, ‘Let’s get out of the way those minor parties and Independents who represent 25 per cent of the Australian electorate and let’s have a system where we have Labor versus Liberal.’ If Labor had been in the majority in the Senate in those years when those two major reforms Mr Howard is so proud of occurred, you would not have the 1996 IR reforms and you would not have A New Tax System. There are many members of the community who say that might be a good thing, but the idea that a minority government—and it is a minority government—should not be required to negotiate its outcomes where necessary with other parties which hold substantial shares of the electorate’s vote in their own right, and my memory records that the
Democrats had well over a million voters supporting them in 1996 and just under a million in 1998, is frankly a denial of the principle of majority representation. That is the first point I would make.

The second myth that has already been floated is that the bills that are passed—98 per cent of all bills are passed of which about a third are amended—are, in the words I think of the Treasurer, ‘non-contentious legislation’. That is absolute nonsense. I have frequently had members of the government backbench, sometimes even ministers, and members of the National Party come to me—and I know it has also happened to my colleagues—with pleas to take up issues which they have not been capable of winning support for in their own party room. I have had that happen from the caucus I might say as well.

Senator Cherry—And the Labor Party.

Senator MURRAY—Exactly that is why I said ‘caucus’: it is the Labor Party. That is perfectly reasonable because, with a top-down executive situation where the Prime Minister and his cabal tell the cabinet what to do and the cabinet tries to tell the party room what to do, legitimate views on, say—let us choose a good one—the ASIO bill need to be expressed by other parties to get a good compromise view out. There are many members of the Liberal Party and the National Party who are extremely pleased when the minor parties and the Labor Party oppose, reform or adjust legislation. That is a proper part of the democratic process. I will say to you that, although Labor opposed the GST with great vehemence—wrongly. I thought—there were numbers of Labor people in the state legislature and even in this legislature and Labor ministers who came up to me and said, ‘Well done,’ and they were very pleased that we did it.

Senator Marshall—Name them.

Senator MURRAY—That is perfectly natural—there are many points of view in the major parties. I do not think I will name them, Senator Marshall; it might damage my sources. The point about reform and amendment is that it has a far wider supporting mechanism than otherwise you might see. In the case of the Cole royal commission, I note that there are very strong donors to the Liberal and Labor parties—construction companies and others—that are saying to me, ‘By the way, please pass these things entirely.’ Whatever I deal with tax legislation, there are community members who ask us to pursue it. I must say, to the credit of government senators, when they are required to look at legislation objectively they do so and they often make some substantial improvements to what the government intends.

So what are we really talking about then with this debate? We are talking about those bills which the government cannot get compromise on and which they say damage their ability to operate as a government. One of the areas they pick on is industrial relations. I smelt that this lot was coming along so on 18 September I put out a briefing note which I boxed. It was on two issues that week—one was unfair dismissals and one was workplace relations legislation from 1996 to 2003. You will note in my earlier quotes that Professor Sharman says we have to keep an eye on the media and their reporting of these matters. I think we do, too. In the end, they are frequently employees of Mr Murdoch and Mr Packer and I do not regard those people as friends of the Senate. I have noted that some of the media commentary in these areas is remarkably ill informed given the material that is available to them. Let us test this proposition that the government have not been able to get through their IR legislation.

Of those bills put to the Senate from March 1996 to September 2003, 13 workplace relations bills have passed into law.
and, in theory, 11 have not passed. In fact, 13 proposals passed and three proposals did not pass. The 11 reduced to three because six bills were attempts to exempt small business from federal unfair dismissal provisions, two bills related to an attempt to add to existing secret ballot provisions and two bills that did not pass subsequently passed in another form, thus leaving just three rejected proposals—unfair dismissals, secret ballots for protected action and termination of employment.

The coalition employ Chicken Little rhetoric with respect to IR. They claim the Senate holds up their workplace relations agenda and that the coalition’s 1996 workplace relations law needs radical change. They cannot have it both ways. Existing workplace relations law makes a major contribution to Australia’s economic performance. That being so, the federal workplace relations law cannot simultaneously be regarded as seriously defective. It is a fact that we now have lower unemployment, lower interest rates, higher productivity, higher real wages growth and lower levels of industrial disputation than in the past. Working days lost per thousand employees is the lowest ever at 30 days. Simultaneously they are telling us that the laws are awful and we have to change them in a massive way.

The other thing I would remind many people who are not thinking clearly of is that it is the government not the Senate that decides the legislation that is put before this place. All those IR bills stacked up have never been put to the Senate. I would remind people who talk about obstructionism of the point made by Senator Bartlett the other day that well over 40 private senators’ bills are not addressed by the government and the history of obstructionism of the House of Representatives to private senators’ bills is well over 80 per cent rejection, which makes the house of obstruction very definitely the House of Representatives.

Let us return to the federal unfair dismissals area. When the Prime Minister was asked what area was being held up, this was the only one that he nominated. The annual total of federal unfair dismissal cases reduced from 14,707 in November 1996 to 7,129 as at July 2003. The number of employed persons in that time has gone up by 1.2 million; the number of unemployed persons has fallen by 153,000. The proposition the government puts is that getting rid of the unfair dismissal provisions for federal employees would produce up to 80,000 jobs. According to the government there are 600,000 small business employees, so the ridiculous proposition the government puts is that 80,000 jobs will be created from exempting small business employees—approximately 600,000 of them—from access to the regime. The figures do not stack up. The facts do not stack up. This is a debate about attitude, rhetoric and lies.

Senator CHERRY (Queensland) (1.11 p.m.)—I rise to speak on the government’s Senate reform paper released last week. I want to speak not so much on what is in it but what is not in it. Alfred E. Smith, the former Governor of New York in the 1920s, once said:

All the evils of democracy can be cured by more democracy.

I think that is an important benchmark by which we can and should judge this Senate reform package. The key question must be: does it expand or improve our democracy? Indeed I note that the reform paper itself said on page 8:

The solution must be to develop a model which more faithfully reflects the will of the people and the intentions of those who drafted the Constitution.
I think the answer is that this paper fails to improve or enhance our democracy.

From the government’s point of view, the Senate is frustrating the will of the people as reflected by the election of the government in the House of Representatives. This raises the question of how representative the House of Representatives is. In 1998, the British government established a royal commission into its electoral system headed by Lord Roy Jenkins. That commission concluded that single member constituency elections, while encouraging a direct relationship between member and electorates and encouraging strong governments, also had ‘a natural tendency to disunite rather than unite the country’ by exaggerating movements of public opinion with mammoth majorities by excluding the supporters of third parties and by ‘geographically dividing’ parties by denying representation in very large regions. The commission recommended a ‘mixed member’ system, combining elements of single member electorates and proportional representation as a means of overcoming these concerns. Such models have been adopted in recent years in the Scottish, Welsh, London and New Zealand parliaments.

I think the concerns identified by the Jenkins commission equally apply to the Australian House of Representatives. Of the last 21 elections, the House of Representatives electoral system has produced the wrong winner on five occasions. That is, the party that won the majority of the two-party preferred vote failed to win the majority of the seats. Kim Beazley, Andrew Peacock, Gough Whitlam, Arthur Calwell and Bert Evatt are in a select club of Prime Ministers that should have been. An electoral system that produces the wrong result in 20 per cent of elections is a huge threat to national security and unity—far more even than the boat people who keep sailing over our horizon. What would have happened in 1998 if Kim Beazley, having won 51.3 per cent of the two-party preferred vote, had denounced the election result, claiming that the result was not free and fair? What would have happened then in terms of our national unity?

The House of Representatives distorts the will of the people by the nature of its electoral system. Of its 150 members, only 63 won a majority of first preferences at the last federal election. Out of 150 members of the House of Representatives, 87 members sit in their seats in the full knowledge that the majority of people in their electorates would have preferred to be represented by someone else. That is an extraordinary outcome.

Further, the House electoral system denies representation to around one in five Australians who vote for minor parties. At the last federal election the combined votes of the Democrats, the Greens and One Nation was around 16 per cent of the vote, the equivalent of the populations of South Australia and Western Australia combined. If we were to deny representation to the people of South Australia and Western Australia on the basis that New South Wales and Victoria had the majority of people then I am sure those states would have something to say. Yet, when it comes to the notion of denying the equivalent of South Australia and Western Australia in terms of political parties, for some reason that is okay and still within the will of the people.

The electoral system did not produce a single win for these parties, despite the fact they got between 16 and 20 per cent of the vote—although I should note that the Democrats got within four per cent of winning Boothby and the Greens subsequently won Cunningham in a by-election. By contrast, the Senate more accurately reflects the voting will of the Australian people. No party has won a majority of the vote in a Senate election since 1975. As a result, no party has
held a majority in the Senate since 1981. Minor parties continue to be underrepresented in the Senate, but not to the same degree as they are in the House. Over the 1998 and 2001 Senate elections, minor parties won around 24 per cent of the vote in the Senate but won only 16 per cent of the seats.

The Senate may not be perfect, but it more accurately reflects the electoral will of the people than the House of Representatives does. Any test of proposals for constitutional reform should be based on the benchmark: does it make our nation more democratic? Given the House of Representatives is formed on a less democratic basis than the Senate, increasing the power of the House vis-a-vis the Senate would make our nation, as a whole, less democratic. In fact, because the support of the people is needed for any constitutional change, a reform that fails the test of making the nation more democratic is almost certain to fail at a democratic referendum. The Australian people will not accept increasing the power of the Prime Minister at their expense, particularly when the system that produces the Prime Minister falls well short of world’s best practice in electoral systems and electoral fairness.

Senator GREIG (Western Australia) (1.16 p.m.)—I am keen to speak briefly on this issue, not because it is not important but because, rather than echo much of what has been said on this topic—much of which I agree with, particularly from those of us on the crossbench—I want to touch on some issues which I feel perhaps need some further discussion and which have not been fully covered in the debate and discussion so far. The particular issue I want to go to is the question of mandate and what that means to both houses. I think that mandate is very much at the core of the Prime Minister’s intervention in this debate and very much at the heart of how the Australian electorate feels about the Senate and the collision sometimes between the House of Representatives—or government, more particularly—and the Senate.

It is worth nothing that the political make-up of the Senate chamber in 2003 is such that 54 per cent of the political parties represented here are not of the government. More than half the Senate is not of the government, yet the government expects that 100 per cent of the time ought to be used to address government legislation—or, at least, 99 per cent of the time. Further, there is an implied argument there, sometimes stated more specifically, that the government ought to have 100 per cent of its legislation passed by the Senate; that the Senate ought to act as a rubber stamp rather than as a house of review and, on occasion, as a house with the opportunity to prevent the passage of particular government legislation or amended government legislation.

I note, for example, that like the federal parliament the ACT Legislative Assembly has a four-day sitting week and that every Thursday is dedicated entirely to private members’ business. So 25 per cent of the time in the ACT Legislative Assembly is dedicated to non-government business, yet only a miniscule fraction of time in this place is dedicated to private members’ business—despite the fact that more than half of it is constituted by non-government members. Since 1901, only eight private senators’ bills have become law, although 58 of those have passed the Senate. So the House of Representatives record for blocking Senate bills is 86 per cent. Two of the bills which became law were Australian Democrat bills. One was legislation that banned tobacco advertising while another Democrat bill became the basis for the first World Heritage legislation which ultimately was used to save the Franklin.
Currently in the Senate we Democrats have a range of private senators’ bills, including the ABC Amendment (Online and Multichannelling Services) Bill, the Air Navigation Amendment (Extension of Curfew and Limitation of Aircraft Movements) Bill; the Anti-Genocide Bill, introduced by me; a bill dealing with the ABC more broadly; the Charter of Political Honesty Bill; the constitutional alteration bill, dealing with appropriations for ordinary annual services of government; the Corporate Code of Conduct Bill; the genetic privacy bill; the Patents Amendment Bill; the Parliamentary Approval of Treaties Bill; a reconciliation bill; the Republic (Consultation of the People) Bill; the State Elections (One Vote, One Value) Bill; and a bill addressing uranium mining in or near Australian World Heritage properties. Private senators’ bills from we Democrats that have been discharged from the Notice Paper include the Public Interest Disclosure Bill, the Electoral Amendment (Political Honesty) Bill and the Freedom of Information Amendment (Open Government) Bill.

Private senators’ bills that we have introduced into this parliament in the year 2002 include the Ministers of State (Post-Retirement Employment Restrictions) Bill, the Great Barrier Reef Marine Park (Boundary Extension) Amendment Bill, the Australian Broadcasting Corporation (Scrutiny of Board Appointments) Amendment Bill, the Workplace Relations Amendment (Paid Maternity Leave) Bill, the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill and the Public Interest Disclosure (Protection of Whistleblowers) Bill.

This year, Democrat senators have introduced private senators’ bills such as the Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill; the Electoral Amendment (Political Honesty) Bill, which was revised from an earlier bill; the Sexuality Anti-Vilification Bill; the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas Conflicts) Bill; the Textbook Subsidy Bill; the Freedom of Information Amendment (Open Government) Bill, which, again, was revised from a previous bill; the National Animal Welfare Bill; and the Financial Management and Accountability (Anti-Restrictive Software Practices) Amendment Bill.

The point I am making here is that, very often, Independent senators and/or minor party senators speak for a constituency, and they raise an issue or wish to address an issue which is not being thoroughly addressed by the major parties and which goes to the heart of what we would argue is mandate. I can accept and understand that if a bill were to be debated and passed in this place it might not be supported in the other place. I understand that; that is the way our democratic processes are structured and that is the way the numbers may fall. But, as it happens, if a bill passes this place it does not get to the point of being debated and voted on in the House of Representatives because it is suffocated at the point of entry and there is no debate.

I would argue very strongly that, if we are going to have a comprehensive and sensible debate about Senate reform, we must address the fact that the Senate is largely constituted of non-government members and that they too have a mandate to prosecute their agenda and their issues, not by forcing the passage of these things through the House of Representatives because it is suffocated at the point of entry and there is no debate.
the Australian people—ironically, rather than the so-called ‘House of Representatives’.

So, within the broader debate about the role and function of the Senate, let us not forget the opportunity and the right for those of us who are non-government members, and who constitute the greatest number in terms of the political dynamic in this place, to also move on those issues in which we have a key interest, in which we feel passionately and which we believe we have a mandate to pursue.

Senator HARRIS (Queensland) (1.23 p.m.)—I rise to contribute to the debate on the discussion paper on section 57 of the Australian Constitution. It is not a bad idea to identify and understand a problem before you set out to solve it. So what exactly is the problem in respect of which the amendments of section 57 are proposed? A Senate deadlock occasionally frustrates the government of the day but the historic fact is that the will of the people is not frustrated. History shows that the Senate deadlocks mostly occur when the government of the day has lost touch with the people and is pursuing an agenda to which the people of Australia eventually showed they were opposed.

Look at the most famous case: the deadlock of 1975, of which our present Prime Minister was a beneficiary. Although the chant ‘We was robbed!’ can still be heard at ALP barbecues, the fact is that the government of the time was pursuing an agenda in which the people of Australia eventually opposed. When given the opportunity they breathed a sigh of relief and dismissed the Whitlam government. One can say the government of the day was frustrated in 1975 but the people of Australia were not.

Look at what has happened on another five occasions when there have been double dissolutions. The most recent occasion was 1997, over the Australia Card. The Hawke Labor government was returned but did not pursue the divisive issue of the card. In that case the existing process in section 57 served the people well by forcing the government of the day to listen to the people. Did section 57 work? Yes, it did. The time before that was in 1983. The Senate had refused to pass 13 bills and the Fraser government called a double dissolution which removed that government from office. This is another fine example of the Senate empowering the people.

In 1974, six bills were deadlocked. A double dissolution was called and the government was returned. A joint sitting was called and the bills were passed. Once again, section 57 worked. On this occasion it worked from the view point of the Australian people as well as the government of the day. In 1951 a similar situation had arisen in relation to just one bill. A double dissolution was held and the Menzies government was returned. Section 57 worked again. The only other time section 57 was put to the test was in 1914 when a single bill was deadlocked. The double dissolution brought about a change of government. Section 57 had worked again.

In 102 years of federation, section 57 has been put to the test six times and it has worked every time from the point of view of the people. So where is the problem with options 1 and 2 that are put forward in Resolving deadlocks: a discussion paper on section 57 of the Australian Constitution? Why are they being put forward as solutions?
The problem is solely one for governments, because on the majority of occasions when there has been a double dissolution the government which called it has been defeated. These were not occasions when the government was being frustrated in carrying out the will of the people; these were occasions when the government of the day had become the master of the people, not the leader of the people. It is the job of a government to lead but it is not the job of a democratic government to impose its will on those who elected it.

In a democracy leaders lead by persuading the people to their point of view, not by imposing their point of view. I therefore put it to you that the present section 57 is working well. ‘Yes,’ you may say, ‘but that is only from the point of view of the people and not from the point of view of the government.’ Let me remind those in the chamber that any change to section 57 will not be decided by us in backrooms of parliament but by the Australian people in the homes, factories, farms and offices that cover our land. If ever I have heard of an impossible selling job, it is the job which will be faced by this government in selling this scheme to the people. Of the 200 government bills passed by the parliament each year, only a handful—less than two per cent—of the government’s bills are either rejected outright or amended in such a way that the government will not accept them. Many bills pass with amendments and, when the government compromises with the other parties, this produces better laws. At present, there are just four bills that the Senate has rejected outright.

Let me remind representatives of the media, who should be listening to this—and it is ironic that we do not even have a single media representative in the gallery here today—

Senator Santoro—They are probably listening though.

Senator HARRIS—Yes, they will be listening. Let me remind those media people who are listening to the debate that the Broadcasting Services Amendment (Media Ownership) Bill 2002 is one of those bills. That bill would have removed restrictions on overseas ownership and allowed Murdoch and Packer to further monopolise ownership of the Australian media. This is the sort of legislation that the Senate blocks. Let us hope that the media is not asleep at the wheel during this debate. The first casualties of the Prime Minister’s Senate reforms, if they get up, will be the members of the press gallery, their media organisations and our public broadcaster, the ABC. If these reforms are supported, the Liberal Party will be able to force the media ownership changes it so desperately wants.

How different would our country be if the Senate could not stop bad legislation? Think of the larger agenda of the government: a utilitarian grid of industrial relations legislation, the complete privatisation of Telstra, the full-blown privatisation of our health and education system, farmers strangled by deregulation, doctors struggling with Medicare, increases in GST, and the erosion of privacy and civil liberties. Without the Senate, the government of the day, or any future government of our nation, would have carte blanche. The Senate is the only protection that the Australian people have against major political parties running amok with bad legislation.

Let me remind the chamber of some comments by the National Party that have been raised on the issue. The National Party’s national conference over the last weekend was told:

If you want native title fixed up and unfair dismissals fixed up then you’ll have to ‘depower’ the Senate.
The Nationals conference passed a motion, and I would like to put that motion on the public record so that the Australian people are fully aware of the fact that the National Party wants to depower the senate. The motion, as reported by Brendan Nicholson in *The Age* newspaper, reads that the National Party:

Acknowledges the need to develop a mechanism whereby any impasse between the House of Representatives and the Senate can be resolved in a manner which present constitutional and legislative structures do not provide.

Labor’s position, explained on their web site, is very clear. They want reform of section 57 to be considered in the context of two related reforms: firstly, the removal of the Senate’s power to block supply; and, secondly, a move to fixed four-year terms for the House and all Senators. The worrying issue here is that the Labor, Liberal and National parties all agree that the power of the Senate should be radically altered, presumably to progress their own party political agendas.

The current bills that the Senate has rejected could hardly be called critical or essential. They are not bills that are vital to the continuation or smooth operation of the government. The government’s prized reforms have been passed by the Senate, albeit not supported by One Nation. Consider the privatisation of Telstra, the implementation of the GST and the Workplace Relations Act. The passage of such legislation proves without a doubt that the Senate is not obstructing the government’s so-called reform agenda.

The Australian public is not comfortable with a government that has control of the lower house and control of the Senate. The people have shown this with their voting preferences in recent years. Large numbers of Australians do not share the Prime Minister’s view about reforming the Senate because they do not share his views about power. As Harry Evans, the Senate Clerk, pointed out in his paper “Reform” of the Senate the aim of the proposed reforms to the Senate is closely related to the mandate theory of government, strongly supported by the Prime Minister—but not when he was in opposition. Let us look very clearly at the mandate that the Prime Minister claims. Fifty-eight per cent of the Australian people did not vote for the coalition. So, if anyone has a mandate, it is the opposition and the crossbenches, and this is what the government is scared of.

The Senate is not rejecting the government’s legislation. The government is the body that administers all aspects of our Australian society. What is being rejected is the Liberal and National parties’ policies and ideology parading as legislation. The Prime Minister can talk until he is blue in the face, but he does not have a mandate, because he does not have a majority. He does not have automatic consent and he does not have a green light to go ahead with everything that he wants. Changing the ground rules when you cannot get your own way 100 per cent of the time will not curry favour with the electorate. To claim a mandate is an affront and an insult to Australians.

Let me turn to the discussion paper. We have a chapter titled ‘The minority-led Senate’. This title begs the question: why have the Australian people chosen to turn to minor parties? The answer is that the Liberal, National and Labor parties no longer fulfil the true function that the Senate was originally created to perform. If there is to be any reform of the Senate at all, why not implement an antideadlock process which consults the people, not the parliament?

One Nation’s policy since the formation of our party has been to support citizen initiated referenda, or CIR. This process would resolve any so-called deadlocked bills. If a bill is rejected by the Senate twice, have a referen-
endum on it. Put the bill to the people and ask the people whether they want it passed or not. We would soon see that the Senate is not blocking important bills and frustrating the will of the government at all; we would soon see that the Senate is only reflecting the wishes of the people.

One Nation welcomes debate on improving the effectiveness of the parliament. However, any proposed changes must genuinely enhance the ability of the parliament to represent the will of the people and not give the executive government more power. Just because a government is democratically elected does not mean it has carte blanche to do whatever it wants to do. An elected government must accept defeat on certain issues and on certain legislation. That is the democratic process; that is the Senate acting as a brake on bad legislation.

The debate over section 57 is a solution looking for a problem that does not exist. The Senate is the only mechanism that Australians have to stop the privatisation of education and health, the sale of Telstra and legislation that would increase the concentration of media ownership. If a bill cannot stand up to the scrutiny of the Senate, including the scrutiny of the committee inquiry stage which seeks public input, it is simply bad legislation and in all probability should be rejected.

Australia’s democratic process is based upon the election of representatives, who ‘represent’ the will of the people. Just because a certain number of representatives combine to form a government does not negate their responsibility to represent the wishes of voters. The Prime Minister has accused the Senate of being obstructive, but his approach is destructive. He wants to destroy the faith that the voters have in the Senate. The Senate allows the voters’ wish to override bad legislation and political party policy. The only way for this to continue is to preserve and protect the Senate in its current form. The introduction of a citizen initiated referendum on bills that are defeated twice by the Senate would improve our parliamentary process and ensure it is reflecting the wishes of the majority of Australians.

Senator SANTORO (Queensland) (1.41 p.m.)—As many speakers have already noted, the question of Senate reform is a very important one. I do not intend to speak for long on this topic today, as the debate that the Prime Minister has begun has some distance to go. Indeed, it will not be a debate that is conducted solely or even chiefly in this chamber or indeed in this parliament. In speaking today I am making only an initial contribution. I suspect that my thoughts will firm up after further studying the proposal and listening to various responses such as those from senators in this place and I expect to be making further contributions to national debate on this matter.

The Australian Constitution is a dynamic document. It was designed to be that way by the founders of this nation, who were as far-seeing and highly proactive a group of people as have existed. That has always been to our benefit. Indeed, we do not honour our founders sufficiently nor do we give them enough credit for designing in the closing stages of the imperial 19th century—through an original consensus that itself delivered a sense of national destiny—a document that throughout the century of our independent nationhood has been central to managed process of change.

We can look everywhere around the globe and see societies that do not function with half the efficiency of ours. We can examine other national experiences and see that Australia’s egalitarian tradition is indeed unique and immensely robust. We can put other systems of government under the microscope...
and establish, I believe beyond argument, that our system provides the Australian people with direct, democratic benefits that far outweigh those found anywhere else. In this chamber itself we have among us minor party senators and Independents who often make a fine contribution—and I underline that point—to the process of government. Democracy is not meant to be easy. It is a very difficult system of government. It requires, among the many elements desirable for progress and motivation, high levels of goodwill. Australia’s experience is overwhelmingly one of high levels of goodwill in the business of the people’s right to govern themselves.

That is the starting point for any argument about constitutional change or, in this instance, reform of the processes of one of our national houses of parliament. It is true that the proposals canvassed in the discussion paper released last week by the Prime Minister are not radical. I accept that for some there are persuasive arguments for radicalism. The Australian Democrats are an example. They face a battle for electoral relevance with the emerging strength of the alternative Green vote. They seek to defend the turf they have carved out of the political landscape over the past quarter century. But, as in so much else, a radical Australian Democrat agenda for Senate reform runs counter to the public interest.

We have a system that works, and Australians sensibly want to keep it that way. Much is made from time to time of the fact that the Australian Senate is unique in the parliaments that have sprung from the British tradition in that it is a fully elected chamber. But I believe it is right to place limits on the power of an upper house to frustrate the policy of a popularly elected government which has the confidence of the lower house. Our Constitution does this. Section 57, which governs how a dispute between the two houses over legislation may be resolved, provides a mechanism—a mechanism that is in need of some repair. I stress here that it is repair, not reinvention: radicals, please note.

Students of Roman history will recall the vast disputes that corrupted the senate of that imperium. It is perhaps worth reflecting that it was not until very late in Rome’s history—the year 339—that the patrician veto exercised through the senate was abolished. Two millennia later and in an entirely different world, conditions are vastly different. Politics in our country are profoundly democratic, and the Roman experience is of academic interest. Our practical purpose now is to find a way of retaining the Senate as a powerful and responsible house of review while providing a means for the government of the day to enact legislation on which it has campaigned for election. There is no argument, beyond the sort of sorry rhetoric that we have heard from Senator Faulkner and others in this place, between the major parties of Australian politics on that point. The fact is that federal governments in this country are presently formed by either the Liberal Party with the National Party in coalition—but not exclusively in that way—or by the Labor Party.

The proposals for reform that are being canvassed do not offer any future government carte blanche to railroad things through the Senate. The insurance policy that the Senate has always offered the people against excesses by the executive via the lower house would remain very firmly in place. Moreover, the minor parties are now a fixture in Australian politics. I think the Democrats are right to say, as Senator Bartlett has, that the Australian electorate is comfortable with having a party in the Senate in the balance of power role when that party acts responsibly. I stress the words ‘when that party acts responsibly’. To that extent, Australian politics has changed over the past
quarter century perhaps more than in the pre-
ceding three-quarters of a century. In a de-
mocracy the people rule—they vote and they
rule. To put it plainly, the political battle is
fought and won by argument, and the peo-
ple’s vote seals the bargain.

In the context of reform of Senate proc-
ress—and it is reform of process that we are
debating, not reform of the Senate: a very
important distinction that we must not lose

sight of—we are now in a political battle. The
Labor Party has proposals that would
link reform of Senate process to far-reaching
reform—and I use that term loosely in this
context—of our parliamentary system. Fixed
terms for parliaments in our system of re-
sponsibility government are not necessarily to
be regarded as a sensible reform. They could
injure the vital dynamic of the parliamentary
system. Our executive is not only responsible
to parliament but also actually part of it. We
do not have a congressional system as in the
United States, where Congress does its thing
and the President sits in the White House and
works out how to deal with the outcome, and
vice versa. At this stage, I believe, Labor
would be well advised to reconsider its at-
tachment to fixed terms for the national leg-
islature, certainly to the extent of examining
the option with an objective eye instead of
political spin. For me, and I believe for the
overwhelming majority of Australians, the
bottom line is that the Senate must retain its
power of review.

At this point I am inclined to favour op-
tion 2 in the discussion paper: a joint sitting
following an ordinary election. This would
be a cautious reform of the section 57 provi-
sions that would resolve issues without the
expense of a double dissolution. It would
reinforce the natural desire of any democ-
ratie government to negotiate the detail of its
policy through a genuine house of review. It
would put pressure on the government of the
day to look favourably on Senate suggestions
and amendments. There is always pressure
on a government to listen carefully to Senate
argument and to improve its legislation as a
result. Indeed, it was this democratic pre-
mium that prompted me to call for the rein-
troduction of an upper house in my maiden
speech to the Queensland parliament in
1989, when I was in that place. Let us have
the national debate that this discussion paper
is designed to both generate and inform and
then reach our conclusions individually and
collectively.

Senator ALLISON (Victoria) (1.49
p.m.)—I too rise to join this debate about the
Prime Minister’s discussion paper Resolving
deadlocks. The first point I want to make is
that there is no deadlock. The Prime Minis-
ter’s discussion paper on the Senate is a fic-
tion. In his case for change, the Prime Minis-
ter says:

... it is virtually impossible for a government to
obtain a majority in the upper house, no matter
how large its majority is in the lower house.
That is a nonsense, too. A party needs only to
win 50 per cent of the Senate vote to deliver
it the majority of seats. I would argue that if
there was so much anxiety about the gov-
ernment not having a majority in the Senate
then we would not have 25 per cent of the
voting population voting for neither the ALP
nor the coalition.

The point is that the Australian people
have not, for some time now, seen fit to give
any government absolute power. The election
result that followed the constitutional crisis
of 1975—triggered by the coalition blocking
supply—showed that people expect the par-
liament to use its powers to check govern-
ments that overstep the mark. I do not agree
that the coalition should have blocked sup-
ply, and the Democrats would not join the
opposition to do so, now or ever. The point I
want to make is that a sizeable chunk of the
voting public does not have the same
qualms. I would argue that there is little point in having a parliament if all it can do is pass the government’s legislation unamended. For one thing, most of the amendments moved in the Senate are moved by the government. Very often the government itself recognises errors in drafting, poor policy or just things they did not consider, usually because they have consulted inadequately.

The Senate does the government’s consultation for them. It consults with anyone who wishes to make a contribution to the debate, and it does this through its excellent and comprehensive committee system. Bills are examined by these committees if they are complex or contentious, or where senators simply determine that they need to know more about their implications. In fact, the Senate has a procedure that gives us time to scrutinise legislation. When the government wants to exempt bills from the so-called cut-off, the Senate has to agree. In recent times, a quarter of all bills that the Senate has dealt with have been brought to the Senate late by the government. I would argue that it is the government that frustrates the orderly scrutiny of legislation, and it does this now routinely. The gloriously democratic feature of the Senate is its practice of drawing upon the advice of academics, experts, unions, representative bodies, people directly affected and ordinary individuals who might just have a view.

The amendments put and agreed to in the Senate since I have been here, I would argue, have probably kept this government in office. Some would say that might not be a good thing. Telstra would have been sold despite the fact that at every poll that has been taken in this country more than half the population say they disapprove. Commonwealth public servants would be worse off, losing their pensions. That is just to name a couple of things. Employers would be entitled to dismiss employees even when it was unfair. The sick would be charged more for medicines even though promised cost-saving reforms to the PBS have been forgotten. People on disability support pension would be joining the long queues of unemployed people going through the government’s so-called activity tests.

I refer here to seven bills that have now been twice rejected by the Senate and that are now triggers for a full Senate election. Nowhere in this document is there mention of these seven bills. The Prime Minister says that a huge amount of legislation is being stopped in the Senate. The paper says there is a permanent veto on the government’s legislative agenda. Others in this place have already pointed out the vast number of bills that are passed and the fact that these seven represent a very small percentage of bills in this place.

The paper says there has been a pattern of frustration. No doubt that is so. I, too, get frustrated when the government cannot see the most obvious flaws in its legislation. Take the ludicrous decision to impose an excise on alternative fuels from 2008 without any thought for what this might mean for the sector. The government will probably reverse this decision, but only because the Democrats in the Senate have put the case that Australia needs a diverse fuel mix. Unless you have realistic targets and determine what will be needed to achieve them, you can forget the industry. It will just go. There will be no more LPG, CNG, LNG, ethanol or other biofuel industry in our transport industry. Why was the decision made when anyone in the alternative fuel sector, if they had been asked, could have told the government what the consequences would be? The answer is arrogance. We are facing a government that is frustrated by being presented with the truth, a government that wants only to hear its own version of reality.
We have heard a lot about the politicisation of the Public Service. People who know that alternative fuel is better for air quality, greenhouse emissions, local jobs and the incomes of farmers are silenced because the decision was made for other reasons—free market ideology, party donations from petroleum companies, ignorance, disputes between ministers, payback, political expediency. That is what this decision was about. This is just the most recent example of the government getting it wrong. Thankfully the Senate puts aside much of this by calling for the evidence.

The government’s arguments for reform are hollow. The government says there is a need to rebalance the relationship between the two houses and ensure that, where the houses are deadlocked, the parliament as a whole may reconcile the differences as expeditiously as possible. We think that any rebalancing should change the House of Representatives so that their debate has some purpose, some effect, instead of being simply a rubber stamp, with more rhetoric than substance in what is said. We also think that it is time the government stopped being obstructionist about the documents that are ordered to be provided by the Senate. In the last Labor term, 1993-96, there were 53 orders, 92 per cent of which were complied with. In the 1998-2001 parliament, there were 56 orders, only 73 per cent of which were complied with. Since 2001, that rate of compliance has dropped to 44 per cent.

The government could also provide more days for sitting. The last two years have been the shortest non-election sitting years since the mid-1970s. Recently we lost another two days to estimates. The government is unwilling for us to deal with legislation on the days that we are recalled to hear the US and Chinese heads of state on 23 and 24 October. Despite this, the Senate has passed an enormous number of bills. The average for 2001-03 is the same as the number we dealt with in 1999, when we had 19 extra sitting days.

It seems obvious to us that the government wants to push the Senate to deal with its unpopular bills at the end of this session—in the dead of night when it hopes that there will be less scrutiny. But even then there will be no deadlock. The Senate will continue to do its work as it has always done. We in the Democrats will continue to play our constructive role in the passage of legislation. We say the Prime Minister should rethink his discussion paper. It is fundamentally flawed and it is seriously misleading.

Senator MURPHY (Tasmania) (1.57 p.m.)—I will speak very briefly in the 1½ minutes that are left before question time, and will continue when we bring the debate back on. With regard to the government’s paper—the Prime Minister’s paper, as it is called—the executive summary at paragraph 3 says:

It has been the bedrock of stable democratic government in this country for over 100 years.

Then the Prime Minister sets out his case for changing all of that. At page 6 of this document, it says:

First, the introduction of proportional representation in 1948, taking effect in 1949, has fostered the development of minor parties.

This has been a valuable evolution in the representative character of the Australian Parliament.

It then proceeds to set out the case for why we should not have it. That is all very interesting. It is a shame that so much good paper contains so much nonsense.

Over the years, governments have wanted—and have had at different times—control of the Senate in the parliament. But people have rejected proposals to reduce the power of the Senate—indeed the control of the Senate, and it changed in 1983 for the better—because governments have consis-
tently lied to the public. Prior to an election, governments promise certain things. Who could forget this Prime Minister’s core promises which became non-core promises over time? There was the issue of what was a core promise and what was a non-core promise. All of those things add up to lies to the public.

Senator Brandis interjecting—

**Senator MURPHY**—This is the claim of what is supposed to be a popularly elected government—a government that says, ‘Look, we were elected on a popular basis to put in place the policies that we took to the people.’ They are often changed—I take Senator Brandis’s interjection—and the general public of this country are often lied to. That is why this Senate is constructive in the way it is and that is why it should remain constructive in that way. It is the only way the Australian public are going to be assured that this place will keep a check on governments of the day to ensure that they actually do deliver what they promise the general public of this country prior to a general election. That has not been the case in the past, and history has proven it to be so, regardless of which party has held power in the parliament. The crossbenches have a very important role.

Debate interrupted.

**QUESTIONS WITHOUT NOTICE**

**National Security**

**Senator LUDWIG** (2.00 p.m.)—My question is to Senator Ellison, Minister for Justice and Customs. What arrangements have been put in place to allow the Attorney-General to take control of counter-terrorism functions of the Federal Police, as reported in today’s media? What is the current timing of Project Merida, the foreshadowed integration of the Federal Police and the Australian Protective Service? Will these new administrative orders change the timing and the focus of Project Merida?

**Senator ELLISON**—The installation of a new Attorney-General will not affect in any way the merger of the Australian Protective Service with the Australian Federal Police. As senators know, the Australian Protective Service is now an operating division of the Australian Federal Police, and we have legislation which will put in place the completion of that merger. The government has nothing at all in relation to its security measures which would interfere with that.

In relation to Attorney-General Philip Ruddock, the Attorney-General has said that what he will do is oversight national security, and that will include also the Australian Customs Service and the Australian Federal Police. As the senior minister for the portfolio, he has an oversight of all matters within the portfolio. Just as the previous Attorney-General had responsibility for national security, he too will have responsibility for it, and this will include those areas of national security which involve Customs and the Australian Federal Police. I will work closely with the Attorney-General. We have discussed this and there will be a seamless team between the two of us working on all issues across the portfolio.

**Senator LUDWIG**—Mr President, I have a supplementary question. What will the administrative arrangements be and who will control the bomb squad, the sky marshals and the explosives detection canines, and for that matter the Australian Protective Service? Will those be directly controlled by the Attorney-General or will you still have some function left? On that matter, what functions of the AFP will you still continue to administer, given the Attorney-General’s comments in the media today?

**Senator ELLISON**—What the Attorney-General has said is that he is going to take an
active role in overseeing national security. Under the Australian Federal Police Act, I have responsibilities as the minister which I will continue to have. Of course, the responsibilities that the AFP carries out with the Australian Protective Service will remain the same in relation to counter-terrorism and bomb detection and I will have responsibility for the running of the APS and the Australian Federal Police.

Immigration: People-Trafficking

Senator PAYNE (2.03 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on the very strong stand taken by the Howard government on combating the appalling trade of people-trafficking?

Senator ELLISON—This is a very important question from Senator Payne, who has taken a close interest in what is a repugnant trade dealing with people-trafficking, particularly the sexual exploitation of women and children. Today I announced on behalf of the government a national action plan for the Commonwealth to fight this appalling trade which focuses on women and children. Much has been done by the Australian government in the fight against people-trafficking and we have seen that work in relation to the Australian Federal Police—eight prosecutions in the courts at the moment and 18 investigations being carried out—and work being done with the departments of Immigration and Multicultural and Indigenous Affairs, Family and Community Services and the Attorney-General as a whole-of-government approach to this. As well as this, the Minister for Foreign Affairs, Minister Downer, announced an $8.5 million plan in relation to AusAID to fight people-trafficking in the region.

Importantly, today’s whole-of-government approach, a comprehensive $20 million strategy, outlines a number of initiatives. Firstly, there will be a 23-man strike team in the Australian Federal Police, which will be housed in the Transnational Crime Centre. There will be a community awareness program which will be targeted at the sex industry and in the wider community to make it known that we will not tolerate any trafficking in women or children, or any other person, for that matter, and to create or heighten awareness in relation to what is an appalling trade.

In relation to other areas, we will look at flexibilities in relation to visas, and in relation to victim support through Family and Community Services. This sends a very clear message to the victims that we will stand by them and facilitate their ability to give us assistance to crack down on people-smuggling. As well as that, we will also post a further immigration officer in Thailand. That will be of great value, particularly in Thailand, which is an area of concern. We will have closer links develop between the department of immigration and the Australian Federal Police and we will also have developed a reintegration assistance project for trafficking victims who are returned to key source countries in South-East Asia. We will also ratify, once all domestic arrangements are in place, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. We will also bring in legislative amendments to make telecommunications interception available in connection with trafficking offences.

We will have a review of the legislation in place. We have found internationally that there have been varying definitions in relation to people-trafficking and that there have been practices which have arisen which we need to target, such as debt bondage. That is something we have to make sure is covered in our law and which we target. Of course, it is no secret that Australia in 1999 passed
some of the toughest anti-trafficking laws in the world. My predecessor, Senator Vanstone, put in place offences which carry maximum penalties of up to 25 years imprisonment in relation to sexual servitude, servitude, slavery and other offences of a similar nature.

We are deadly serious in relation to our fight against people trafficking, particularly the sexual exploitation of women and children. This is a comprehensive package which involves the Minister for Immigration and Multicultural and Indigenous Affairs, the Minister for Family and Community Services, particularly in her position as Minister Assisting the Prime Minister for the Status of Women, the Minister for Foreign Affairs, the Attorney-General and me. What we need to do, though, is also employ the assistance of our neighbours in the region, because Australia on its own cannot beat this vile trade.

At home, we also have to have the assistance of the states and territories because the regulation of the sex industry is, after all, a state and territory responsibility. It was heartening to see at the Australian Police Ministers Council that the states and territories agreed this was a national issue. That ministerial council has agreed to put into place a national plan in relation to the fight against this illegal trade. Of course, this is a matter which had been of concern to this government for some time. This is a matter that was raised at the Bali people-smuggling conference last year and this year, and I have been raising it with my counterparts from the region and will continue to do so. People trafficking, particularly the sexual exploitation of women and children, is something that this government will not tolerate. This strategy we have announced today is a great step forward in the fight against this illegal trade.

**Telstra: Email Services**

**Senator Mackay** (2.08 p.m.)—My question is to Senator Kemp, representing the Minister for Communications, Information Technology and the Arts. What exactly has caused the major email debacle which has affected tens of thousands of Telstra BigPond customers? How many customers have so far been affected? Is it true that both dial-up and broadband customers were hit, with user names beginning with M or H being the most severely affected? What other customers are copping it? What is the government doing about this mess which is affecting the profitability of small businesses all over Australia?

**Senator Kemp**—In response to Senator Mackay, I do have a brief here, Senator, from the minister for communications. Let me just inform you that we are aware of reports that Telstra customers have been experiencing difficulties with the provision of BigPond email services which have caused delays in the receipt of incoming email. I am also aware of reports that customers with other service providers have also been experiencing email difficulties. In relation to BigPond, I understand the media reports indicate that this is a technical issue relating to Telstra’s upgrading of its email service software systems. While Telstra is partially government owned, it is an independent corporation, Senator, with its board and management responsible for the day-to-day running and commercial operations of the organisation. Telstra, I understand, has assured customers that, while the emails they have sent may arrive late, no messages will be lost.

**Senator Mackay**—Mr President, I ask a supplementary question. I ask the minister again: can he advise how many customers have so far been affected and is it true that both dial-up and broadband customers were hit, with user names beginning with M and H
being the most severely affected? Further, given that the Telstra web site says it expects ‘major or widespread’ service disruption of services today, tomorrow, on Thursday and on 21 October, are the government and Telstra preparing to face possible claims for losses as a result of this incredible blunder? How much will Telstra have to expend compensating those customers who have suffered economic loss from the outage?

Senator KEMP—I am not sure you listened very carefully to my response, Senator, but let me make the point that Telstra is an independent corporation, with its board and management responsible for day-to-day running of the corporation—as a result, I believe, of a Labor Party initiative while they were in government. That is what I believe, Senator, so you might take that point on board and remember that. The second point, Senator, is that I do not think you appreciated that Telstra has assured customers—that is the advice I have received—that while the emails they have sent may arrive late, no messages will be lost. There are a number of other matters which you raise in the questions, Senator. Because I always seek to help senators I will draw those questions to the attention of the minister for communications and I will inform you of any response that he may be able to provide to you.

Bushfires

Senator McGAURAN (2.11 p.m.)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Will the minister update the Senate on the government’s commitment to delivering on a national approach to bushfire fighting and prevention? Is the minister aware of any alternative approaches?

Senator IAN MACDONALD—I thank Senator McGauran for that question about bushfires. Of course this is something that is uppermost in our minds as we approach this year’s bushfire season. We all remember with horror the fires that swept through Victoria, New South Wales and, indeed, the Australian Capital Territory at the end of last year and early this year. Senators will remember that in the ACT four lives were lost and more than 500 homes were destroyed. That really brings home that these fires do impact upon metropolitan Australia as much as they impact upon those of us living in rural and regional Australia. As forestry minister I am always appalled to think that with almost three million hectares of trees attacked and some destroyed as a result of the bushfires, that compares very unfavourably with the tiny amount of native forest that we actually harvest in Australia every year. The bushfires consumed about 51 years of sustainable native logging in Australia.

The Commonwealth have been concerned about this. We have provided some $5½ million to help the six states and two territories in their aerial firefighting efforts. We have also provided some $115 million to a bushfire cooperative research centre. As well, the Commonwealth were a major sponsor of the International Wildland Fire Conference, which I opened in Sydney a couple of weeks ago. To pursue the Commonwealth’s interest in providing national leadership in the fight against wildfires the Prime Minister announced just last Friday a national inquiry into bushfire management, prevention and mitigation to be conducted under the auspices of COAG. Mr Stuart Ellis AM, who previously served with the Australian defence forces and is currently the CEO of the South Australian Country Fire Service, will head the inquiry. He will be assisted by Professor Peter Kanowski from the ANU and Professor Robert Whelan from the University of Wollongong, both learned academics with a lot of experience in forestry and fires. They will be assisted by the recent audits in the various state areas. They will also work
very cooperatively with the states to try and get to a decent conclusion from this particular inquiry.

There will be submissions sought from the public. They will be written, in the first instance. The inquiry will not duplicate the work currently being undertaken by the federal parliamentary inquiry or by state and territory inquiries. In the federal inquiry under the chairmanship of Mr Gary Nairn, the member for Eden-Monaro, 16 days of evidence were taken and we expect the report to be tabled in the first week of November.

One of the things that the bushfire problem does draw to our minds is the lack of wisdom in the states going for the easy political option of creating new national parks every time a state election comes around. Too often we see the states building on the political goodwill of creating national parks but they do not at the same time put the resources, the people and the finances into the management of those parks. As a consequence you get fuel build-up and more horrendous fires of greater intensity than would normally occur. So, hopefully, this inquiry will look at all of those issues and make recommendations which both the Commonwealth and all the state and territory governments can follow. (Time expired)

Trade: Free Trade Agreement

Senator LUNDY (2.16 p.m.)—My question is to Senator Kemp, Minister for the Arts and Sport. Given that free trade agreement negotiations with the US are well underway, can the minister confirm that the Australian government is negotiating with the US about the issue of audiovisual content and Australian content regulations? Minister, given there is an exclusion clause for Australian content in the Australia/Singapore free trade agreement, why isn’t the government insisting on the same arrangement for the US trade talks?

Senator KEMP—Thank you, Senator Lundy, for that question. The government has made quite a range of statements on this issue and they have always been consistent, not like the confusing statements which have come out from the Labor Party on the free trade agreement. One of the things that the public would very much like, Senator Lundy, is for the Labor Party to make its position very clear on the free trade agreement, which offers the potential I think to benefit the Australian economy by billions of dollars. The government is aware of the concerns that have been expressed by various members of the cultural sector and I am pleased to say it has consulted key cultural organisations and leading practitioners at all stages in the negotiations. Senator Lundy may be aware that in the statement of objectives for the FTA the government has made a strong public commitment to ensure that the outcomes in negotiations do not undermine Australia’s ability to meet fundamental cultural policy objectives. The trade minister, Mr Mark Vaile, has confirmed that, and I quote Mr Vaile:

We will ensure our capacity to support Australian culture and national identity including in audiovisual media is not watered down in the negotiations.

The offer made to the US in relation to the audiovisual services sector is fully consistent with these statements. We are considering discussing this offer with the US and have explained the nature of our policy regime. In particular we have emphasised that our policies are aimed at ensuring opportunities for Australian cultural expression and not restricting access to foreign material.

Senator Lundy would be interested in the comments of the US chief negotiator, Ralph Ives. He has stated publicly that the US is not seeking elimination of local content rules for free-to-air TV or the elimination of subsidies. This recognises that the local content system works for Australia and that a high
level of openness already exists in the film and TV sector. As the negotiations progress the government will in consultation with cultural sector—and I stress, in consultation with the cultural sector—examine the requests made of Australia and we will do so bearing in mind the commitments that we have given to the sector and the importance of the rich and diverse cultural life that this means to Australia. The free trade agreement is one which I think many Australians have welcomed. The problem is I think that the Labor Party’s position, as in so many other areas, is confused, and where Senator Lundy is concerned it is particularly confused.

Senator LUNDY—Mr President, I ask a supplementary question. I will give the minister another opportunity. First, I ask the minister to confirm that he is aware of the view of the Australian Coalition for Cultural Diversity, which includes Australia’s peak cultural institutions, which has stated:

We advocate that the Australian Government refrain from proposing or accepting trade liberalisation commitments that would in any way limit its freedom to support and foster Australian Culture, whether in the context of negotiations within the WTO or within any other trade negotiations.

Given this concern, and given his ambiguous response to the previous question, will the minister guarantee that the Howard government will accept nothing less than the same exclusion clause for cultural content for the Australian/US free trade agreement that is in the Australian/Singapore free trade agreement? Minister, can you give that guarantee?

Senator KEMP—If there were a standing order against overacting, Senator Lundy would be excluded from this chamber. Senator Lundy, I think you should take heart from the comments of the government minister for trade, Mr Vaile—and he has made it clear—that we are not going to negotiate away our ability as a nation to ensure the objectives of local content. In fact, Senator Lundy, during wide-ranging consultations with industry—with actors, producers, directors and writers—over the last couple of months my colleague Mark Vaile and I have made that very point. Unlike you, Senator, we have maintained close contact with the industry and we will continue to maintain that close contact with the industry as we discuss with the United States the issues surrounding access for audiovisual products.

Attorney-General’s: Child Sexual Offences

Senator MURRAY (2.21 p.m.)—My question is to Senator Patterson, the Minister representing the Minister for Children and Youth Affairs. Is the minister aware that the Attorney-General last week answered ‘no’ to the following question on notice concerning children? That question was:

Given the findings of the Australian Institute of Criminology Issue Paper Number 250 of May 2003, which included the following observations:

(a) when asked if they would ever report on sexual abuse again following the experiences in the criminal justice system, only 44 per cent of children in Queensland, 33 per cent in New South Wales and 64 per cent in Western Australia indicated they would; and (b) in a case study of a cross examination in a Queensland committal, the crying child was repeatedly shouted at and asked more than 30 times to describe the length, width and colour of the penis of the accused:

(1) Does the Attorney-General intend to coordinate through the Council of Australian Governments far more sensitive and appropriate methods of enabling reported child sexual assault to be effectively pursued in state and Commonwealth courts and jurisdictions.

Does the minister representing the portfolio for children and youth affairs agree that to answer ‘no’ to such a question is a shocking and appalling indictment of government insensitivity? (Time expired)

Senator PATTERSON—Senator Murray would be aware that I do not represent the
Attorney-General here and I have not seen the question on notice or the answer, and I do not think I would be expected to see every question on notice to every minister. I will look at the question and discuss it with the Attorney-General. I believe that there have been some rules made—again, it is not my portfolio—and that the way in which evidence can be taken has been changed and that it is now able to be taken by video to protect children. But, as that area is outside the scope of my portfolio, although I still have overall responsibility for children and youth—except that Mr Anthony actually does that as the junior minister—I will have a look at the question on notice and get back to you if I have anything further to add.

Senator MURRAY—Mr President, I ask a supplementary question. Does the minister representing children accept that such an attitude by the Attorney-General in saying just ‘no’ to that question means that children will continue to be discouraged from pursuing child sex abuse in court and that the only beneficiaries of such an outcome are paedophiles? Will the minister with responsibility for children apply cabinet pressure to change the views of the wrong-headed and hard-hearted in the Attorney-General’s office?

Senator PATTERSON—As I said, Mr President, I will look at the question and I will look at the answer. I am not questioning Senator Murray’s interpretation of the question and the answer, but I think it is inappropriate to say anything further until I have actually looked at the question and looked at the answer.

Taxation: Family Payments

Senator MARK BISHOP (2.24 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. What is the status of the departmental investigation into why 18,000 high-income families are receiving family tax benefit A? Has it been completed? Can the minister now provide those results? If not, why not, given it has now been two months since her department discovered the payments were being made?

Senator PATTERSON—The government is committed to ensuring that only those entitled to FTB receive it. FTB payments are reconciled with taxable income and, if the income is underestimated, any FTB overpayment is recovered. The majority of families, over 80 per cent, who had incomes of more than $100,000 during 2001-02 received provisional entitlement to FTB part A during the financial year and ended up with a debt for the entire amount they received because they underestimated their income. Around four per cent of families were covered by the child disability allowance and savings provisions implemented in 1992. These families were entitled to FTB part A free of the income testing arrangements. The remainder of families were eligible for FTB part A because they had a large family. For example, a family with four children all under 12 years of age can earn up to $107,285 before FTB cuts out and/or a family who received an income support payment for at least part of the financial year are entitled to receive their FTB part A under the income testing arrangements that apply to income support recipients. There is another briefing here, I believe, on people who earn in excess of that and who are very high-income families. I will see if I can get back to you on that one. But the department is having a look at it and there are some explanations for the—

Senator Faulkner—Are you struggling with that folder?

Senator PATTERSON—You might struggle too, Senator, but I would be concentrating on making sure you get re-elected as No. 2 on the ticket. The review that Senator Vanstone announced on 15 August has made
good progress. As I said to you, for all of the 664 income support customers with incomes apparently over $100,000—I will just talk to you about the ones with incomes over $100,000—the review has found that 453 customers were entitled to income support and 20 were not. All of these 20 customers were previously identified, reviewed and cancelled as part of Centrelink’s normal compliance controls. For the remaining 191 customers, further work is being done to see if there is a reason for them receiving income support in a financial year that they also had a high annual income. These customers have a complex mixture of incomes and circumstances. For many of these customers, this analysis involves verifying details from third parties, such as employers, banks, councils et cetera, and providing customers with an opportunity to respond to any discrepancy. Centrelink staff are making every effort to ensure this work is completed as quickly as possible, and we estimate the work will be substantially completed by early November for those final ones that were not able to be reconciled.

Senator MARK BISHOP—Mr President, I ask a supplementary question to the minister arising out of her response. Can this recently demoted minister explain why, when the government has just introduced family payments legislation into the Senate, it would not take the opportunity to move amendments to crack down on high-wealth families who have margin loan losses and foreign income but who are receiving family tax benefit A? Through you, Mr President, why is it that, in Howard’s Australia, the poor are getting poorer but the government is still allowing the very rich to cream off family tax benefit allowances?

Senator PATTERSON—As I have said, we have been investigating or looking at those people who have high incomes. For some of them, there is a very good explanation as to why they are eligible and, as I said in the first part of my answer, there are reasons why a small number of people who appear to have high incomes are still under investigation.

Immigration: Asylum seekers

Senator NETTLE (2.29 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Is the minister aware that, over the past seven years, dozens of asylum seekers have been deported to Syria from Australia, despite the fact that they were not Syrian, in many cases had never been to Syria and had no connection with Syria? Is the minister aware that at least six asylum seekers deported from Australia to Syria have recently testified in face-to-face interviews in Syria about their lives as third-class, stateless individuals in fear of persecution, detention and torture? Can the minister explain why so many asylum seekers are being dumped in Syria, a country with an appalling human rights record that has not signed the refugee convention and has no domestic laws relating to Iraqi or Afghan refugees? Does this practice indicate that there is an agreement or arrangement in place between the Australian government and Syrian authorities? If so, what is the nature of the agreement?

Senator VANSTONE—I thank the senator for her question. It gives me the first question that I have had in this portfolio and I am grateful for that. It gives me the opportunity to say how pleased I am to have this portfolio. As you would know, Senator, apart from full-blooded Indigenous Australians, all of us have immigrant blood, and therefore I regard representing immigration as well as the Indigenous community as a great honour and opportunity.

As to the allegations in the question that a country the senator names, namely Syria, is being used I think in her words as a dumping
ground, I have no advice to that effect. I would be surprised if it were the case but I will make inquiries of the department to get details of the numbers you allege: ‘dozens’ over the past few years. I do not know which years you are referring to and how many there might be. I will ask the department how easy it is to get that information. You obviously would not want thousands of dollars spent extracting it but it may be very easy to get and, if it is, I will get it for you. As to whether there is any particular agreement with Syria of the nature to which you refer, I will make inquiries about that and get back to you on that issue as well.

Having said that, let me remind you that we have a policy that the government will decide who comes here and the circumstances under which they come. We have a controlled immigration program. I am a great fan of immigration. This country is an immigration success story, but if you believe in immigration and if you believe in having a very important part of your program being your humanitarian and refugee component, then you also must agree that it must be controlled according to an appropriate system. We will not revert to a system of some sort of Rafferty’s rules to determine who comes here. We will decide who comes and the circumstances under which they come. We will repatriate people appropriately in accordance with our rules. I will investigate the allegations that you make and come back to you if I have anything further to add.

Senator NETTLE—Mr President, I ask a supplementary question. In relation to the deportation of asylum seekers, is the minister aware of the contents of a report issued by the Edmund Rice Centre last week which details case studies of numerous asylum seekers who have been deported from Australia only to be imprisoned, beaten, tortured or disappeared? Can the minister explain how this practice of forcibly returning asylum seekers to dangerous situations is justified under this government given that it clearly breaches Australia’s responsibilities under international law, specifically the 1984 convention against torture and the 1996 International Covenant on Civil and Political Rights? When will the department agree to appropriate monitoring of their deportations in order to ensure that these legal and ethical responsibilities can be upheld?

Senator VANSTONE—I did see some mention of that report last week. My office did not have a copy at the time and I understand some sort of briefing is going to be prepared for me on that report. I would simply caution taking any document put forward by anyone—and I am not being critical of that centre—at face value, which I think your question assumes and which I think is somewhat unfair. I make the point with respect to people who are sent back to their home country that there is a point at which we cannot continue to monitor the situation. People are not sent back if there is a view that they are at serious risk.

Senator Nettle—They are.

Senator VANSTONE—that, of course, is a matter for conjecture but it is not a view that I accept.

Social Welfare: Carer Allowance

Senator JACINTA COLLINS (2.34 p.m.)—My question is to Senator Patterson as the Minister for Family and Community Services. Can the minister confirm that the government’s review of carer allowance will see the government’s test of eligibility for the payment—its child disability assessment tool—applied to permanently disabled children for the first time: that is, children who qualified for the payment under previous rules? Can the minister confirm that some children with conditions such as Asperger’s syndrome and cerebral palsy, conditions that have not changed since they were first
Senator PATTERSON—Senate Collins knows that a review is being undertaken of carer allowance for children. Senator Collins might not know that, when her party was in government, there was a situation where carer allowance was being applied for in situations where children were not, in fact, disabled. I remember very clearly, when I was secretary to the chairman of the back-bench committee when we first came into government, going to an office out in Ringwood with Senator Newman and talking to a number of people on the front desk. They were people who had been working in what was then social security for 10 or so years and they indicated that they were concerned about people receiving carer allowance for children whose disabilities were not severe enough to warrant that.

One of the reasons they were getting carer allowance was, in fact, to get a health care card, particularly people with asthma. So Senator Newman worked with Dr Wooldridge to ensure that people with children with asthma could get a health care card without needing carer allowance. There were situations where people were getting carer allowance when the child did not have a disability that warranted it or when the child’s disability changed over time and they learned to deal with the disability. These situations do not require carer allowance and it is only appropriate that they should be reviewed from time to time.

As Senator Vanstone has said earlier, when they were undertaking these reviews there were some disabilities where it was quite obvious that the disability did not change significantly and those conditions were added to the list of those that would automatically receive carer allowance and not require a review. It is important that we review allowances from time to time. Because children’s situations change as they grow and develop and learn to cope with their disability, there will be situations in which a parent may have been eligible for a carer allowance earlier on but not necessarily later on as the child develops. So it is appropriate that they be reviewed. It is being done in a way that ensures that people who deserve and require a carer pension continue to receive one.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Of course, none of that justifies the now tougher review test that is being applied. Is the minister aware that Senator Vanstone promised that children with any of the six disabilities she has listed as automatic qualifiers for carer allowance would not be reviewed prior to their 16th birthdays? Is the minister also aware that the list of automatic qualifiers is reviewed every two years? Can the minister who was dumped confirm that in fact families with children with one of the six newly listed disabilities may lose the payment in two years time contrary to Senator Vanstone’s promise?

Senator PATTERSON—I believe the number of children who were reviewed and deemed to be still eligible would indicate that it is highly likely that those conditions will remain on. It is very typical of Senator Collins to run a Labor scare campaign. That is what you are going to do. Also, Senator Collins, I would suggest that you have some guts and do not actually read out every single word in the question that has been given to you. Some other people are prepared not to do that.
Senator Abetz. Will the minister update the Senate on measures taken by the Howard government to ensure the integrity of the electoral roll? Is the minister aware of any alternative approaches?

Senator ABETZ—I thank Senator Mason for his ongoing interest in electoral integrity. The Howard government recognises that we need to protect the integrity of the electoral system. We believe the electoral roll must not only be beyond reproach but also be seen to be beyond reproach. As Senator Mason will recall, we introduced legislation and regulations to tighten up enrolment after the exposure of Labor’s electoral fraud which resulted in the prosecution and conviction of three Queensland members of the ALP for enrolment fraud, including Karen Ehrmann, who was the first Australian jailed for enrolment fraud. Former MLA and now ALP assistant national secretary, Mike Kaiser, was also embroiled in that scandal. This scandal gave rise to the Shepherdson inquiry and the Joint Standing Committee on Electoral Matters inquiry into the integrity of the electoral roll. Their User friendly, not abuser friendly report was also aimed at strengthening the integrity of the roll against rorters. Not surprisingly, Labor did not support a number of key recommendations even though it was Labor rorters that led to the inquiry being established. As I have said, the government has previously introduced legislation to enhance the integrity of the electoral roll by requiring elector identification at the time of first enrolment and upgrading witnessing requirements. Labor opposed this reform.

As to alternative approaches, I can inform Senator Mason that in the light of the scandal Labor promised that rorters would face expulsion from party membership and political office. But it has now come to light that the man who blew the whistle on ALP electoral fraud in Queensland is being expelled from the Labor Party for having exposed the rot. Railway Estate branch member Mr Mark Petria testified to the Shepherdson inquiry in October 2000 that he was the anonymous source of documents tabled in the Queensland parliament in 1998 that led to the conviction of electoral rorters Shane Foster and Karen Ehrmann.

Why then has Mr Petria been expelled from the Labor Party? According to the Townsville Bulletin he was expelled for leaking information. The Labor spokeswoman, Ms McLennan, was ‘pleased with the expulsion’ and she said, ‘I think the findings of the disputes tribunal speak volumes about what is and isn’t acceptable behaviour by ALP members.’ Indeed it does, Mr President. His expulsion speaks volumes as to what is acceptable within the Labor Party—the person who blows the whistle on ALP roll rorting is expelled from the Australian Labor Party, but somebody who is actually engaged in the rorting of the electoral roll, Mr Mike Kaiser, is promoted to become the assistant national secretary of the Australian Labor Party. This shows the value that the Australian Labor Party place on the whistleblower exposing the rot and the person that was to benefit from the rorting. It is an insight into how the Labor Party would act if ever they were to get national government. That is the way they behave and it is time for Mr Crean to show leadership. I know he has failed on Centenary House, I know he has failed on the Bolkus rafflegate but here is an opportunity for Mr Crean to show some leadership. (Time expired)

Small Business: Government Policy

Senator CONROY (2.42 p.m.)—My question is to Senator Abetz, the Minister representing the Minister for Small Business and Tourism. Is the minister aware that the most recent Sensis business index for small and medium enterprises found that despite strong confidence in the Australian economy
the Howard government’s standing with the small business sector declined during the quarter to negative 11 per cent and that 32 per cent of small and medium enterprises believe that the Howard government’s policies work against small businesses? Given this vote of no confidence in the government’s small business policy, will the minister now accept that the Howard government’s focus on big business has left small businesses to fend for themselves?

Senator ABETZ—Mr President, I think Senator Conroy knows full well that the real concern of small business is the issue of unfair dismissal, an issue that the Australian Labor Party has failed to deal with on numerous occasions. Indeed, on the weekend in my home state of Tasmania I was able to highlight some of the union thuggery that occurs against the small contractors within the building industry—those who are members of the Master Plumbers Association, those who are involved with the building industry’s Specialist Contractors Organisation, those who are involved with the Master Builders Association and those who are involved with the Housing Industry Association. What small business wants is a fair industrial relations regime in which it can work.

Senator ABETZ—Senator George Campbell has just interjected, asserting that that is rubbish. I hope that interjection is in Hansard, because I will take great delight in circulating that to every single small business in this country. The other thing that small business is very interested in is low interest rates—low interest rates and a sound economy—and that is exactly what small business is getting. That is why we now have this wonderful statistic of the unemployment rate coming down. The reason the unemployment rate is coming down is that, in the current economic climate, small business has sufficient confidence to create greater employment. And, Mr President, we do note that, in spite of that great decrease in unemployment, unemployment could be decreased by a further 50,000 if the Australian Labor Party would allow the unfair dismissal laws to get through the Senate.

Opposition senators interjecting—

The PRESIDENT—Order on my left!

Senator ABETZ—That would see the unemployment rate fall even further than it currently is—below six per cent. As the unemployment rate falls, it is good not only for small business but also for the men and women who have gained employment and who are able to look after themselves without being reliant on the social welfare system.

The Australian Labor Party, for some reason, are suggesting at this very late stage that they want to champion the cause of small business. The simple fact is that every opportunity that they have had to look after the interests of small business, especially in the area of the unfair dismissal laws, they have refused to act upon for one reason, and for one reason only—that is, that they are required to do that which the trade union movement tells them to do. That is the reason. Mr President, if Senator Conroy seeks any further information as to where the Australian Labor Party have failed the small business community, I would be delighted to take his supplementary question.

Senator CONROY—Mr President, I ask a supplementary question. Minister, are you aware that the same Sensis survey found that cash flow was the No. 1 concern of SMEs, replacing lack of work or sales? Minister, given that cash flow is the No. 1 concern of SMEs, will the government now support the debate of Labor’s late payments bill, which cracks down on late payments by big busi-
ness by requiring them to pay interest on overdue debts and not describe it—as you did last time we debated this—as just one of those ‘esoteric’ issues? It is the No. 1 issue.

Senator ABETZ—Surely Senator Conroy and the Labor Party must understand that one of the real drivers of cash flow is the low interest rate environment under which small businesses currently operates. If small businesses had to pay interest rates of 21 per cent plus that they had to pay under the previous discredited Labor government, their cash flow would be negative. The good news is that small business is profitable and growing and that employment is growing. But for Labor’s deliberate obstruction in this place, all those factors could be growing even more for the benefit of the Australian economy, for the benefit of Australian small business and, most importantly, for the benefit of the Australian men and women who do want to find employment.

Housing: Affordability

Senator BARTLETT (2.49 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. This week, as the minister would know, is Anti-Poverty Week. The minister would also know that unaffordability of housing is a major contributor to poverty. Is the minister aware of a report released by National Shelter and ACOSS last week that used her department’s own data to show that more than one in three rent assistance recipients—around 330,000 people—exceed the government’s own conservative measure of housing affordability by spending more than 30 per cent of their income in rent and that almost one in 10 recipients—around 85,000 people—spend more than 50 per cent of their income on rent? What does the minister propose to do to address housing affordability in the private rental market, particularly in our capital cities?

Senator PATTERSON—I think Senator Bartlett would agree that the issue of housing is not totally the responsibility of the Commonwealth government. The Prime Minister, the Treasurer and a number of people have been calling on state governments to release more land to improve the affordability of housing and also to do something about stamp duty. The gain from stamp duty in all states, but particularly in Victoria and New South Wales, has risen exponentially with the increase in housing prices. If you want to talk about housing affordability, housing affordability under this government is much greater than it was under the previous government, when we saw interest rates at unsustainable levels, at 17 per cent, and people losing their houses because they could not afford their mortgage repayments; and when we saw inflation running at such a rate that their income was being eaten away by inflation. We have done an enormous amount to ensure that families have more affordable housing.

The ACOSS and National Shelter claim that rent assistance does not deliver affordable housing and that effectiveness has fallen over time is based on a time series analysis using old data from 1986 to 1996 with flawed measures of affordability. The affordability outcomes for people with rent assistance have improved since June 2000. In June 2000, 42 per cent of rent assistance customers were paying more than 30 per cent of their income in rent compared with 34 per cent in December 2002. Rent assistance makes a substantial difference to customers. It has reduced the proportion of customers paying over 30 per cent of their income in rent from 69 per cent before rent assistance to 34 per cent after rent assistance, and the proportion of customers paying over 50 per cent of their income in rent has decreased from 27 per cent before rent assistance to nine per cent after rent assistance.
Commonwealth assistance for housing is approximately $1.9 billion per year for rent assistance, as well as an estimated $4.75 billion over the next five years for public housing. We are committed to addressing issues of affordable housing both through supply and demand subsidies but, as I said before, it is also important that the states take responsibility for their role in affordable housing, particularly in releasing more land and doing something about the exorbitant stamp duty.

Senator BARTLETT—Mr President, I ask a supplementary question. The minister mentioned public housing availability in her answer. Is it not the case that funding for public housing has decreased and will continue to decrease in real terms? Is it not the case that the latest Housing Assistance Act report, tabled in this place just a few weeks ago, shows a waiting list of 224,000 families and individuals? How does the minister propose to ensure that these people, plus those who are eligible but not on the waiting list, are able to live affordably and close to schools, services and jobs—particularly given that inability to afford adequate housing is one of the key measures for poverty in Australia?

Senator PATTERSON—In 2003, under the Commonwealth-State Housing Agreement, the Australian government provided the very substantial amount of $4.75 billion, allowing five years of fiscal certainty for states and territories to provide housing assistance. The agreement featured indexation for the first time. Combined, Commonwealth rent assistance and Commonwealth-state housing outlays have increased in real terms—I repeat, in real terms—by $184 million: from $2.69 million in 1997 to $2.876 million in 2003. Currently, for every dollar of direct Commonwealth housing assistance, state and territory governments contribute less than 13 cents. Let me repeat that, particularly for the Democrats but also for the Labor people on the other side: currently, for every dollar of direct Commonwealth housing assistance, the state and territory governments contribute less than 13 cents in Commonwealth-state housing assistance matching funds. If states and territories need more funding for social housing—(Time expired)

Immigration: Detainees

Senator BOLKUS (2.54 p.m.)—My question is to the Minister for Immigration, Senator Vanstone. I ask the minister: has the department briefed her on the circumstances of the death of Mohammad Musa Nazari, who was repatriated from Nauru last November by Australia and who was killed a few weeks ago by a Taliban foot soldier? Has the department determined whether he was killed because he was a Hazara Afghan? I ask the minister: can she assure the Senate of the safety of those Hazaras who will be made to return to Afghanistan over the coming months?

Senator VANSTONE—Senator, I do have a brief on that but I do not know that it is going to concur with your view. The brief is on the possible question: can I provide information on reports that an asylum seeker who returned to Afghanistan from Nauru has been killed? I am telling you the possible question because, given that you have identified a particular person, this may or may not refer to the person to whom you were referring. In any event, the answer provided is that this person was found not to be a refugee and this decision was upheld after a full merits review. He chose to go home voluntarily. His death in a robbery almost a year later is tragic but casts no doubt on the reliability of his refugee determination. The department and the UNHCR have identified no information to support assertions that this person’s death was anything other than a purely criminal act.
Senator BOLKUS—Mr President, I ask a supplementary question. In asking this question I suggest to the minister that she visit the issue of this person’s belonging to the Hazara group. I ask the minister: will she follow through with Mr Ruddock’s decision that 50 Hazara Afghanis on temporary protection visas, who are currently employed at Fletcher’s International Abattoir at Albany, should return to Afghanistan so they can attempt to reapply as skilled migrants? Is the minister aware of comments made by the Assistant Managing Director of Fletcher’s on Minister Ruddock’s suggestion that his workers reapply as skilled migrants? He said that it was: ... all right in theory, but in practice it’s not easy ... To be quite brutal about it, who says they are going to live when they get there, to come back out here?

Can the minister guarantee the safety of these workers, who have become integral to the local economy, once they have returned to Afghanistan?

Senator VANSTONE—I can confirm that the person concerned was of the particular group to which you refer. The background notes to the PPQ give me that information. As to the remarks allegedly made by the gentleman in Albany, I have not seen those. I will have a look at them and see what can be said in response to them. I just have not seen them and there is no briefing here in relation to those matters.

Industry: International Resource Projects

Senator TIERNEY (2.57 p.m.)—My question is to Senator Minchin, the Minister representing the Minister for Industry, Tourism and Resources. Will the minister advise the Senate of any recent developments in the government’s ongoing efforts to attract major international resource projects to Australia? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Tierney for his very good question. Senator Tierney is right: we have put a lot of effort, during our time in government, into attracting resource projects to Australia and there is major international competition for these sorts of projects now. I am very pleased to record the fact that there was another victory in our campaign last week when a major UK entity, GTL Resources, announced that it will proceed with the construction of a $700 million resource project on the Burrup Peninsula in Western Australia. This is a major project. It will be converting gas to liquids—as its name implies—and producing methanol for Australia. We won this project against very stiff international competition and we only won it because of this government’s strategic investment coordination process. The government decided that it would provide $34½ million of joint user infrastructure on the Burrup Peninsula to make this project a reality. Without the investment by the federal government of $34½ million into that infrastructure this project would not proceed. As I said, it is a $700 million project and it will produce one million tonnes of methanol a year. There will be 600 jobs created during the construction phase and about 85 ongoing permanent positions when it becomes fully operational. So it is terrific news for Australian resources, for Western Australia, and for our national economy.

As I said, it has only happened because of this very important strategic investment incentive program. Since it was set up in 1997, we have provided incentives of about $400 million in all and attracted investments of over $7 billion to this country—investments as widespread as the Holden V6 engine plant in Melbourne and the Comalco alumina refinery in Gladstone.

I draw attention to this very important program because this program is directly
threatened by the advent of a Labor government. In its parochial anti-business attitude, the Labor Party has said that it will not continue with this program. It ignores the fact that the international competition for resource projects is incredibly intense. The fact is that other countries are offering major incentives to companies to locate their resource projects in their countries. We have to accept that reality. We have to be in there to compete for these projects with these sorts of incentives if we want the jobs and the exports. I deplore the Labor Party for proposing the abolition of this very important federal government program.

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

National Security

Senator LUDWIG (Queensland) (3.00 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Ludwig today relating to the Australian Federal Police and counter terrorism.

Today we have seen from the Minister for Justice and Customs, Senator Ellison—or perhaps the junior woodchuck now—that he has been sidelined by the Attorney-General. It seems that the new Attorney-General has decided to beef up the national security aspects of the Attorney-General’s portfolio, as reported in the media today. Of course, this is again policy on the run, with no thought of administrative arrangements and no thought of what is currently occurring within the justice portfolio and on counter-terrorism issues. We have a minister who, without concern, has decided to cause a nightmare.

Minister Ellison has told us that the Attorney-General is now to adopt an overseeing role. It appears he will oversee all of both justice and customs and Attorney-General’s—a lot for any one minister. Minister Ellison has failed to tell us what he will be left to actually do in his portfolio. If the Attorney-General is now going to garner all of the role of Minister for Justice and Customs, Minister Ellison will effectively be on a vacation in Nauru. It seems to be an implicit acknowledgement that there is a need for an office of home affairs, or at least an acknowledgement from this government that there is a need for a structured, strategic plan for how to deal with national security rather than the Attorney-General deciding policy on the run or in media correspondence—for instance, a newspaper stating there is a plan or that a plan has been written on the back of a napkin. It is obvious from the lack of answers given by Senator Ellison today that the idea has simply popped into the imagination of the Attorney-General. The Attorney-General has failed to, in any substantive way, deal with how he is going to ensure that there is a co-ordinated and structured plan on national security.

The entire notion of national security has been transformed as a result of terrorism. Clearly, we must rethink how we look at national security issues. The government—and, in particular, the Attorney-General—has attempted to grandstand on the issue of national security, but it is not a new issue. This issue has been around for some time. What we find is that the government is still making policy on the run in this matter. It has had over two years to develop a co-ordinated action plan on national security but it has failed. The new Attorney-General has been thrown into the fray to beef it up—at least, that is what he has told the media—but we do not have any solid evidence of how he is going to beef it up, what the administrative arrangements in the department are going to
be, or how he is going to split up the portfolio of justice and customs.

We heard from Senator Ellison that the Attorney-General may have a role in customs, but what in truth is the government doing about security at wharves, at ports and at airports, and how and who will look after it? Will the Minister for Justice and Customs no longer be the relevant minister to deal with that? I find it amazing that the new Attorney-General has seen fit to announce his intentions in an offhand manner in a news article in today’s media without a thought as to how this can best be achieved, without knowledge of the workings of the counter-terrorism procedure currently in operation and without considering projects such as Project Merida, which I mentioned during my question and which is well under way. In fact, Project Merida is supposed to be finalised by the end of this year. It has been listed as a piece of legislation to be dealt with in the spring sittings this year. One doubts whether the government will be able to bring it in, with the Attorney-General making the offhand remarks that he has.

I suspect that the minister has not considered the effect this will have on legislation nearing completion. The APS and the Australian Federal Police—the one-act, one-agency model of Project Merida—is almost complete. But we now have a side wind coming in by way of the Attorney-General saying, ‘I need to beef up national security so I am going to make a few strategic decisions.’ As I have said, it seems to be that he is making plans on the back of a napkin. The government has been unable to define where it sees the obligations of the Department of Justice and the Attorney-General on national security. What is to happen to the APS? What is to happen to the sky marshals? What is to happen to the APS cost recovery model? Even the Prime Minister is completely confused about the issue. (Time Expired)

Senator JOHNSTON (Western Australia) (3.06 p.m.)—The first question that one has cause to ask when listening to the commentary of Senator Ludwig is: where on earth has he been during the past 12 months? We have enacted a number of very significant, broad-ranging and very powerful pieces of legislation—all of which I am sure he recalls and all of which have gone a very long way to securing our country in the face of the ravages of this blight of terrorism.

Sadly, when Senator Ludwig uses the word ‘grandstand’, it is clear that the word is at the forefront of his mind, because what we have seen here this afternoon is nothing more or less than a monumental grandstand. Obviously, the strategy committee over on the other side of this chamber did not have much to talk about! The new Attorney-General is simply saying that terrorism, the broad range of legislation that is afoot and the suite of legislation that is available for use in terms of security and protection of our country need to be brought to the forefront of the Attorney-General’s primary considerations. Who could complain about that? Who could complain that the new Attorney-General is focusing and refocusing and continuing to be vigilant on such a crucial and vitally important subject?

So where has Senator Ludwig been and what is this complaint all about? There has been an article in the weekend press, and Senator Ludwig wants to make some sort of mileage out of the fact that the new Attorney-General is announcing that he will be focusing very much on security and the administration of the various legislative heads that are at his disposal in dealing with this blight of non-state asymmetrical actors out there, particularly in South-East Asia. What has happened here is clearly that the opposition do not have any particular matter to raise in terms of a deficiency, maladministration or a complaint no matter how broadly
based other than to say that there is a change of ministerial responsibility. If there has been, it happened yesterday, so what are we doing talking about it? We are talking about it because Senator Ludwig does not have anything else worthy of discussion in this chamber.

It is apt that here we are 12 months from Australia’s worst ever terrorist attack and we have enacted an outstanding suite of legislative countermeasures to deal with this absolutely terrible blight of terrorism and of mindless violence against innocent civilians. In looking at what the response has been and the suite of measures that the government has put into place, every Australian citizen can see very clearly and very tangibly that the response has been a good response and that the two ministers in question have been vigilant—indeed, Senator Ellison has done an absolutely outstanding job in responding to what has been a most difficult situation. So where is the criticism of the administration of our security countermeasures and our border control? There is no criticism. The opposition is simply responding to an article—responding to something that a journalist has put together—because there is no real issue underlying the sorts of complaints that Senator Ludwig has brought to the chamber.

There is no criticism. The opposition is simply responding to an article—responding to something that a journalist has put together—because there is no real issue underlying the sorts of complaints that Senator Ludwig has brought to the chamber.

Senator BOLKUS (South Australia) (3.11 p.m.)—I rise to express my concern at the government’s continuing inept handling of this country’s national security, as evidenced by the new Attorney-General’s express statement this morning, and as further evidenced by the Minister for Justice and Customs’ contradictory statements in the Senate today. Let us put it on the record. I quote the Sydney Morning Herald this morning:

One of Mr Ruddock’s first moves has been to take over control of the counter-terrorism functions of the Australian Federal Police, which had been overseen by the Justice and Customs Minister, Senator Chris Ellison.

It is an explicit statement that functions are being taken by the Attorney-General and taken from the Minister for Justice and Customs. This statement was directly contradicted by Senator Ellison within the last hour in question time in this place when he said that his view was that, just as the previous Attorney-General had oversight, so would the new Attorney-General. That is what Senator Ellison said. Basically Senator Ellison said that it is business as usual, whereas Mr Ruddock made it very clear that he will take over the oversight and control of the antiterrorism functions of the Australian Federal Police.

You have contradictory statements from the two ministers who are responsible for this area. We are left with a critical, outstanding issue—that is, who is telling the truth and, as a consequence, what is actually changing, if anything, in the administration of counter-terrorism in this country? Is there a reorganisation going on? If so, what? If there is not, why did the new Attorney-General raise this issue and, in doing so, claim that he was going to be taking over responsibility in a very critical area? We just cannot walk away from this contradiction, Senator Johnston. It is a contradiction that needs to be addressed and we need to get to the guts of why this contradiction is appearing at this particular time.

It is not just of concern to us: I would maintain that it is of greater concern to those foot soldiers in the field—in the AFP, ASIO
and other organisations—who woke up to the news this morning that they would have a new line of command to a new Attorney-General as opposed to the Minister for Justice and Customs.

Despite what the government may say about this, there is one direct consequence and one clear outcome of this contradiction—that is, that the position of the Minister for Justice and Customs is well and truly undermined. His authority is well and truly undermined. Why? Because the Attorney-General, in essence, was saying across the nation this morning through the SMH that, in effect, he does not have sufficient confidence in the Minister for Justice and Customs to allow him to continue to have direct responsibility for the counter-terrorism area in the Australian Federal Police. He has basically said, ‘Look, I’m Mr Toughie; I’m coming in—get out of my way.’ It is not good for stability and the lines of command for authority in these critical areas to have such mixed messages.

There is one clear primary concern, as far as I am concerned, from our side of parliament—that is, two years after the World Trade Centre attacks and one year after the Bali bombings, this government still cannot get the lines of command and responsibility in their counter-terrorism response settled down. They are still arguing as to who has responsibility for what. This comes on top of strangers entering high security facilities with false IDs. It comes on top of a 13-month period to interview top al-Qaeda suspect Abu Dahdah. It comes on top of this government not being able to get the national security hotline number listed in the White Pages. It comes on top of security cameras not working in a number of high security facilities. That is why we are concerned about who has responsibility. This is a government that may run the themes out in the community, but in terms of organising the shop and organising administration, it goes from one stumble to another.

What motivates Minister Ruddock to make these statements? There are three possible reasons. The first possible reason is whether there has been a grab for power going on here, one that the junior minister does not know about. If there is, it is not good enough. That is not the way to run an administration. If there is not, there is still at least a very clear intent by the new Attorney-General that has a destabilising impact. The second possible reason for these statements is that this minister may have in fact identified a need for change, something that the opposition has been proposing for quite a while now—a ministry for home affairs with direct responsibility. If he has come to that conclusion then that is a strange way to do it, but we would welcome this late conversion. The third possible reason is, as most people suspect, that this is an Attorney-General playing politics. He knows how to send coded messages and he knows how to exploit fears for political purposes. Is he about to embark on doing that again with this very critical area of national security? Is he about to embark on doing that again with this very critical area of national security? All those possible motivating factors should be of concern to this parliament, and I am sure they will be of concern to the Australian people. (Time expired)

Senator McGauran (Victoria) (3.16 p.m.)—You can always rely on Senator Bolkus, when given the chance to stand up in this Senate, to go too far, and he has. He has probably spoilt it for the previous speaker. If there was any point to be made, Senator Bolkus, as usual, has spoilt it. He simply goes too far when he makes the suggestion or the claim that this government’s security alert systems—the security of the nation—have collapsed or are in a shambles, all because of a ridiculous power play between a senior and a junior minister. It is an absurd proposition. It is simply untrue, and to make

CHAMBER
it—as Senator Bolkus just has—at the time of the Bali memorial is typically irresponsible, reckless of him in his duty as a parliamentarian and highly insensitive, because both sides of parliament should be united in the security platform of this country; it should not be a matter of division at all. Quite frankly, where there has been division it has come from the opposition. It is very untimely to raise this matter in the parliament, at least this week.

As I said, it is an absolutely absurd proposition to say that now, based on an article in the newspaper—no less than the *Sunday Age*, what credibility!—all of a sudden all of the efforts of the government’s counter-terrorism actions since September 11 are in some sort of disarray. It is disrespectful, it is untrue and it is scaremongering at its worst, at the worst possible time. In fact, this government has sought to go even further than it has already, though satisfied with the actions it has taken up to this stage of coordinating agencies such as ASIO, ASIS, AFP and the defence and special forces. They are all properly coordinated and all cooperating, but this government has, in its time, sought to go further in the security of this nation and its citizens, but it has been blocked by the opposition.

An example of this is the ASIO bill. It was dragged through every possible committee in the Senate, delayed and ultimately rejected. The full powers that ASIO required—and this government’s judgment of what powers were necessary for ASIO to act—were denied and rejected by the opposition. They were watered down to the extent that we had to accept a sunset clause on those powers—those new powers given to ASIO will terminate within three years, I believe. Who could possibly think that the war on terror will be finished in three years? We all know that we need at least a decade of dedication to the war on terror. What absurdity the parliament has placed on the powers of ASIO. The opposition has brought delay and frustration to the government’s efforts in relation to counter-terrorism.

Nevertheless, the government believes that all agencies are cooperating and all ministries are cooperating. All it seeks is the cooperation of the opposition in regard to counter-terrorism. Not only do we in the parliament have a vested interest in the security of Australia, but also we have a Prime Minister, uniquely, with a personal interest in this. Let us not forget that our Prime Minister was in Washington on September 11, which began the war on terror. He has a personal and emotional involvement in this war on terrorism—as it was so dubbed by Mr Beazley. We have a Prime Minister who is not going to allow, as the opposition will try, this issue to become a dispute between a senior and a junior minister. It is an absolutely absurd proposition. It is an opportunistic proposition, and it is made at the wrong time.

Senator Kirk (South Australia) (3.21 p.m.)—I rise to take note of answers given by the Minister for Justice and Customs, Senator Ellison, in response to questions asked by Senator Ludwig. As has been mentioned here today, a report in this morning’s *Sydney Morning Herald* relayed an interview with Mr Ruddock in which he foreshadowed a heavier focus on national security in his portfolio of Attorney-General’s. This was said to be on the order of the Prime Minister.

It is useful to go over the chronology of events in relation to security matters and the way that responsibilities have been switched around between ministers over the past few years. At the end of this chronology, senators will be aware—it is pretty obvious—that the government is simply not up to scratch when it comes to security arrangements.

The rearrangement that we read of this morning is the third rearrangement of security responsibilities in the past two years. The
Prime Minister, Mr Howard, took on board Labor’s 10-point plan released in October 2001 and followed many of Labor’s suggestions regarding security arrangements, including increasing funds to ASIO and security organisations and extending counter-terrorism capabilities. Because the Attorney-General at the time, Mr Williams, was not hitting the mark, the Prime Minister appropriated those responsibilities in October 2002. He said:

To ensure that the Commonwealth optimises its arrangements for strong policy coordination between the Commonwealth, States and Territories, I have asked my Department to take on the lead role for counter-terrorism policy coordination. The Attorney-General’s Department will continue to have responsibility for operational coordination on these issues.

Just seven months later, the Prime Minister set up ‘Security Central’ in his own department, Prime Minister and Cabinet, rearranging the defence branch on 23 May this year. He told the media:

It is in no way a de facto homeland security department, we don’t need a homeland security department, and our coordination arrangements in this area do work very well.

Today we read that the Attorney-General, Minister Ruddock, will be pillaging the former responsibilities of Senator Ellison in order to boost his own security powers. To be quite blunt about it, it seems that Senator Ellison has been rolled. It is ironic, because on 10 October 2001 the Prime Minister said:

... can I tell you the thing that really matters is what you do, not how many ministries you have or how many bureaucrats you have or a turf war between shadow ministers.

That is exactly what we have here—a turf war between two ministers, between Minister Ellison and Minister Ruddock. This has been played out to the detriment of the security of Australians. Mr Ruddock’s pronouncements that were reported today will mean more administrative arrangements, more confusion, more chance of the right hand not knowing what the left hand is doing in order to protect Australians. This underlines again that Australia needs one senior cabinet minister in charge of national security, running a department of home affairs, instead of the rearrangement of responsibilities every three months as this government has been doing.

The ALP announced in the 2001 election that we have a plan to create a cabinet level minister for home affairs. This responsibility would have covered and overseen all Commonwealth security functions outside those provided by Defence, including law enforcement, counter-terrorism, aviation security and telecommunications interception. We also would have set up a coastguard to protect Australia’s maritime borders 52 weeks of the year. It is this initiative that the Australian people need in the new climate that we live in post September 11 and October 12. We need a cabinet minister to have responsibility for these issues. *(Time expired)*

Question agreed to.

**Housing: Affordability**

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

That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Patterson) to a question without notice asked by Senator Bartlett today relating to poverty and housing affordability.

It is appropriate that the Minister for Family and Community Services answered the question I asked, not just because that portfolio is often seen as being particularly concerned with alleviating poverty but also because it still has oversight for the Commonwealth-State Housing Agreement and funding that operates through that for public and community housing. As my question also noted, the
payment of rent assistance through social security payments is a key part of measures that are intended to address housing affordability.

This week, Anti-Poverty Week, a number of groups are focusing on poverty and trying to draw attention to the continuing problem of major poverty in many parts of the Australian community. The question I asked went to one of the core issues about poverty that is often overlooked: for many Australians, the cost of housing is a key figure in poverty. If you are unable to get adequate or affordable housing, it makes it pretty difficult for you to address any of the other issues that you have to address to ensure that you and your family have maximum opportunities in life. If we cannot fix up the basic issue of housing affordability, we are putting people not just behind the eight-ball but completely out of the game altogether. It is a growing problem, and it is one of the clearest demonstrations of a growing divide in the Australian community between those that are able to get by and those that are basically being left behind.

Last week ACOSS and National Shelter, the peak housing organisation, released a report, based on the government’s own figures, which highlighted the major shift in housing support that has taken place in the last decade away from the supply of low-cost public and community housing towards direct in-the-pocket financial assistance through rent assistance paid through the social security system. What that means is an issue in itself but, as the question I asked clearly showed, the paying of rent assistance is not sufficient to address housing costs, particularly when you look at where these people are. A high proportion of people are in areas where there is high unemployment. That also demonstrates that areas where there is any prospect of affordable private rental housing tend not to be the areas where the jobs and the services are. The cost of housing in those areas where the jobs are means that it is basically inaccessible to low-income people, to people on social security, so they are in a catch-22 situation. They cannot afford to live in the areas where the jobs are, so they remain unemployed or remain on pensions, and therefore remain on rent assistance in the private rental market, and therefore remain in poverty having to pay huge portions of their income on rent.

I know the minister said this is not just a federal government issue. That is true, but it is significantly a federal government responsibility, particularly when you look at the shift away from money provided from the federal government through the Commonwealth-State Housing Agreement which goes to public housing. Sure, the states might not be pulling their weight on that. The Democ-
rats do not disagree. But the Commonwealth cannot use that as an excuse to step away from the bigger problem. (Time expired)

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Military Detention: Australian Citizens
To the Honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows:
• that the treatment of David Hicks is not in accordance with Geneva Convention Guidelines applying to prisoners of war

Your petitioners ask that the Senate should:
• ensure that Australian citizen, David Hicks’, rights are met under the guidelines of the Geneva Convention as it applies to prisoners of war
• send a deputation to George W. Bush asking that David Hicks be returned to Australia
• ensure that David Hicks be entitled to a civil trial, in Australia, if he is charged with any crime

by Senator Kirk (from 393 citizens).

Medicare
To the Honourable the President and Members of the Senate in Parliament assembled:
The petition of the undersigned shows:
We strongly support Medicare, our universal public health system. Medicare is an efficient, effective and fair system, which provides access to care based on health needs rather than ability to pay. This helps to define Australia as a fair, compassionate and caring community. However, Medicare is currently being undermined by the Howard Government through under-funding and cost shifting to the sick. We reject totally what will result from the proposed changes to Medicare: the establishment of a two-tier US-style health system.

Access to quality health care for all Australians is a basic human right that must be ensured.

Your petitioners request that the Senate should:
• oppose all Howard Government policy initiatives that will undermine the integrity, universality and ongoing viability of Medicare;
• ensure bulk billing for all Australians as a fundamental cornerstone of our health system;
• institute an independent national inquiry into the future of the Australian health system, so the community determines the type of health system that meets its needs; and
• make no change to Medicare until this national independent inquiry is finalised.

by Senator McLucas (from 214 citizens).

NOTICES

Presentation

Senator O’Brien to move on the next day of sitting:
That there be laid on the table, no later than 2 pm on Wednesday, 15 October 2003, the following documents concerning the voyage of the MV Cormo Express:
(a) the import risk analysis report concerning the return of the sheep stranded aboard the vessel to Australia; and
(b) the latest Master’s report revealing mortality aboard the vessel.

Senator Cook to move on the next day of sitting:
That the time for the presentation of reports of the Foreign Affairs, Defence and Trade References Committee be extended as follows:
(a) an examination of the Government’s foreign and trade policy strategy—to the last sitting day in 2003; and
(b) the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002—to the last sitting day in March 2004.

Senator Bartlett to move on the next day of sitting:
That the Senate—
(a) notes:

(i) that the United States (US) Government has 10 600 nuclear warheads, of which nearly 8 000 are considered operational,

(ii) that the Chinese Government has approximately 400 nuclear warheads, and

(iii) that the US and Chinese Governments both signed the Comprehensive Nuclear Test Ban Treaty on 24 September 1996 but neither nation has ratified the Treaty; and

(b) calls on the Government to urge the leaders of the US and China to pursue nuclear disarmament initiatives.

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

That the Senate—

(a) notes that:

(i) the People’s Republic of China has forbidden Falun Gong practitioners from practising their beliefs and has systematically attempted to eradicate Falun Gong by persecuting its practitioners,

(ii) the persecution of Falun Gong practitioners within China includes torture and murder, and that women are targeted with various forms of sexual violence, including rape, sexual assault and forced abortion, and

(iii) the People’s Republic of China has taken measures to conceal these atrocities, such as the immediate cremation of victims, the blocking of autopsies, and the false labelling of deaths as from suicide or natural causes;

(b) calls on the People’s Republic of China to immediately cease its persecution of Falun Gong practitioners, release all Falun Gong practitioners who are currently in detention, and allow Falun Gong practitioners to pursue their personal beliefs;

(c) welcomes the re-establishment of dialogue between the People’s Republic of China and representatives of the Dalai Lama in September 2002 and its progress since that time;

(d) encourages the People’s Republic of China to increase the level of contact with the Dalai Lama and to proceed with a substantive dialogue on the political status of Tibet;

(e) expresses its deep concern at reports that Tibetan monk, Nyima Drapka, who had been imprisoned by the People’s Republic of China since 2002, recently died after being brutally beaten for refusing to recant his separatist beliefs;

(f) calls on the People’s Republic of China to:

(i) immediately release all prisoners being held in relation to non-violent protest activities, such as calling for an independent Tibet,

(ii) make public the whereabouts of Tenzin Delek Rinpoche and others detained and imprisoned in relation to his case, the charges against them, any evidence supporting the charges, and their medical conditions, and

(iii) repeal all laws and regulations which permit it to interfere in religious affairs and which infringe the right to freedom of religion;

(g) urges the People’s Republic of China to agree to an immediate visit, without conditions, by the United Nations Special Rapporteur on Religion, who has not visited China since 1994;

(h) notes that the People’s Republic of China continues to restrict the right to freedom of association for workers; and

(i) calls on it to repeal all laws and regulations which prohibit workers from organising collectively, and to ratify International Labour Organisation Conventions 87 and 98, which protect the freedom of association and the right to bargain collectively.
Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes that the United States (US) Government continues to detain more than 600 detainees at Guantanamo Bay and, in particular, that:
(i) none of the detainees has been charged with any criminal offence,
(ii) reports indicate that the detainees include children as young as 13 years of age,
(iii) by classifying the detainees as ‘unlawful combatants’, the US has stripped them of the rights and protections that would have otherwise been available to them as prisoners of war under the Geneva Conventions,
(iv) by holding the detainees at Guantanamo Bay, the US has prevented them from challenging the legality of their detention under US law, and
(v) it is proposed to try the detainees before military tribunals, which lack independence, do not adhere to the usual rules of evidence, severely limit the right to appeal and are subject to Presidential direction;
(b) notes that the US refuses to recognise the jurisdiction of the International Criminal Court (ICC), which was established to put an end to impunity for the very worst crimes against humanity and, in particular, that the US;
(i) maintains its refusal to ratify the Rome Statute,
(ii) has adopted a National Security Strategy which seeks to ensure that its military efforts ‘are not impaired by the potential for investigations, inquiry, or prosecution by the International Criminal Court’,
(iii) has enacted the American Service-members’ Protection Act of 2001, which prohibits US cooperation and intelligence sharing with the ICC, restricts US participation in United Nations’ peacekeeping forces, and authorises the use of military force in order to retrieve US personnel being held by or on behalf of the ICC,
(iv) has entered into agreements with a number of states under Article 98 of the Rome Statute to prevent the prosecution of American citizens for crimes against humanity,
(v) has suspended $47.6 million in military aid and $613 000 in military education programs to 35 of the world’s poorest countries, which refused to enter into Article 98 agreements with it, and
(vi) is currently pursuing additional Article 98 agreements with other nations, including Australia; and
(c) expresses concern at the US disregard for fundamental human rights and the principles and institutions of international law in these instances.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) congratulates the winner of the 2003 Nobel Peace Prize, Ms Shirin Ebadi, who is the first Muslim woman and the first Iranian, to receive the prize;
(b) notes that Ms Ebadi, a lawyer, judge, lecturer, writer and activist is a dedicated fighter for the human rights of women, refugees and children and holds the view that human rights are compatible with Islam;
(c) also notes that the Nobel Committee highlighted this approach to her religion as one element in their choice, saying Ms Ebadi promotes an interpretation of Islamic law that recognises the harmony between human rights, democracy and equality before the law;
(d) acknowledges the work of Ms Ebadi and others fighting for human rights in Muslim countries who promote respect for human rights within Islam; and
(e) also acknowledges the work done by the Australian Council for Islamic Education,
the umbrella organisation for 20 Muslim colleges nationwide, in its landmark Muslim Schools’ Charter, which condemns violence and hatred in the name of any religion, including Islam, and which promotes tolerance and understanding in the broader Australian community.

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

That, on Thursday, 16 October 2003, the sitting of the Senate shall be suspended from 10.30 am to 2 pm, to enable senators to attend a National Remembrance Service honouring the victims of the terrorist attacks in Bali.

Senator Wong to move on Wednesday, 15 October 2003:

That the Senate—

(a) notes:

(i) that 15 October 2003 marks the 50th anniversary of the first atomic test conducted by the British Government in northern South Australia,

(ii) that on this day, ‘Totem 1’, a 10 kilotonne atomic bomb, was detonated at Emu Junction, some 240 kilometres west of Coober Pedy,

(iii) that the Anangu community received no forewarning of the test, and

(iv) that the 1984 Royal Commission report concluded that Totem 1 was detonated in wind conditions that would produce unacceptable levels of fallout, and that the decision to detonate failed to take into account the existence of people at Wallatina and Welbourn Hill;

(b) expresses its concern for those Indigenous peoples whose lands and health over generations have been detrimentally affected by this and subsequent atomic tests conducted in northern South Australia;

(c) congratulates the Kupa Piti Kungka Tjuta—the Senior Aboriginal Women of Coober Pedy—for their ongoing efforts to highlight the experience of their peoples affected by these tests;

(d) condemns the Government for its failure to properly dispose of radioactive waste from atomic tests conducted in the Maralinga precinct; and

(e) expresses its continued opposition to the siting of a low-level radioactive waste repository in South Australia.

Senator Ferguson to move on the next day of sitting:

That the Parliamentary Joint Committee on ASIO, ASIS and DSD be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 16 October 2003, from 4.30 pm to 7.30 pm, in relation to its inquiry into the accuracy of intelligence prior to the war in Iraq.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes:

(i) that the following motion was adopted unanimously at the National Party of Australia Federal Conference on Sunday, 12 October 2003:

‘That as a matter of urgency, this Conference of the National Party of Australia:

(a) Endorses the strong Federal Coalition policy on Development incentives for the ethanol industry as taken to the last Federal Election,

(b) Supports a 10 year excise exemption for ethanol,

(c) Endorses a mandate of 10% Australian-produced ethanol content for fuel sold in Australia to achieve the Federal Government’s policy of a target of 350 million litre production of biofuel by 2010, and

(d) Notes the ALP and minor parties opposition to ethanol, including their opposition to mandating 10% Australian produced ethanol content for fuel sold in Australia’.
(ii) the significant benefits derived from alternative fuels in terms of air quality, public health, regional development and energy security, and

(iii) the Government’s May 2003 budget decision to impose an excise on alternative fuels from 2008;

(b) corrects the National Party motion with respect to (d), pointing out that the Australian Democrats strongly support alternative fuels, including ethanol, and made a submission in September 2003 to Cabinet calling for targets to be set to increase alternative fuel use in Australia; and

(c) urges the Government to:

(i) reverse its budget decision and not impose an excise on ethanol, other biofuels, LPG, CNG and LNG for at least 10 years, and

(ii) conduct a review of the timetable and incentives required for industry to meet a mandated level of 10 per cent ethanol content in petrol.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that 12 October to 17 October 2003 marks Australia’s first national Anti-Poverty Week;

(b) affirms that poverty is a form of violence and an abuse of the right of all people to live with dignity;

(c) condemns the Howard Government’s attack on public services including housing, education, and health, and its complacency about unemployment, underemployment, and insecure employment;

(d) supports the call by the heads of eight churches in Australia to the Prime Minister (Mr Howard), premiers and chief ministers to convene a national forum with the purpose of developing a national strategy to eliminate poverty in Australia;

(e) urges all Australian governments to make poverty eradication a priority; and

(f) recalling the goals of the 2000 Millennium Declaration, calls on the Commonwealth Government to increase its commitment to international poverty eradication by meeting the United Nations official development assistance target of 0.7 per cent of gross domestic product.

Withdrawal

Senator TCHEN (Victoria) (3.33 p.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that on the next day of sitting I shall withdraw seven notices of disallowance, the full terms of which have been circulated in the chamber and I now hand to the Clerk.

The list read as follows—

Nine sitting days after today

Ten sitting days after today
Business of the Senate Notice of Motion No. 1 for the disallowance of the Medical Indemnity Subsidy Scheme 2003, made under subsection 43(1) of the Medical Indemnity Act 2002.

Eleven sitting days after today
Business of the Senate—Notices of Motion Nos:


2. Electoral and Referendum Amendment Regulations 2003 (No. 1), as contained in Statutory Rules 2003 No. 188 and made under the Commonwealth Electoral Act 1918.


Senator TCHEN—I seek leave to incorporate in Hansard the committee’s correspondence concerning these instruments.

Leave granted.

The correspondence read as follows—

Administrative Decisions (Judicial Review) Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 115

14 August 2003

The Hon Daryl Williams MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Minister


These amendments concern decisions made under the Quarantine Act 1908 to contain or prevent an outbreak of an emergency animal disease. These amendments exempt such decisions from the operation of the Administrative Decisions (Judicial Review) Act 1977. The Explanatory Statement notes that these amendments are part of a framework agreed by COAG in April 2002. The Committee would, however, appreciate further information about which aspects of the agreement necessitate these amendments and whether there has been any consultation with industries that are likely to be affected by these amendments.

The Committee notes that the Explanatory Statement that accompanies these Regulations does not provide an item-by-item description or explanation of the amendments. Along with a general description of the Regulations, an item-by-item description assists in understanding the operation of the Regulations. The Committee draws this matter to your attention as it is important that Explanatory Statements are as informative and precise as possible.

The Committee would appreciate your advice on the above matters as soon as possible, but before 5 September 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen
Chairman

Senator Tsebin Tchen Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen


I apologise for my delay in replying to your letter—in order to answer your questions it was necessary to obtain further information from the Department of Agriculture, Fisheries and Forestry (which has primary responsibility for the development and implementation of the COAG framework to implement a national response to a foot and mouth disease outbreak).

COAG Agreement and industry consultation

Your letter notes that the Regulations were developed as part of the framework agreed by COAG in April 2002. The Committee seeks further information as to which aspects of the COAG agreement necessitate these Regulations and whether there has been any consultation with
industries that are likely to be affected by the proposed amendments.

What aspects of the COAG agreement necessitate these amendments?

Because of the significant impact an outbreak of foot and mouth disease (FMD) would have on livestock and related industries, the national economy and rural and regional Australia, COAG agreed that such an outbreak must be managed on a national basis. A memorandum of understanding (MOU) outlines the arrangements agreed between governments for the national coordination framework, which builds on existing animal disease and emergency management plans. The MOU is at Attachment A.[not included in Hansard]

Schedule S to the MOU states that “if an FMD outbreak occurs, States and Territories will first have recourse to their own powers to control and manage the outbreak. A State or Territory may seek an authorisation under section 3 of the Quarantine Act 1908 in order to effect timely quarantine measures”. It was highlighted during a 2002 mini-simulation designed to test the adequacy of Commonwealth and State and Territory legislation to respond to an FMD outbreak that an injunction may be granted under the Administrative Decisions (Judicial Review) Act 1977 (AD(JR) Act) to a decision made under section 3 of the Quarantine Act. Any class of actions (including injunctions) that delay or prevent action to control and eradicate an epidemic would be highly detrimental to the containment of the disease and would have the potential to cause damage of national significance to livestock industries and the broader community.

The Regulations provide for exclusion from the AD(JR) Act of actions taken as a consequence of the issuing of a Governor General’s Proclamation under section 2B of the Quarantine Act. This is to enable a timely response to the outbreak and assist in its containment. The ability to quickly and effectively implement quarantine measures such as animal movement restriction and area disease freedom zoning may lessen negative impacts on international trade.

What consultation has occurred with industries that are likely to be affected by the amendments?

The industries most likely to be affected by the amendments are those related to livestock production. There has been no direct consultation with the livestock industries in relation to these amendments. However, it is recognised in the MOU that livestock industries have an important contribution to make to the national response to a disease outbreak. The MOU also recognises the closely related Government and Livestock Industry Cost-Sharing Deed in Respect to Emergency Animal Disease Resource under which government and signatory industries are committed to a range of matters including cost sharing. Under these arrangements, affected industries are participants in the national and State/Territory decision-making processes relating to disease control.

The operation of the proposed exemption is short term in nature—the exemption would not operate unless a Governor General’s Proclamation has been issued and would cease to have effect once Australia is declared free of disease by the Office International des Epizooties (the World Organisation for Animal Health). The Office has a range of functions, including developing sanitary rules for trade in animals and animal products. The amendment was sought to prevent delays in the implementation of nationally agreed disease control strategies. If delays occur, the disease may spread unnecessarily to further properties thus exacerbating the duration and cost of a response. A timely response and containment of the disease is likely to assist in enabling international trade to resume.

The need for the proposed amendment is closely tied to the amendments to the Quarantine Act that enable the States and Territories to access certain powers of the Act in order to control, eradicate or prevent an emergency animal disease. I understand that the Department of Agriculture, Fisheries and Forestry sought advice from the Office of Regulation Review (ORR) as to whether a Regulatory Impact Statement (RIS) would be required with respect to the Quarantine Act amendments and the ORR determined that on the basis of national security and lack of direct impact on business, the amendments were exempt from RIS requirements.
Explanatory Statement

Your letter also states that the Explanatory Statement for the Regulations did not include an item-by-item description or explanation of the amendments and that such a description ‘assists in understanding the operation of the Regulations’. I have directed the relevant areas of the Attorney-General’s Department to have regard to these requirements when producing explanatory statements in the future.

Given that the primary responsibility for the containment of a foot and mouth disease outbreak falls with the Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss MP, I have provided a copy of your letter and my reply to the Minister for his information.

I hope this information is of assistance to the Committee.

Yours sincerely
DARYL WILLIAMS
Attorney-General

Medical Indemnity Subsidy Scheme 2003 made under subsection 43(1) of the Medical Indemnity Act 2002

14 August 2003
Senator the Hon Kay Patterson
Minister for Health and Ageing
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Medical Indemnity Subsidy Scheme 2003 made under subsection 43(1) of the Medical Indemnity Act 2002 that establishes the Medical Indemnity Subsidy Scheme for certain medical practitioners.

Paragraph 8(4)(d) of this Scheme states that the scope of the subsidy does not cover any “additional charge that relates to the practitioner’s prior claims history”. The Committee would appreciate clarification as to whether this includes a higher premium that relates to a practitioner’s prior claims history. If this is the case, then should this be stipulated more clearly in the ‘2003 Notes for Applicants’, found in Attachment E?

Section 14 of the Scheme states that decisions under sections 7 or 10 may be the subject of review. Section 12 provides that an authorised officer may withhold further payments of subsidy where a practitioner has not notified the Department about a “material change” in his or her circumstances. Given that there may be disputes about what constitutes a “material change”, the Committee would appreciate your advice on whether a decision to withhold payments under section 12 should be reviewable.

The Committee would appreciate your advice on the above matters as soon as possible, but before 8 September 2003, to enable it to finalise its consideration of this instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

Senator Tsebin Tchen
Chairman
Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen,

Thank you for your letter of 14 August 2003 concerning aspects of the Medical Indemnity Subsidy Scheme, established under subsection 43(1) of the Medical Indemnity Act 2002. In your letter you have raised two issues on which the Standing Committee on Regulations and Ordinances seeks clarification and my advice.

Paragraph 8(4)(d) of the Scheme states that the subsidy to a doctor is not payable in respect of ‘any additional charge that relates to the practitioner’s prior claims history’. Where my Department can identify from the information provided by the doctor that the doctor has been charged such an amount, in addition to the premium, no subsidy will be available for that portion of the doctor’s costs. The Committee has asked if the effect of the paragraph should be expressed more clearly in
the Notes to Applicants. The Notes to Applicants form part of the information available to doctors applying for a subsidy.

I appreciate the Committee bringing this matter to my attention. I will ensure that my Department makes appropriate changes to the Notes to Applicants to ensure that the effect of paragraph 8(4)(d) is made clearer to applicants.

I understand that the Committee also seeks my advice as to whether a decision by an authorised officer to withhold payments under section 12 of the Scheme should be reviewable. I am of the view that the interests of applicants are appropriately recognised and protected without a further avenue for reviews, for the following reasons.

Section 12 states that the authorised officer may withhold a payment to a doctor where the doctor has failed to notify my Department of any material change in his or her circumstances, which may affect the subsidy payment. The authorised officer may only withhold payment until the doctor provides the relevant information.

Under section 12 payment is merely suspended, not denied. The terms of the instrument make it clear to applicants what information needs to be provided, and what actions need to be taken for doctors to be eligible for payments. It is important that public moneys be expended appropriately and that doctors receive the correct amount of subsidy for which they are eligible under the Scheme. If the doctor’s circumstances change (which may either increase or decrease the level of subsidy they may be paid) it is essential that my Department becomes aware of this, so that the correct moneys are paid in a transparent and accountable manner. On providing the relevant information, in accordance with the terms of the instrument, a doctor can be paid. No doctor will be denied payment under this provision.

As you have identified in your letter, section 14 of the Scheme provides specifically for the review of decisions under sections 7 and 10. If a doctor is refused a payment of subsidy, that doctor does have both internal and external avenues for review of that decision. This, of course, requires that extra resources be allocated for the conduct of these reviews. The advice of the Attorney-General’s Department was sought in relation to review provisions for the Scheme. The current review arrangements in the Scheme reflect that advice. I consider that applicants under the subsidy are generally well protected with both internal and external avenues of review for final decisions about the payment of subsidy under sections 7 and 12 under the Scheme.

I trust that this information is of assistance.

Yours sincerely,
Senator Kay Patterson
Minister for Health and Ageing

18 September 2003
Senator the Hon Kay Patterson
Minister for Health and Ageing
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 11 September 2003 responding to the Committee’s concerns with the Medical Indemnity Subsidy Scheme 2003 made under subsection 43(1) of the Medical Indemnity Act 2002.

The Committee expressed concern that applicants would not clearly understand the effect of paragraph 8(4)(d) and appreciates your advice that the Notes to Applicants will be amended to include such information.

The Committee also sought advice on whether a decision to withhold payments under section 12 of the Scheme should be reviewed. You advised that review was not necessary as payments under this section are merely suspended and no doctor would be denied payment once the relevant information has been provided. The Committee appreciates that payments will be suspended only for so long as the doctor withholds information. However, it is not clear what would happen if there is a dispute about whether satisfactory information has already been supplied. What mechanisms, if any, have been put in place for resolving such a dispute?

The Committee would appreciate your advice on the above matter as soon as possible but before 3 October 2003 to enable it to finalise its consideration of this instrument. The Committee has given a notice of motion to disallow this instrument to preserve its position while awaiting...
ment to preserve its position while awaiting a response. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

Senator Tsebin Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen,

Thank you for your letter of 18 September 2003 seeking further clarification regarding the rights of appeal mechanisms within the Medical Indemnity Subsidy Scheme, established under subsection 43(1) of the Medical Indemnity Act 2002.

In your letter you have asked what mechanisms if any have been put in place to address disputes over whether satisfactory information has been supplied under section 12 of the Scheme.

There is no formal merits review available for disagreements about whether a practitioner has told my Department about a material change in circumstances as required by section 12. Of course, my Department would exercise the power to withhold further payments reasonably. In this respect, my Department does not have any discretion to withhold payments. Rather, payments can only be withheld if the practitioner has not told my Department about a material change in the practitioner’s circumstances. Should the power be exercised otherwise than in accordance with section 12, this could be subject to judicial review in court.

Given the nature of section 12, I remain of the view that merits review is not appropriate. Payments are only withheld under section 12, not denied. A withholding of payments would be removed as soon as the practitioner provides the relevant information, or my Department is satisfied that it already has been notified of all relevant information. In these circumstances, in my opinion, it would be inappropriate for disputes to be resolved by recourse to a formal appeals process.

As I mentioned in my letter of 11 September 2003, I believe that the information that needs to be provided is apparent from the terms of the subsidy instrument. That said, it may be helpful if practitioners had some explicit guidance on what sort of changes would be a material change to a practitioner’s circumstances that would have to be notified under section 12.

I therefore undertake that my Department will amend the notes for applicants so they set out some examples of the types of change in circumstance that should be notified under section 12.

I trust that this information clarifies these issues for the Committee.

Yours sincerely,
Senator Kay Patterson
Minister for Health and Ageing
03 Oct 2003

Criminal Code Amendment Regulations 2003 (No. 9), Statutory Rules 2003 No. 184

21 August 2003
The Hon Daryl Williams MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Criminal Code Amendment Regulations 2003 (No 9), Statutory Rules 2003 No 184. These Regulations insert into the list of terrorist organisations the organisation known as Hizballah External Security Organisation and its alternative titles.

The Committee notes that these regulations have a retrospective commencement date of 5 June 2003. The Explanatory Statement does not indicate the reason for the retrospective commencement. Indeed, the Explanatory Statement indicates that the regulations commence on gazettal. Nor does the Explanatory Statement deal with the matters found in subsection 48(2) of the Acts
Monday, 13 October 2003

Subsection 102.1(12) provides that a copy of the announcement referred to in paragraph 102.1(11) (b) must be published on the Internet and in a newspaper circulating in each State and the Northern Territory.

Pursuant to the Code, I announced that the Regulations were to be made on 5 June 2003. This announcement was made in the manner of a press release and can be accessed at www.ag.gov.au. I have attached a copy of that announcement to this letter for your perusal. The announcement was also published in a newspaper circulated in each State and the Northern Territory on 21 June 2003.

In conjunction with the announcement, paragraph 102.1(11)(c) provides that the Regulations have to be made within 60 days after the day on which the Criminal Code Amendment (Hizballah) Act 2003 received Royal Assent. The Criminal Code Amendment (Hizballah) Act 2003 received Royal Assent on 24 June 2003 The Regulations were made and gazetted on 18 July 2003 and were within the 60 day time period prescribed by the Act.

Section 48(2) of the Acts Interpretation Act 1901 is implicitly overridden by section 102.1(11) of the Code, which provides for the retrospective operation of regulations made pursuant to that section. This is consistent with the rules of legislative interpretation which provide that a specific provision such as subsection 102.1(11) of the Code, override provisions Of general application such as section 48(2) of the Acts Interpretation Act 1901. The retrospective operation of the Regulations in no way pre-empts or diminishes the decision making process to list a terrorist organisation.

In enacting the legislation, the Government has provided express provisions to ensure that the public is kept fully informed, particularly where a listing will operate retrospectively. As can be seen in this instance the details of the listing were widely promulgated through the Internet and print media.

The Government feels justified that there is little point in delaying the listing of a terrorist organisation if there is intelligence indicating that the organisation is a significant national security concern.
I note that the Explanatory Statement for the Regulations is incorrect in its specification of the Regulations commencement date being the date of gazettal, I will ensure that the Explanatory Statement is amended to reflect the intended operation of the Regulations.

Yours sincerely

DARYL WILLIAMS
Attorney-General

Electoral and Referendum Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 188

21 August 2003
Senator the Hon Eric Abetz
Special Minister of State
Parliament House
CANBERRA ACT 2600
Dear Minister

I refer to the Electoral and Referendum Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 188.

The Committee notes that these amendments affect the continued operation of regulation 10 that permits the use of confidential elector information by prescribed Commonwealth agencies and authorities by extending the date of the sunset clause in subregulation 10(3) of the principal Regulations by two years, from 26 July 2003 to 24 June 2005. This sunset clause was previously extended in December 2001 for a further period of eighteen months (see Statutory Rules 2001 No. 340). The Explanatory Statement does not indicate the reason for the further extension of the sunset clause, nor why it is being extended for a two year period.

The Committee would appreciate your advice on the above matter as soon as possible, but before 12 September 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen
Chairman

Senator Tsebin Tchen
Chairman
Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600
9 SEP 2003

Thank you for the Committee’s inquiry into the further extension to the sunset clause on the provision of confidential elector information under Regulation 10 of the Electoral and Referendum Regulations 1940. As you have noted, the sunset clause on the permitted purposes for the use of confidential roll information governed by Regulation 10 has been extended to 24 June 2005.

It was necessary to extend the current provisions allowing the release of elector information under specified circumstances. The possibility of a federal election intervening was taken into account when deciding upon the length of extension to the sunset clause under subregulation 10(3). A period of two years was considered prudent to ensure that legislative amendments would be finalised without any requirement for yet another extension to the sunset clause proving necessary.

Yours sincerely

ERIC ABETZ
Special Minister of State

18 September 2003

Senator the Hon Eric Abetz
Special Minister of State
Parliament House
CANBERRA ACT 2600
Dear Minister

Thank you for your letter of 9 September 2003 responding to the Committee’s concerns with the Electoral and Referendum Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 188.

In your response, you advised that the further extension of the sunset clause in subregulation...
10(3) was ‘necessary’. No reason was given as to why it was considered necessary to extend this provision. The Committee would therefore appreciate a further explanation for the extension of this sunset clause.

The Committee would appreciate your advice on the above matter as soon as possible but before 3 October 2003 to enable it to finalise its consideration of these Regulations. The Committee has given a notice of motion to disallow this instrument to preserve its position while awaiting a response. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

Senator Tsebin Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
2 OCT 2003

Dear Senator Tchen

Thank you for your letter (Ref: 106/2003) of 18 September 2003 seeking further explanation for the extension of the sunset clause under subregulation 10(3) of the Electoral and Referendum Regulations 1940 (the Regulations) to 24 June 2005. As you may know, the sunset clause relates to permitted purposes for the use, by prescribed Commonwealth Government Agencies and Authorities (prescribed Agencies), of confidential elector information provided in electronic format.

I note that the notice of motion to disallow Electoral and Referendum Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 188, given by the Standing Committee on Regulations and Ordinances (SCRO) on 18 September 2003, was to preserve the SCRO’s position while awaiting my response to your letter.

For your information, the extension of the sunset clause is a consequential amendment to the Regulations, relating to the delay of introduction of the proposed Commonwealth Electoral Amendment Bill (No. 1) 2003 (the Bill) until such time as the Joint Standing Committee on Electoral Matters (JSCEM) had considered the Australian Electoral Commission’s (AEC) review of sections 89-92 of the Commonwealth Electoral Act 1918 (the Electoral Act), the provisions relating to roll access. The AEC, for which I have portfolio responsibility, prepared the Bill for introduction in the 2003 Autumn Sittings in anticipation that it would be introduced in time for implementation by 25 July 2003 when the sunset clause was due to expire.

The Bill was intended to specifically provide for the release of confidential elector information (i.e. including date of birth, gender and occupation details) to prescribed agencies in electronic format. Further, the Bill was necessary to resolve the situation that arose, in June 2000, following advice from the Solicitor-General, that the Electoral Act contained no specific power to provide confidential elector information to prescribed Agencies in electronic format.

The Solicitor-General’s advice qualified previous legal advice on which the AEC had been relying since the early 1990s.

In summary, the Solicitor-General advised that the AEC could release confidential elector information to prescribed Agencies in electronic format under the combined powers of subsection 91(10) and paragraph 91(4A)(e) of the Electoral Act.

However, subsection 91 A(1) of the Electoral Act stated that information released under paragraph 91(4A)(e) of the Electoral Act could only be used for a permitted purpose. Therefore, the Solicitor-General advised that while the release of confidential elector information in electronic format to prescribed Agencies was lawful, the use of the information by the prescribed Agencies would not be lawful unless it was used for a permitted purpose.

At that point in time, the Electoral Act provided, in paragraphs 91A(2A)(a), (b) & (c) respectively, two permitted purposes and one power to prescribe further permitted purposes. The two permitted purposes were “any purpose in connection
with an election or referendum”; and “monitoring the accuracy of information contained in a Roll”.

Further, as at June 2000, two additional permitted purposes had been prescribed under subsection 91A(2A)(c) of the Electoral Act. These were the conduct of medical research and the provision of public health screening programs, found in Regulation 10(1) of the Regulations. Therefore, while the AEC could lawfully release confidential elector information in electronic format to the prescribed Agencies then listed in Schedule 2 of the Regulations, those prescribed Agencies could only use it for the following four purposes:

1. any purpose in connection with an election or referendum [paragraph 91A(2A)(a) of the Electoral Act]; and
2. monitoring the accuracy of information contained in a Roll [paragraph 91A(2A)(b) of the Electoral Act]; and
3. conduct of medical research [paragraph 91A(2A)(c) of the Electoral Act and Regulation 10(1)(a) of the Regulations]; and
4. provision of a public health screening program [paragraph 91A(2A)(c) of the Electoral Act and Regulation 10(1)(b) of the Regulations].

However, the majority of prescribed Agencies that were then receiving confidential elector information in electronic format were not using it for any of the above purposes. Therefore, it became apparent that, in the absence of further permitted purposes being prescribed in the Regulations, such as law enforcement and protection of the public revenue, the use by many of the prescribed Agencies of the confidential elector information, provided in electronic format, was likely to be unlawful.

The matter was put to Cabinet on 26 June 2000. As a short-term solution, Cabinet agreed to the making of regulations that would prescribe the permitted purposes in relation to Agencies. Cabinet noted that the AEC was intending to submit a review of sections 89-92 of the Electoral Act to the JSCEM and was of the view that any further legislation should await the JSCEM’s consideration of the review (Cabinet Decision JH00/217/cab). As the regulations were intended as a short-term solution, they contained a sunset clause.

It was considered inappropriate and contrary to Cabinet’s wishes to pre-empt the JSCEM’s consideration of this matter by introducing the Bill. But the original sunset clause has proven to not provide sufficient time to have a final legislative solution in place.

As you may be aware, the AEC submitted its review of sections 89-92 of the Electoral Act as part of the AEC’s main submission to the JSCEM’s inquiry into the conduct of the 2001 Federal Election. The JSCEM published its Report of the Inquiry into the Conduct of the 2001 Federal Election in June 2003 and the Government Response to the recommendations contained in the Report is expected to be tabled in Parliament soon.

It was for the above reasons, the need to ensure finalisation of relevant legislative amendments following the Government Response, and the possibility of an intervening federal election, that a further extension of the sunset clause is necessary.

Thank you for the opportunity to provide the Committee with further information about this matter.

Yours sincerely

Eric Abetz
Special Minister of State

Fishing Levy Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 134
14 August 2003
Senator the Hon Ian Macdonald
Minister for Fisheries, Forestry and Conservation
Parliament House
CANBERRA ACT 2600
Dear Minister

I refer to the Fishing Levy Amendment Regulations 2003 (No 1), Statutory Rules 2003 No 134, that amend the principal Regulations to include reference to the North West Slope Fishery and the Western Deep Trawl Fishery.

The Explanatory Statement accompanying these regulations notes that the levies set for the two
fisheries represent a significant reduction on the levies prescribed in previous years. The Explanatory Statement explains that previous levy amounts were set to cover the development of Management Plans which have now been put on hold, resulting in a budget surplus. The Committee notes that the Management Advisory Committee for the two fisheries has agreed that some of the surplus should be used to subsidise management costs for 2002/2003. The Committee would, however, appreciate your advice as to why the original purpose for the collection of these levies has been ‘put on hold’ and whether any consideration was given to returning the surplus to the levy payers.

The Committee would appreciate your advice on the above matters as soon as possible, but before 12 September 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

Senator Tsebin Tchen
Chairman
Senate Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen

Thank you for your letter of 14 August 2003 regarding the Fishing Levy Amendment Regulations 2003 (No 1), Statutory Rules 2003 No 134. These Regulations amend the Principal Regulations to include reference to the North West Slope Trawl Fishery (NWSTF) and the Western Deep Water Trawl Fishery (WDWTF).

I note that the Committee has asked for advice as to why the original purpose for the collection of levies in the two fisheries has been ‘put on hold’ and whether the Australian Government has given consideration to returning the surplus to the levy payers.

In preparing a response, I have sought advice from the Australian Fisheries Management Authority (AFMA). I am advised by AFMA that during 2000 the Management Advisory Committee (MAC) for the NWSTF and WDWTF recommended that appropriate management plans be developed for these fisheries over the 2001/2002 financial year. Accordingly, funds to cover the costs associated with the development of management plans were included in the budget for that financial year.

The development and implementation of management plans are a very resource intensive process and include not only the development and consultation on the actual management plan itself, but also the preparation of a strategic assessment under the Environment Protection and Biodiversity Conservation Act 1999, the development of a computer-based register of statutory fishing rights and a number of other administrative processes.

AFMA is in the process of developing a number of management plans. The Western Trawl Fisheries are relatively small fisheries without major resource concerns at this time. Hence, it was decided to give priority to the development/review of management plans for the high value Southern and Eastern Scalefish and Shark Fishery, Southern Bluefin Tuna Fishery, Southern and Western Tuna and Billfish Fishery and Eastern Tuna and Billfish Fishery.

Funds budgeted for the development of management plans for the NWSTF and the WDWTF were therefore not expended.

Every year, AFMA returns any surplus on levies collected by reducing the levy charged to operators in the following year. In the case of the NWSTF and the WDWTF, the surplus from 2001/2002 was almost exactly the amount required to fund the 2002/2003 budget for those fisheries. Therefore, AFMA, in consultation with the MAC decided to only charge the operators a small levy for 2002/2003. This small levy was to provide funding for anticipated future research requirements without having to increase levies significantly in 2003/2004.
The alternative to the above approach would have been to refund the surplus for 2001/2002 to operators then re-collect the money for 2002-2003, attracting an overhead in the process. Since this approach would have meant that operators would have borne an additional financial burden and the inconvenience of receiving a refund and then having to pay again, AFMA and the MAC decided that the better option was to carry the surplus over for 2002/2003.

Thank you again for bringing the Committee’s concerns to my attention.

Yours sincerely

Ian Macdonald
Minister for Fisheries, Forestry and Conservation

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Great Barrier Reef Marine Park Amendment Regulations 2003 (No. 2), Statutory Rules 2003 No. 200

21 August 2003

The Hon David Kemp MP
Minister for Environment and Heritage
Parliament House
CANBERRA ACT 2600

Dear Minister


The Explanatory Statement notes that one purpose of these amendments is to provide that certain offences are offences of strict liability. It is not clear whether these amendments are simply clarifying the strict liability status of the specified offences, as a consequence of the Criminal Code, or whether new strict liability offences are being created. If new strict liability offences are being created, then the Explanatory Statement does not indicate why strict liability is appropriate. In particular, it is not clear why, under new paragraph 38(1)(a), it should be a strict liability offence to use an underwater breathing apparatus that is not a snorkel. The Committee would appreciate your advice on these offences and about what steps are to be taken to ensure that adequate notice is given to people (eg spearfishers) about the creation of these new offences.

The Committee would appreciate your advice on the above matters as soon as possible, but before 12 September 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen
Chairman

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Senator Tsebin Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen


I note that you have sought my advice with respect to the strict liability offences contained in the amendment regulations and I can advise that steps are being taken to ensure that adequate notice is given to people about the creation of these new offences.

The purpose of the amendment regulations, in so far as they make specified offences strict liability offences, was not to clarify the strict liability status of the specified offences as a consequence of the Criminal Code, but rather to make existing offences in the Great Barrier Reef Marine Park Regulations 1983 (“the GBRMP Regulations”) offences of strict liability.

The offences that were made strict liability offences in these amendment regulations are:

- Subregulation 38(1)—this subregulation creates an offence for a person who is spearfishing in the Great Barrier Reef Marine Park (“the Marine Park”) to use an underwater breathing apparatus that is not a snorkel, or a power-head, or a gun.
• Subregulation 41 A(1)—this subregulation creates an offence for a person to take or allow a living terrestrial animal to enter upon an island, or part of an island, that is owned by the Commonwealth and is within the Marine Park.

• Subregulation 66C(1)—this subregulation creates an offence for a person to display a bareboat identification number in certain circumstances.

• Subregulation 84(1)—this subregulation creates an offence for a person to alter the date on a receipt or ticket, or add a date to a receipt or ticket that does not bear a date.

All of the above offences have been identified as offences for which an infringement notice may be issued. This provides the offender with the option to pay the infringement notice penalty as an alternative to a prosecution. As such, pursuant to paragraph 66(2)(n) of the Great Barrier Reef Marine Park Act 1975, the maximum penalty under such an infringement notice is one fifth of the maximum penalty by which a contravention of that provision is otherwise punishable; that is, 10 penalty units. In this regard, I refer you to Schedule 10 (Item 10) in the amendment regulations.

You will note that most penalties for an infringement notice offence is five penalty units or less. However, whether or not an infringement notice penalty is collected, or whether the infringement notice is withdrawn and the offender prosecuted for the offence, would depend on the seriousness of the offence.

I note that the Senate Standing Committee for the Scrutiny of Bills in its sixth report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation, noted that infringement notices should be used only for strict liability offences and are acceptable; subject to the usual safeguards.

Although the above offences have become strict liability offences, the defence of mistake of fact pursuant to section 9.2 of the Criminal Code is still available. In addition, both regulations 38 and 41 A of the GBRMP Regulations provide additional defences for the use of an underwater breathing apparatus when spearfishing and for the taking of a terrestrial animal onto a Commonwealth island, respectively.

In addition, the nature of the above offences is such that the Great Barrier Reef Marine Park Authority (“the GBRMPA”) considered that the use of a mental element would add nothing to the criminality of the act nor the education of the public. For example, I note that you have specifically sought advice as to why it should be a strict liability offence, under paragraph 3 8(1)(a) of the GBRMP Regulations, to use an underwater breathing apparatus that is not a snorkel. In this instance, the use of the underwater breathing apparatus provides a spearfisher with the ability to spear a greater number of fish than the spearfisher would be able to obtain by using only a snorkel. In addition, the use of underwater breathing apparatus provides the spearfisher with greater access to fish at deeper depths, whilst the use of a snorkel provides a “depth buffer” for the fish. It is because of these effects on the environment that it was considered appropriate to make using an underwater breathing apparatus when spearfishing a strict liability offence.

I also note that you have requested advice on what steps are to be taken to ensure that adequate notice is given to people about the creation of the new offences.

The GBRMPA has recently advised me of an extensive public education program to be conducted by the GBRMPA with respect to the implementation of the infringement notice system. This program will include media releases, an article published in the GBRMPA's Tourism and Recreation Group’s newsletter (which is provided to all tourism operators in the Marine Park), information being published on the GBRMPA's internet site, and industry groups and community representatives on the Local Marine Advisory Groups along the Queensland coast being informed of the introduction of the infringement notice system. At this stage, it is envisaged that the implementation of the infringement notice system will occur on 1 December 2003 to allow adequate time for the community information and education to occur. This date also coincides with a downturn in tourism related activities in the Marine Park.

I trust that this addresses your concerns.

Yours sincerely

[Name]
Dear Minister,

I refer to the Marriage Amendment Regulations 2003 (No 2), Statutory Rules 2003 No 198. These regulations specify requirements for the registration and professional development of, and the process for dealing with complaints against, marriage celebrants.

The Committee notes that new subregulation 37N(3) provides that the Registrar of Marriage Celebrants must give a marriage celebrant a notice stating the outcome of a review of the celebrant’s performance ‘as soon as practicable’ after the review has been completed. The Committee seeks your advice on why a specific time limit should not be imposed on the Registrar of Marriage Celebrants to provide notification to a marriage celebrant of the result of their performance review. The subregulation provides that such notification must be provided ‘as soon as practicable’ after the review has been completed. The Committee has drawn attention to the time limit specified for the receipt and consideration of representations by the marriage celebrant in cases where there are concerns about a marriage celebrant’s performance.

Subregulation 37N(3) applies to all performance reviews whether there are concerns about the performance of a marriage celebrant or not. In the vast majority of cases it is anticipated there will be no concerns about the performance of a marriage celebrant.

There are currently approximately 3,500 marriage celebrants being transferred to the new system and a maximum of 350 marriage celebrants to be appointed per year. Conducting a review of all of the current marriage celebrants over, for example, a twelve month period will involve the completion of the reviews at the rate of approximately 291 per month or 73 per week. The provision in subregulation 37N(3) that the Registrar must notify the marriage celebrant ‘as soon as practicable’ of the results of the review is intended to provide flexibility for the Registrar to manage this aspect of the new system in conjunction with other responsibilities.

Subregulation 37N(3) is not intended to lead to delays in notifying marriage celebrants of the result of their review and it is certainly not anticipated that this will be the case. It is expected that the use of new administrative databases in man-
aging the new Marriage Celebrants Program will result in most reviews being a straightforward matter.

I hope that this clarification addresses the Committee’s concerns on this matter.

Yours sincerely

DARYL WILLIAMS
Attorney-General

Presentation

Senator Forshaw to move on the next day of sitting:

That the Senate—
(a) notes that:
   (i) Monday, 13 October 2003, is the 160th anniversary of the founding of B’nai B’rith,
   (ii) B’nai B’rith is the largest Jewish community service organisation in the world today, with branches in 51 countries including Australia, and holds non-government organisation consultative status at the United Nations (UN), UNESCO and the UN Commission on Human Rights,
   (iii) for 160 years B’nai B’rith has provided continuing support and assistance to both Jewish and non-Jewish people in Australia and throughout the world, particularly those in need or sick, the aged and people suffering persecution, and
   (iv) that B’nai B’rith continues to promote the ideals and principles of peace, philanthropy, support for science and the arts, relief from suffering and the advancement of humankind; and
(b) congratulates B’nai B’rith on its 160th anniversary.

Postponement

Items of business were postponed as follows:

General business notice of motion no. 466 standing in the name of Senator Lees for 14 October 2003, relating to the introduction of the Protection of Biodiversity on Private Land Bill 2003, postponed till 2 December 2003.

General business notice of motion no. 637 standing in the name of Senator Brown for today, relating to the cancellation of the SBS program Insight, postponed till 14 October 2003.

IMMIGRATION: DETENTION CENTRES

Senator ALLISON (Victoria) (3.35 p.m.)—I move:

That the there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs, no later than 3 pm on Thursday, 16 October 2003:
   (a) the default notice issued to Australasian Correctional Management under the Government’s general agreement contract to manage detention centres; and
   (b) the report prepared for the Department of Immigration and Multicultural and Indigenous Affairs by Knowledge Enterprises in 2001 on management of detention centres.

Question agreed to.

INSURANCE: MEDICAL INDEMNITY

Senator CHRIS EVANS (Western Australia) (3.35 p.m.)—I move:

That there be laid on the table by the Minister for Revenue and Assistant Treasurer, no later than 5 pm on Tuesday, 14 October 2003, all documents held by the Australian Government Actuary relating to its calculations of the Incurred But Not Reported (IBNR) levy following the collapse of the medical defence organisation United Medical Protection, including the formulae used to calculate the estimated unfunded liabilities for IBNR claims.

Question agreed to.
COMMITTEES

Rural and Regional Affairs Legislation Committee

Reference

Senator MACKAY (Tasmania) (3.36 p.m.)—At the request of Senator O’Brien, I move:


Question agreed to.

NOTICES

Withdrawal

Senator MACKAY (Tasmania) (3.36 p.m.)—At the request of Senator Hutchins, I withdraw general business notice of motion No. 601, standing in his name for today.

Question agreed to.

TRUTH IN FOOD LABELLING BILL 2003

First Reading

Senator BROWN (Tasmania) (3.38 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to enable consumers to know the country of origin, the extent of genetic manipulation and the chemical residues in food, and for related purposes

Question agreed to.

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—

The purpose of this bill is to provide a comprehensive GM labelling system in Australia that will require the labelling of all foods derived from gene technology, not just those foods that still have detectable levels of GM protein or DNA left after processing, as is the case at present.

This bill is the result of a Trans-Tasman link up between Greens MPs in Australia and New Zealand. A bill almost identical to this one has been introduced in the New Zealand parliament by Greens NZ MP Sue Kedgley. The legislation is the product of the growing internationalisation of the Greens worldwide. There are 80 Greens parties around the world with Australia and New Zealand at the forefront of the development of this global green project. Indeed the Global Greens Conference in Canberra in 2001 attracted 800 people from almost 70 countries.

It is based on the concept that consumers have the right to sufficient accurate and meaningful information on a label to enable them to make informed food purchasing decisions.

Under the bill, all GM derived foods, ingredients, flavourings and additives will have to be labelled, irrespective of whether there is DNA or protein of GM origin in the final product.

The threshold for labelling foods that are inadvertently contaminated with GM material will be lowered from 1% to 0.5%. The threshold for non-approved GM material will remain at its current level: zero.

The bill will also require animal feed derived from GM to be labelled for the first time. It will ensure that GMOs can be traced at all stages in the production, distribution and marketing chain. This will enable authorities to keep track of all GM material that enters the food chain, and trace GM food ingredients and foods from the moment of their inception through the processing stage. This will ensure that producers can prove that they have taken all appropriate steps to avoid such contamination.
The need for accurate, truthful and meaningful food labelling is recognised by all the major national and international food standard setting agencies including Food Standards Australia New Zealand.

Our existing GM labelling regime does not provide consumers with sufficient information, however, to enable them to make informed purchasing decisions or to avoid GM foods or ingredients if they so wish. It exempts all GM foods and ingredients that do not have DNA or protein of GM origin in the final product, as well as flavourings and additives and food that has been inadvertently contaminated with GM ingredients up to 1%. The absence of any requirement to label these GM derived products and ingredients in food means it is almost impossible for a consumer to work out which foods contain or are made from GM ingredients and avoid them if they wish.

The bill also requires the Minister to implement a monitoring plan that would enable the tracing of any direct or indirect unforeseen effects on human health or the environment of GM food or feed after it has been placed on the market.

The bill enshrines in law for the first time the fundamental consumer right to know what is in food they are purchasing, and to have unhindered access to information on food products so that they can make informed purchasing decisions.

It requires that the country of origin of certain foods is clearly identified on labels or at the point of sale of food. It also requires government to make available to the public all information it gathers on residues in foods from pesticide, heavy metals, industrial chemicals or by-products, veterinary medicines and any other contaminants.

Senator BROWN—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DOCUMENTS

Health: Bans on Smoking

The DEPUTY PRESIDENT (3.38 p.m.)—The President has received a response from the Premier of Queensland, Mr Beattie, to a resolution of the Senate of 11 September 2003 concerning bans on smoking.

Parliamentary Zone
Proposal for Works

The DEPUTY PRESIDENT (3.39 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present on behalf of the President a proposal by the Joint House Department for works within the Parliamentary Zone, together with supporting documentation, relating to the installation of four accessible pram ramps at the junction of the Parade Ground and Federation Mall.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.39 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Joint House Department for the installation of four accessible pram ramps at the junction of the Parade Ground and Federation Mall.

Committees

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator FERGUSON (South Australia) (3.40 p.m.)—I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled Review of the Defence annual report 2001-02. I seek leave to move a motion in relation to the report.

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the report.

The 2001-02 Defence Annual Report covers a period of climactic events affecting Australian and world security. The terrorist attacks of 9-11 and the rise of non-state adversaries are causing nations to evaluate and reconsider their national defence strategies and
priorities. Australia is not alone in this challenge.

The review of the Defence Annual Report provides an opportunity to scrutinise the performance of Defence not only in delivering key services but also in how it is reacting to new security threats. Defence has recently established a Special Operations Command. A key component of this is the new Tactical Assault Group East and the Incident Response Regiment. A key challenge faced by Defence in providing these new capabilities is the provision of highly trained personnel.

The Australian Defence Force, particularly the Army, is subject to high operational tempo, which has implications for personnel, training and equipment. The committee examined how Defence is managing Army personnel and equipment. A key defence procurement program is the replacement of the FA18 and F111 combat and strike aircraft. The government has committed funding to the systems design and development stage of the Joint Strike Fighter, the F35, program. A decision on whether to purchase the F35 is not required until 2006. The committee examined the F35’s capability, the transitional arrangements from the existing aircraft to the F35, and possible Australian industry involvement opportunities.

Financial management and performance reporting of defence outcomes and outputs are key requirements which ensure transparency and accountability to the parliament. The 2003-04 portfolio budget statements are an improvement over those of the previous year. Further improvements, however, are possible. Through the review of the 2001-02 Defence Annual Report, the committee recommends that the Department of Defence should (1) include in future portfolio budget statements cost data on the ADF reserve forces, including total cost data and cost data by service; and (2) respond to the measures proposed by the Australian Strategic Policy Institute to improve Defence budgetary transparency, discussed on pages 99 to 105 of the ASPI Defence Budget Brief 2003-04.

In addition, the Department of Defence should provide information in its annual report: indicating and giving reasons for the key changes to defence capability which are identified in the next Defence Capability Plan; detailing the Army’s personnel deficiencies and the measures being undertaken to address these problems; detailing the work and performance outcomes of the military inspector-general, military justice, of the Australian Defence Force; giving a description of the role, structure and function, including transition to new functions, of reserve forces, and the extent to which Army is blending them with regular units; and outlining Australia’s role in the Joint Strike Fighter program, the projected cost, transitional arrangements and progress with Australian industry involvement in the program. The Department of Defence should include performance targets and objectives in its report. Subsequent annual reports should report outcomes against those targets and objectives.

The committee concludes that the implementation of these measures will enhance transparency and parliamentary accountability of defence operations. In conclusion, and on behalf of the committee, we would like to thank all those who have contributed to the review of the 2001-02 Defence Annual Report, and I thank the committee members for their input. I commend the report to the Senate and seek leave to continue my remarks later.

Leave granted; debate adjourned.
Return to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.45 p.m.)—by leave—
The statement that I read is on behalf of Peter McGauran MP, the Minister for Science. The order arises from a motion moved by Senator Brown and agreed to by the Senate on 9 October 2003, and it relates to the provision of working documents of the independent working group which operated in 2002 to produce a report for the Prime Minister’s Science, Engineering and Innovation Council on ‘Beyond Kyoto: Innovation and Adaptation’ as well as certain related correspondence and records of meetings between employees or representatives of Rio Tinto and the Minister for Science, his department or the Office of the Chief Scientist between 1 January 2002 to the present.

I wish to inform the Senate that, in relation to item 1, the document was not provided in response to question on notice 1374 because Rio Tinto had advised that it had been provided as a work-in-progress to the working group for discussion purposes only and that it would be inappropriate to distribute it outside that group. In light of the Senate order, Rio Tinto has been invited to provide comments on whether it considers that its or Roam Consulting’s commercial interests could be prejudiced by the tabling of the document. It would be reasonable to await consideration of any response before deciding whether the document should be tabled.

In relation to items 2 and 3, in the time available it has not been possible to identify and examine all relevant documents. I propose to make a further statement when that process has been completed.

Senator BROWN (Tasmania) (3.46 p.m.)—by leave—The request for documents by the Senate is on a very important matter. They are documents about the interrelationship between Rio Tinto and the government which has led to the disbursement of many millions of dollars in the field of energy and minerals. To be frank, they relate to the position of the Chief Scientist who works half-time with the government, advising the government and various working groups including the one the minister mentioned, but also as chief technologist for Rio Tinto, one of the biggest coal and aluminium producers in the country.

The questions are very clear. On point 1, the minister has indicated doubt that this document will be forthcoming because it is a work-in-progress document going to a working group which was deciding on the very matters that I have just talked about. If it is good enough for a working group to have a document which is making decisions about allocations of public moneys and/or energy policy in this country, it is good enough for this Senate to get that document. It is an argument that goes without countermanding, as far as the Greens are concerned. For the government then to move that it wants to provide a blind here by asking whether Rio Tinto or Roam Consulting could be tempted to say, ‘Yes, this is commercial-in-confidence,’ as a means of preventing that coming before the Senate, is a form of behaviour which I do not accept, and I do not think the Senate should accept that either.

Senator Ian Campbell—It’s a basic courtesy basically. You may not believe in a basic courtesy.

Senator BROWN—We will see where the courtesy goes. On that, and the other two components of these documents requested by the Senate last week for this afternoon, the minister has simply said that the other documents are under consideration. That is not good enough.
Senator Ian Campbell—You haven’t given them enough time.

Senator BROWN—Responding to that interjection, the minister gave the Senate no time at all. It would facilitate the matter a great deal if the minister does give an indication to the Senate of the time required. Is it a day, is it a week or are we to be led down the path of this taking months? That is not acceptable. I ask whether the minister can give the Senate a time such as Wednesday night or Thursday night of this week for these documents to be prepared. We are prepared to be reasonable about that, and I think that is perfectly reasonable, but to simply say ‘Some time into the future’ is not what such an order is about, and the minister owes it to the chamber to put when that time will be. I am sure that if we do not get that there will be a consequent motion.

Senator CARR (Victoria) (3.50 p.m.)—by leave—This question of the Chief Scientist’s relationship with Rio Tinto has now been raised on a number of occasions. The opposition supported the return to order on the basis that I do think there are legitimate questions that ought be asked and answered—and I waited for Senator Ian Campbell to rise and I did not see any indication that he was rising. The Greens are basically asking the government whether they are seeking extra time to respond to this return to order, and I think that is a reasonable question, and it would be reasonable for the government to respond.

On the substantive question of whether there is a conflict of interest between the Chief Scientist and a major corporation for which he works part time, there is quite clearly a perception of a conflict of interest. I maintain the view, and I have stated it publicly, that I have no reason to doubt the integrity of the Chief Scientist. I have had no evidence put before me to suggest that the Chief Scientist has behaved improperly. I do think, however, that responding to these matters is one way of at least putting the case, and I would have thought it was in the government’s interests to respond properly and thoroughly to what is a reasonable request for information.

I am led to believe—in fact, I know—that the Chief Scientist is a man of great professional stature within the scientific and research communities in this country. I know that he is a man whom the government relies on quite extensively for advice in a range of policy areas. For instance, he is the author of a report on a research mapping exercise which sets down the research capacity for this country as part of the government’s forthcoming statement on Backing Australia’s Ability II. The Chief Scientist has within his grasp the capacity to influence the direction of policy in this country. It is not therefore an unreasonable question to ask: is there pressure being brought to bear upon him from a major corporation that may well benefit directly from the decisions of government in these matters that are under consideration by the executive? What I say, however, is that it does not automatically follow that the bloke has acted improperly simply because he has a job with Rio Tinto.

The policy position that we argue is that this appearance of a conflict of interest which clearly exists ought to be resolved by making the position full time thus removing the circumstances whereby these questions can be raised. I am advised that Rio Tinto—and I have yet to confirm this with the Chief Scientist but I understand that he has confirmed it in other quarters—are paying him something like $700,000 a year and that the Commonwealth is probably paying him in excess of $200,000 a year. If it is true that his salary is of that size—and I say to you that has to be confirmed—I would like to confirm it. I would like to confirm it at Senate esti-
mates but I cannot, because the government denied the Chief Scientist the capacity to appear before the Senate estimates, despite the fact that he was listed in the PBS as an officer reporting directly to the minister. When I raised this issue I was told that this was a mistake in the PBS, that the reporting line was not accurately recorded, that he was a consultant to the government. We have a situation where, under this government, a major public office appointment—namely, the Chief Scientist—is presented to this parliament as a consultant, not as a public servant. That is wrong; that is not appropriate.

Now we have a situation where the government is appearing—and that is what I want clarification on—to deny the parliament basic information about the relationship between advice tendered and a major corporation. If it is the case that the Chief Scientist has provided advice based on Rio Tinto data and that has not been declared, then I think there is a serious problem. It is not to say that the advice is wrong; this is where I differ with the Greens. I think it has yet to be demonstrated that the advice is, in itself, wrong. The nature of scientific argument is that people will put a view from time to time—and I think that is very worthy and appropriate—which is challenged. The difference here, however, is that the source of the information has not been declared.

In this particular case with regard to coal, I think the fact that there was such a controversy and that there were people on the other side of the argument from the Chief Scientist, including a range of authorities of very strong repute—namely, the Department of Energy in the United States, for instance—and a range of other sources, who lead me to the view that there does need to be further inquiry. That is why I say this is a reasonable request for documentation and information, and I trust that the government will treat it as such and now respond appropriately. I say, however, there is a more substantive structural problem in the way the government has sought to position this officer within the Public Service as a consultant, not as a public servant, and that the position is on a part-time basis. Under the Labor government this was a full-time position as it was regarded to be of such importance. This is a policy position that the government should now take.

COMMITTEES
Foreign Affairs, Defence and Trade Committee: Joint

Senator FERGUSON (South Australia) (3.57 p.m.)—I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled Review of Foreign Affairs and Trade Annual Report 2001-02, together with the Hansard record of proceedings. I seek leave to move a motion in relation to this report.

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the report.

I seek leave to have my tabling speech incorporated in Hansard.

Leave granted.

The report read as follows—

Mr President, I am pleased to present this report on behalf of the Joint Standing Committee on Foreign Affairs Defence and Trade.

This report comprises a review of the Annual Reports for 2001-02 of relevant portfolio agencies. The review was conducted on behalf of the Full Committee by three of its Sub-Committees—Foreign Affairs, Trade and Human Rights. The Defence Sub-Committee’s report of its annual report review was tabled earlier.

The review is the second that the Committee has undertaken.

Annual reports of the Foreign Affairs, Defence and Trade portfolio agencies stand referred to the Joint Standing Committee on Foreign Affairs,
Defence and Trade for any inquiry the Committee may wish to make in accordance with a schedule tabled in the House by the Speaker.

The Committee decided early in this parliament to conduct reviews of relevant annual reports primarily with a view to making an active contribution to the processes by which the Parliament holds the Executive and its agencies to account.

Its first review examined the annual reports 2000-01 from the Department of Defence, DFAT, AusAID and Austrade. It held two public hearings as part of this review, one convened by the Defence Sub-Committee and the other by the Foreign Affairs Sub-Committee. The reviews were wide ranging and gave the Sub-Committees the opportunity to survey policy, operational and management issues; to seek status reports on key issues of interest and to follow-up issues canvassed in earlier committee reports.

For this second review, the Committee decided to focus on the performance of agencies in delivering outcomes rather than focusing on subject matters of interest. The Committee also decided that the reviews should concentrate on a limited number of issues rather than the broad sweep approach of the previous year.

The Sub-Committees elected to develop separate programs of review.

**Foreign Affairs**

The Foreign Affairs Sub-Committee held a half day public hearing calling representatives from DFAT, AusAID and also from the Australia-Indonesia Institute.

DFAT’s Annual Report 2001-02 described the 11 September 2001 terrorist attacks in the US as having had far-reaching consequences for DFAT’s work in delivering consular and passport services. The Sub-Committee acknowledges this impact and commends staff for their dedication at the time of the crises and since. Although the Bali bombings occurred outside the period of this review, the Committee considers it appropriate to also acknowledge the undoubted impact of this crisis on staff and to express appreciation to all those involved in responding to that situation.

Not surprisingly, the issue of travel advisories received considerable attention. DFAT advised that it was working closely with the travel industry, particularly travel agents, as a means of disseminating travel advice. We look forward to hearing of any developments in this area.

Other matters examined in this review included support for businesses, services to State and Territory governments for overseas visits programs, support for policing in East Timor, and the Virtual Colombo Plan.

We also examined the annual report of the Australia-Indonesia Institute with a view to achieving a broad understanding of the scope of the Institute’s work, which is also of relevance to our current inquiry into Australia’s relationship with Indonesia.

**Trade**

The Trade Sub-Committee held a half day public hearing calling representatives from DFAT and Australian Trade Commission (Austrade). In conducting the review of DFAT’s trade portfolio, the Committee focused on Austrade, and trade promotion within the Department with particular reference to trade development through the Market Development Group, and trade policy coordination and business liaison.

In reviewing Austrade, the Committee focused on two main themes: client satisfaction and export impact.

In terms of measuring client satisfaction, Austrade has a range of mechanisms in place. Austrade has been working with the Australian National Audit Office to develop a robust system to accurately gauge client satisfaction and to audit Austrade’s client satisfaction survey process. The Committee was also pleased to see that Austrade achieved quite acceptable performance in the region. For example, Austrade achieved 85% client satisfaction in Northeast Asia and 82% in Southeast Asia.

The Austrade Annual Report indicates that the export impact of their activities is $15.35 billion, double their target of $7 billion. This figure includes the value of goods exported with ‘light’ Austrade involvement as well as where Austrade was more actively engaged. It is worth reiterating that while assessing Austrade’s export impact is inherently difficult, the Committee pointed out that every effort should be made to ensure ambiguity is avoided.
The Committee also reviewed the overlap of state export promotion agencies and Austrade to identify where such duplication is wasteful and where it is complementary. The Committee was satisfied with Austrade’s efforts to address this challenge through the ‘national trade consultation’ process.

In conducting the review of DFAT’s trade portfolio, the Committee focused trade promotion within the Department, with particular reference to trade development through the Market Development Group, and trade policy coordination and business liaison.

The Market Development Group (MDG) coordinates the efforts of a number of portfolios and agencies on Australia’s bilateral market access and market development priorities. The MDG focuses on high-priority, short-term opportunities identified in consultation with business.

The Committee reviewed the role of the Trade Development Division within DFAT. This division plays a key coordination role within the Department, including managing a range of consultative processes including the Trade Policy Advisory Council and the National Trade Consultations.

The Committee also reviewed the transparency of WTO negotiation requests as part of the WTO negotiation process and the value of pursuing bilateral trade concessions in light of the WTO multilateral negotiation rounds.

Human Rights

In conducting the review the Human Rights Sub-Committee focused on the AusAID 2001-02 Annual Report with particular reference to Australia’s engagement with multilateral organisations, governance and health. The Human Rights Sub-Committee held a half day public hearing calling on representatives from AusAID.

Multilateral Organisations

Australia makes significant contributions to multilateral organisations. The Committee reviewed the efficiency and effectiveness of AusAID’s monitoring of the relevance, efficiency and effectiveness of the multilateral agencies and the outcomes of Australia’s contributions to them.

Overall, AusAID satisfied the Committee of the efficiency and effectiveness of its performance monitoring processes and utility of accountability mechanisms, and that contribution to forecast outputs appear to have been met.

Nevertheless, the Committee feels that it is crucial that Australia’s relationship with multilateral organisations is accountable and transparent to all stakeholders. In the interests of transparency the results of these processes should be made publicly available. There should be ongoing efforts to develop and refine appropriate accountability mechanisms and processes to ensure funds continue to be spent in the interests of Australia’s international development goals.

Governance

The promotion of good governance in the region is one of AusAID’s key result areas. In the period under review, governance accounted for 20 per cent of aid expenditure, with the aid program undertaking 307 activities with governance as the primary focus, with a cost of $308.3 million. Expenditure in other sectors that contributed to governance was a further $180.5 million.

In order to evaluate the performance of AusAID’s governance activities, the Human Rights Sub-Committee selected for examination programs targeting the promotion of effective governance in PNG, Indonesia, Solomon Islands, East Timor and China, with reference to their relevance to the work of the Human Rights Sub-Committee and to Australia in general.

In assessing AusAID’s performance according to AusAID’s own performance evaluation methods, the Sub-Committee concluded that AusAID employs a wide range of evaluation methods that include both in-house and outsourced expertise, and is satisfied with the evaluation mechanisms employed.

Nevertheless, there are some matters of concern to the Sub-Committee. Governance remains a serious issue in the region which has a negative impact on regional security, as seen in the rapid deterioration in economic performance and security in the Solomon Islands. In this regard, the Committee supports:

• a vigorous, focussed approach to good governance;
• the continued focus on governance with appropriate ongoing funding; and
the conduct of regular, independent and comprehensive reviews of AusAID’s governance programs.

Health

Improving health outcomes in the region is a key result area of Australia’s aid program. In the period under review, health accounted for around 13 per cent of expenditure, with the aid program undertaking 224 projects aimed at improving health outcomes, totalling $197.2 million. A further $83.4 million was spent on projects that contained a health component.

In view of the rising incidence globally of the HIV virus and AIDS, the Committee resolved to focus on AusAID’s efforts in relation to the pandemic. Indeed, a major effort has been made by AusAID in regard to sexually transmitted diseases (STD), including HIV/AIDS.

In order to measure the effectiveness of AusAID’s efforts in relation to HIV/AIDS, the Committee selected for review:

- the operation of the Global Aids Initiative, to which Australia has committed $200 million over 6 years;
- the HIV/AIDS prevention and care project in the Xinjiang Uygur Autonomous Region (one of the poorest areas of China with the second highest number of HIV cases in the country); and
- strengthening of the capacity to mount and expand effective responses to the HIV/AIDS epidemic in China in central and local government levels through the Australian co-financed Health Nine World Bank project.

As one of the most populous nations currently in the grip of the HIV/AIDS epidemic, activities undertaken in China were selected for review to seek sample indicators of the effectiveness of AusAID-administered activities. The United Nations and World Health Organisation estimated in mid 2002 that 1 million people in China were living with HIV/AIDS.

The Sub-Committee explored these initiatives in some detail and is encouraged by the government’s serious commitment to combating HIV/AIDS in the Asia Pacific region and AusAID’s implementation, monitoring and evaluation of targeted programs and projects. While many projects are in their early stages, the Committee will maintain a watching brief on the progress of these initiatives.

Conclusion

I would like to take this opportunity to thank the agencies involved in this exercise.

The review exercises that the Committee has undertaken in the course of this parliament signals the Committee’s interest in enhancing its scrutiny role. It is an important process and one that the Committee will continue to develop.

Senator FERGUSON—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator PAYNE (New South Wales) (3.58 p.m.)—On behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I wish to make a statement on the Human Rights Subcommittee’s recent activities concerning conditions within immigration detention centres and the treatment of detainees. I will read the statement and table the Hansard record of proceedings and submissions received by the committee.

In June 2001, the Joint Standing Committee’s Human Rights Subcommittee tabled the report on its visits to immigration detention centres across Australia, A report on visits to immigration detention centres. The committee, then chaired by my esteemed former colleague Peter Nugent MP, made 20 recommendations that reflected, amongst other matters, our concern with physical conditions within the centres; access to information, education and other services for detainees; the delays in processing of applications and appeals and the consequential long periods of detention; occupation for detainees
within the detention centres; and security for different groups.

Early in the current parliament, the subcommittee sought to update itself on developments concerning conditions in IDCs and the treatment of detainees. In late 2002 the subcommittee held a number of public hearings and took evidence from key agencies involved in administering government policy in this area and from bodies whose statutory responsibilities give them a role in monitoring conditions in IDCs. We also visited the Baxter Immigration Detention Facility in the early weeks of its operations.

The inquiry enabled the committee to review progress that has been made in regard to the recommendations put forward in the committee’s 2001 report. Although the committee notes that progress has been made in relation to implementing some of those recommendations, a number of the issues raised in our previous inquiry remain problematic and need to be addressed. The government response to the June 2001 report accepted, or in part addressed, the majority of the committee recommendations. The committee notes the progress made in a number of areas—for example, that, according to the latest summary of facilities, services and activities available to detainees, there has been some improvement in a number of the centres; that many children in all centres now have access to external schooling and others will soon have access, depending on the results of negotiations with state governments; that a revised set of immigration detention standards have come into operation and form the basis of the recently awarded contract to Group 4 Falck Global Solutions Pty Ltd for the provision of a range of services relating to the detention of unlawful non-citizens at immigration detention facilities around Australia and for the management of those detention facilities. The number of people in detention has dropped markedly and new detention arrangements for women and children have been introduced in Woomera with an indication that this will be extended. The committee notes that Woomera IRPC has since been closed and the detainees transferred to the Baxter facility.

The committee is also aware that the minister announced an expansion of the residential housing project in August 2002 and has recently announced the development of an RHP at Port Augusta, which will provide alternative arrangements closer to the Baxter facility. Since the announced expansion of the RHP in August last year, however, a total of only 21 women and children have been provided with alternative arrangements. The committee is concerned at the slow rate of progress for alternative arrangements for women and children. Despite announcements that the criteria would be expanded for women and children who participate in alternative detention arrangements, to date the overwhelming majority of women and children are still being housed in inappropriate detention facilities. In addition, the committee notes that Curtin and Woomera centres have been mothballed and the Baxter IDF opened and that the minister announced the commissioning of Australia’s first permanent purpose designed and built immigration reception and processing facility on Christmas Island. A preferred IRPC site in Darwin at the 11 Mile Antennae Farm has also been identified.

New issues have also emerged since the 2001 report was tabled, particularly in the areas of education, length of detention, complaint and incident reporting mechanisms, incident reports, monitoring of conditions in offshore processing centres, and language skills and human rights training of officers. One of the committee’s key areas of concern has been the access that children in detention centres have to quality education programs.
and that children have the opportunity to attend schools outside detention centres. The committee notes that negotiations are well advanced for external schooling arrangements with education authorities in New South Wales, Victoria, South Australia and Western Australia and that, in a number of cases, children were already attending external schools. The committee would expect any remaining negotiations to be finalised without delay.

The committee accepts that there may be situations where it is more appropriate for some children to receive education within the centres, but we have always maintained that this should be the exception rather than the rule. In these cases, we expect the relevant authorities to ensure that education programs are of a high quality, as stipulated in the immigration detention standards, and that the department maintains an adequate monitoring regime to ensure that a centre education plan is developed and implemented for each facility and evidence continues to be provided on a monthly basis that such educational services for detainee children are available. The evidence we received indicates that the statement of service requirement, which specifies that trained and qualified teachers focusing on English as a second language should be employed in all facilities, is being met.

The committee notes that there has been a significant reduction in the number of detainees since the committee’s 2001 report. This is the case for a number of reasons; however, the length of time people spend in detention remains a significant issue. Of particular concern is the issue of mental health associated with long-term detention, which has been identified by a range of health practitioners and various commentators as the key problem in detention centres. While the physical conditions in the Baxter IDF were unquestionably better than the facilities we had seen in our visits to other detention centres, they are not conducive to good mental health and wellbeing and cannot possibly negate the impact of long-term detention, particularly the psychological effects.

The evidence received in the course of the inquiry indicated that, of those asylum seekers who appeal the primary decision, only a minority win their appeals. While the committee acknowledges that the decision to appeal is one for the individual, the existing process does allow this legitimate avenue to be pursued. However, the strain on detainees awaiting the results of the appeals for prolonged periods is immense. The committee considers that attention should be focused on reducing the delays in appeals processing and hence the period people are held in detention. We suggest that an immediate review be undertaken of the appeals process, that the factors causing the delays be clearly identified and that strategies be actively developed to accelerate the appeals process. Resources should be made available for this review to be completed within three months.

The committee also recommends that more resources be provided to the Refugee Review Tribunal and that a review be undertaken to assess ways to speed up the process of dealing with appeals through the Federal Court. For those who have exhausted the appeals process and who face deportation, the period between the end of the appeal and removal should be as short as possible. We accept that this is not always easy, given difficulties such as cumbersome administrative arrangements in receiving countries, civil unrest in the destination countries and the requirement of some countries for the return to be voluntary.

The committee notes that DIMIA has made arrangements with some countries concerning return arrangements, including Afghanistan and Vietnam. We also note
DIMIA’s advice that ‘while the removal of Iraqis, Iranians and others can be complex, the Department continues to have some successes’. The committee is concerned that DIMIA unnecessarily extends detention in these circumstances and recommends that the department release these detainees as soon as possible after finding they cannot be returned. We note DIMIA’s submission that for detainees there is an ‘element of choice’ and that detainees can help bring their detention to an end by cooperating in the provision of information and documentation to assist in their removal.

The committee also notes several issues relating to the complaints and incident reporting mechanisms. The immigration detention standards require that detainees are informed of their rights and are able to comment on or complain, without hindrance or fear of reprisal, about any matter relating to the conditions of detention to the services provider, the department, HREOC or the Commonwealth Ombudsman; or, in the case of a suspected criminal offence, to the police; or, in the case of suspected child abuse, to the relevant state or territory welfare agency. With regard to the Baxter detention centre, the committee was told that the complaints box was hardly operational.

The committee notes evidence received during the inquiry highlighting DIMIA’s lack of progress towards arriving at MOUs with the states, various police services and other authorities so that the demarcation of responsibility between the state authorities and the Commonwealth should be more clearly defined. We received conflicting evidence regarding MOUs with state and territory authorities, and the committee would urge all parties to afford greater priority to reaching these agreements and request that the subcommittee be regularly updated concerning developments.

The subcommittee also explored the closely related issue of incident reporting, in particular from the perspective of DIMIA’s monitoring of the provision of services with the IDCs. While some potential deficiencies were identified, the measures that are outlined in the immigration detention standards—in theory, at least—provide a reasonable framework for monitoring service delivery. However, regular reporting by DIMIA of the results of monitoring to the Commonwealth Ombudsman would provide some measure of a check on the adequacy of the department’s monitoring practices.

The subcommittee also explored the issue of external monitoring of conditions in detention centres, such as that conducted on the mainland by HREOC and the Commonwealth Ombudsman in relation to Manus and Nauru. The Commonwealth Ombudsman advised the subcommittee that it had not addressed any issues involving detention conditions in those places and was uncertain whether the office would in fact have the requisite jurisdiction. The committee is concerned to ensure that detainees in offshore centres should be afforded the same protection as those in mainland centres. The committee’s inquiries in this area were inconclusive. It was difficult to obtain a clear picture from the agencies involved, and the committee will give further consideration to this aspect of detention conditions.

In light of the time, I seek leave to incorporate my further remarks, as arranged with the opposition previously.

Leave granted.

The speech read as follows—
However the Committee believes that the centres are essentially under Australian control and therefore the Ombudsman should view them as a more serious responsibility.

Language skills of officers and human rights training of officers
Finally I would like to address the issue of adequacy of the language skills of officers working with unlawful arrivals and asylum seekers and also the issue of the human rights training of these officers.

The Sub-Committee was advised by ASIO and the AFP that whilst direct human rights training was not provided, training in the legality, propriety and ethical standards required when interacting with the community in a range of situations, including contact with asylum seekers was provided and the principles of human rights were inherent in all training provided.

While we are confident that officers are obliged and trained to respect the ‘dignity, cultural and religious sensitivities of all individuals within the community’ we consider it important that officers should also have a thorough understanding of Australia’s obligations under the human rights treaties to which we are signatory and also its obligations under the Convention relating to the Status of Refugees (1951) and the Protocol relating to the Status of Refugees (1967).

To this end, we suggest that the relevant ministers should develop in consultation with the Office of the High Commission for Human Rights and the Office of the United Nations High Commission for Refugees, a specific training course for officers dealing with unlawful entrants and asylum seekers. This is a matter that we will be pursuing further in our current inquiry into human rights and good governance education.

We are also concerned that officers involved in guarding detainees have appropriate language skills. In the context of our discussions with the AFP and APS, we acknowledge the points made by the APS that language translation is not a contracted function and appreciate its efforts to deploy people where possible with appropriate language skills.

Concluding remarks

The Human Rights Sub-Committee intends to maintain its interest in conditions within immigration detention centres and the treatment of detainees.

We are supported in our efforts to do this by the ready assistance of a number of agencies and departments. In this respect, I would like to express appreciation for the cooperation of the Human Rights Commissioner, the Commonwealth Ombudsman, the Director-General of Australian Security Intelligence Organisation, officers from the Australian Federal Police and Australian Protective Services and officers from Australian Correctional Management and the Department of Immigration and Multicultural and Indigenous Affairs.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.08 p.m.)—by leave—I rise to take note of this important statement by the Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Subcommittee. Senator Payne made a valiant attempt to read all of it into the record in the 10 minutes available. Unfortunately she was not able to do so, so I will elaborate a bit further on some of the particularly fine points within it.

Firstly, I think the notation in there about the very slow progress with the residential housing program is worth noting. Whilst far from a perfect solution, it is nonetheless clearly preferable to keeping women and children in the higher security environment of the detention centre. The fact that there has not been sufficient progress yet—or as much progress as one would have liked—is unfortunate and should be noted, as it has been in this statement.

The committee has dealt with some concerns under the headings of ‘Education’, ‘Length of detention’, ‘Complaint and incident reporting mechanisms’, ‘Incident reports’, ‘Monitoring of conditions in offshore processing centres’ and ‘Language skills of officers and human rights training of officers’. I will focus on just a couple of those, although they are all of importance. The length of detention that is outlined, which Senator Payne did speak about, is one thing that has to be noted. It was a key component of the recommendations of the subcommit-
tee’s report in 2001. It caused some controversy at the time, as I recall.

We have a new minister in this portfolio as of a week or two ago. I really do hope that Senator Vanstone looks at this statement seriously because there is no doubt, as has been said here, that the conditions in detention facilities are not conducive to good mental health and wellbeing. No matter how good the physical conditions are—and there is no doubt, in my view anyway, that the physical conditions in Baxter detention facilities are better than those that existed in Woomera—they cannot negate the impact of long-term detention, particularly the psychological effects. There is simply a mountain of expert evidence that highlights how damaging it is to have long-term detention. As this statement says, ‘The strain on detainees ... for prolonged periods is immense.’ This statement does suggest that an immediate review be undertaken of the appeals process and that resources be made available for this review to be completed within three months. I do hope the minister takes up that suggestion.

The committee also recommends that more resources be provided to the Refugee Review Tribunal and, again, I think that needs to be acted upon as a matter of urgency. The committee also expressed concern that the department unnecessarily extends detention in circumstances where there is difficulty returning people to places such as Iraq and Iran and, to some extent, Afghanistan and other countries. It recommends that the department release these detainees as soon as possible after finding they cannot be returned. We have had court cases in recent times—most notably what is known as the Al Masri decision—which have found that prolonged indefinite detention without a reasonable prospect of deportation in the foreseeable future is unlawful. That is under appeal to the High Court at the moment, as I understand it—not that case, but that principle in relation to another case.

Obviously we will all see what the final decision is there but, clearly, there is a significant problem with long-term, indefinite detention. I would suggest that that really moves into the area of unlawful detention and unlawful imprisonment—remember that the vast majority of these people have not been charged with anything, let alone convicted of any crime. To have them indefinitely detained without any prospect of them being deported really is inappropriate and immoral in any ethical sense. Certainly strong arguments exist and the current court precedents are that it is illegal—and there are many people who are in detention centres in Australia now who are in this situation.

Equally important is the other aspect I wanted to emphasise: offshore processing centres. If we think the physical conditions and the mental stress are a problem in Australian facilities, and if we think that people being detained indefinitely with uncertain prospects for being deported in the future is a problem in Australia, that problem is compounded tenfold in the existing offshore processing centre in Nauru. I note the use of the term ‘processing centre’—that is a falsehood, basically. It is a bit of cute language usage that the department keeps insisting on using. But the fact is that there are around about 350 people in the centres on Nauru now, and all of them were ‘processed’ in any meaningful sense of the word well over a year ago. Processing has finished. To keep calling these places ‘processing centres’ when clearly they are simply detention facilities is to be misleading in the use of language. There may be legal niceties as to why that phrase is being used, but it is nonetheless misleading and, I would suggest, false.

There are 350-plus people still on Nauru, as I said. There are two of those centres
there—Topside camp and Statehouse camp—and virtually all the people there now have been processed, have had their claims rejected and any appeals examined either by the UNHCR or by the Australian Department of Immigration and Multicultural and Indigenous Affairs. The majority of them are from Afghanistan; most of the rest are from Iraq. There is a clear statement from the Afghan government, as I understand it, that it does not want to take back people who are involuntarily being returned, and clearly the situation in Iraq is such that even for people who want to go back it is very difficult. There are people who have now been in detention for over two years—some of them on Nauru for that time, some of them on places like Manus Island or Christmas Island. The time has come, I would suggest, for their fate to be considered as a matter of urgency, rather than their being left to drift in uncertainty for who knows how many more months or, quite feasibly, years.

The problem, of course, is that the legal principle that I spoke about before of unlawful detention, indefinite detention and imprisonment, which I hope will be upheld by the High Court of Australia, is not necessarily able to be applied to those people in Nauru. It is Australia’s own version of Guantanamo Bay. They are outside the control of Australian courts. As this committee statement suggests, the Commonwealth Ombudsman believes it is outside their jurisdiction. The Australian Human Rights and Equal Opportunity Commission have made similar views known—that they believe it is outside their jurisdiction—and yet, as this statement makes clear, it is, for all intents and purposes, an Australian-run facility. It is funded by the Australian government; the contract to run the centre through the International Organisation for Migration is paid directly by the Australian taxpayer. It is, as the statement says, ‘essentially under Australian control’, and yet not only is it impossible to have legal oversight for these people but also the facility is incredibly difficult for Australians to access. To use just one example, Father Frank Brennan found this out when he was prevented from gaining authorisation to enter Nauru to speak and meet with some of the detainees there.

I have had the privilege, I suppose you would call it, of being able to meet and speak with many of the detainees on Nauru. They, in my experience, are in even greater despair and distress than people in detention centres in Australia—and that is saying something. Having spent many hours speaking with people individually and with families, I can say that the level of despair is simply horrifying to behold. As the medical staff in that camp made clear, up to 90 per cent of their medical work is dealing with mental health issues, with anxiety, depression and despair, and all of that generated as a direct consequence of this detention centre, which is Australian funded and, as this statement says, under Australian control.

The statement itself says that the committee is concerned to ensure that detainees in offshore centres are afforded the same protection as those in mainland centres, that the committee’s inquiries in this area were inconclusive and it was difficult to obtain a clear picture. That is how ridiculous we have become. We have Australian parliamentary committees trying to investigate the situation with Australian controlled and funded facilities and we cannot find out any answers. I can tell the committee, having been there, that they do not get the same protection as the mainland centres. They certainly do not get the same legal protection and the facilities are far worse than those in mainland centres. It is a disgrace and it really should be addressed as a matter of urgency. I draw the minister’s attention to the unanimous findings of another Senate committee, the recent
inquiry into Pacific issues. Those should also be looked at as a matter of urgency. *(Time expired)*

Leave granted.

**Senator STOTT DESPOJA** (South Australia) *(4.19 p.m.)*—by leave—You have heard from the previous speakers about the content and, more importantly, some of the recommendations contained in this report of Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. As a member of that committee, I would like to commend the report to the Senate and, indeed, confirm the views that have just been expressed by Senator Bartlett on behalf of the Australian Democrats in relation to this issue. I do not seek, therefore, to talk about the specifics of the report, simply to say that, as outlined by the previous speaker, there is no shortage of evidence and research—indeed, court cases now—that attest to the proven deleterious impact on the mental and physical wellbeing of people, not just men and women but also children, who are in detention.

I look forward to seeing action by the new minister on this report. I also add for the record how extraordinary I found it yesterday to participate in the very moving, meaningful Bali tribute ceremony at which Mr Ibrahim Sammaki was present with three ACM guards in attendance to ensure, I suppose, that he behaved. There is something wrong with a system where a man whose wife was killed in the Bali bombings cannot be reunited with his children. I look forward to seeing some action on rectifying such a blatantly unfair and unjust system. I hope that the new minister will act compassionately and see the resolution of that specific case. More broadly, I hope that the new minister will pay attention to the recommendations and information contained in the report tabled today by Senator Payne on behalf of the Human Rights Subcommittee. I seek leave to continue my remarks at a later time.

Leave granted.

**ASIO, ASIS and DSD Committee Report**

**Senator SANDY MACDONALD** (New South Wales) *(4.21 p.m.)*—On behalf of the Parliamentary Joint Committee on ASIO, ASIS and DSD, I present the report of the committee entitled *Private review of agency security arrangements*. I seek leave to move a motion in relation to the report.

Leave granted.

**Senator SANDY MACDONALD**—I move:

That the Senate take note of the report.

There is a requirement under the Intelligence Services Act 2001 for the Joint Committee on ASIO, ASIS and DSD to report annually on the administration and expenditure of these three intelligence collection agencies. On 27 June last year, as a result of this annual review, the committee resolved to examine the internal security arrangements within the intelligence collection agencies. This was prompted by our understanding that any rapid expansion of the services necessitated by the heightened security circumstances after September 11 would place strains on the agencies in this regard. There was an added factor of the concern raised by two high-profile security breaches in 1999 and 2000. These breaches had been followed by a thorough review by the Inspector-General of Intelligence and Security, Mr Bill Blick. His report *Inquiry into security issues* was made to the Prime Minister in March 2000 and contained 50 recommendations to the agencies about how they might tighten their practices. The report brought about changes in the *Commonwealth Protective Security Manual*. 
The committee’s intention with this review was to examine closely the implementation of the Inspector-General’s recommendations. However, the committee was unable to adopt the IGIS inquiry report as a formal exhibit. While it did receive details of the IGIS inquiry recommendations from each of the three agencies in their submissions, enabling it to make some meaningful assessments on their implementation, the lack of formal access to the IGIS inquiry report raised questions about the committee’s ability to perform fully the functions assigned to it under the Intelligence Services Act and whether security concerns would inhibit the committee’s ability to address other aspects of agency administration in future.

In the course of the inquiry, the committee called for and received submissions from each of the intelligence agencies—ASIO, ASIS and DSD—and from three other Commonwealth agencies—the Australian Crime Commission, formerly the National Crime Authority; the Australian Customs Services, ACS; and the Australian Federal Police. They were invited to give evidence for comparative purposes. In addition to these submissions, the committee took oral evidence from ASIO, ASIS, DSD and a number of other organisations in private hearings held in December 2002 and February and March 2003 in Canberra. In general, the committee found that protective security arrangements within the three agencies were sound and, in most respects, exceeded the standards required by the Protective Security Manual. The committee further found that each of the agencies had made impressive progress in implementing the recommendations of the IGIS inquiry by Mr Bill Blick. Completion of this process, with the exception of a few measures requiring new technologies, is expected by the end of this year.

The committee noted that each of the agencies has placed emphasis on improving security planning, documentation and staff security awareness and training over the past two years since September 11. This has led to a greater degree of accountability at all levels within the agencies and an improved understanding of the rationale and need for robust protective security practices and procedures from within. The report makes four recommendations: firstly, that agencies take necessary steps to ensure that initial vetting and security clearance re-evaluation processes for personnel are completed within the time frames set out in the Protective Security Manual and that any remaining backlogs are completed by the end of this year; secondly, that the inter-agency security forum, known as IASF, develop and submit proposals to the Attorney-General on improving the capacity of agencies to access information about staff from credit reference agencies and other financial institutions; thirdly, that DSD conduct random bag searches of people entering and exiting secure facilities at all locations in Australia; and, fourthly, that agencies implement electronic article surveillance systems for all secure premises.

In the next annual review—which, due to pressure of work, has been deferred until next February—the committee will examine the broader impact on the agencies of rapidly increasing budgets and demands. In conclusion, I would like to thank my fellow members of the joint committee for their very active interest in the work of the committee and also the secretariat staff for their very skilled assistance. I commend the report to the Senate and I seek leave to continue my remarks.

Leave granted; debate adjourned.

National Capital and External Territories Committee

Report

Senator LIGHTFOOT (Western Australia) (4.27 p.m.)—I present the report of the
Joint Standing Committee on the National Capital and External Territories entitled *Not a town centre: the proposal for pay parking in the parliamentary zone*. I seek leave to move a motion in relation to the report.

Leave granted.

**Senator LIGHTFOOT**—I move:

That the Senate take note of the report.

As the agency charged with managing the Commonwealth’s interests in the national capital, the National Capital Authority is seeking to introduce pay parking as a means to manage traffic in the parliamentary zone. This is the second time the issue of parking in the parliamentary zone has been examined by the committee. Although the committee was against the introduction of pay parking in the parliamentary zone in 1994, the current committee members commenced this new inquiry with open minds. The issues relating to parking in the zone that have become a cause for concern include traffic flow problems, limited car parking spaces, the physical isolation of major buildings and iconic attractions, and a poor pedestrian access network. This was evident to members of the committee during an inspection of the parking areas within the zone and the adjacent Barton-Forrest area.

The committee is conscious of the many interests involved in this issue, as evidenced by the large number of submissions we received. Strong arguments have been put forward by people who work in the zone and adjacent areas and will be affected by pay parking, as well as from the national cultural institutions and Commonwealth agencies located within the zone. The committee is well aware of the need to find an equitable solution to the overcrowding of parking areas in the zone. The committee is also conscious of any flow-on effect changes in parking policies or new building developments in the Barton-Forrest area may have.

The committee received 145 submissions to the inquiry, the majority from people who work in the Barton-Forrest area. In addition, the committee received some 600 responses via email from people working in the Barton area and in the parliamentary zone to an informal survey conducted by the committee on 9 May 2003. The committee wished to learn what mode of transport people used to get to work on that day and whether public transport offered a viable alternative. Somewhat disturbingly, over 95 per cent of those who responded to the survey were commuting to their place of work, be it in the zone or the adjacent Barton area, via private vehicle. The main reason for this was that public transport servicing the area was considered to be inadequate. Respondents also identified the need for a private vehicle to balance family and child-care commitments and to get to shopping centres during lunch breaks, due to the lack of facilities in the area. The unanimous view of the committee is that the parliamentary zone is unique and should not be treated in the same way as the commercial centres in the ACT. The zone belongs to the people of Australia, and access to any of the culturally significant sites throughout the area should remain free of charge.

The National Capital Authority sought the committee’s support for the principle of pay parking. Unfortunately, the committee believes the authority failed to adequately address a number of significant issues regarding the implementation of pay parking. This created a large degree of uncertainty for the committee which, at this time, finds itself unable to give the in-principle support for pay parking that the authority was seeking.

The parking situation in the parliamentary zone and adjacent areas of Barton and Forrest, however, remains unacceptable. The committee, therefore, recommends that, as a matter of urgency, the authority, in conjunction with the ACT government, develop a
more detailed parking policy proposal that clearly defines the following characteristics: the infrastructure to be built, including time frame and funding arrangements; the parking fees to be introduced, including provision to exclude visitors, volunteers and people with disabilities from payment; and contingencies should the parliamentary zone experience further encroachment by commuters from the adjacent Barton precinct.

I would like to express, on behalf of the committee, our gratitude to all those who participated in the inquiry and to the staff of the secretariat, in particular Mr Justin Baker, who drafted the report, and Mr Quinton Clements, our inquiry secretary. I would also like to take this opportunity to thank my committee colleagues for their work and support throughout the course of the inquiry and reporting process. That having been said, I commend the report Not a town centre: the proposal for pay parking in the parliamentary zone to the Senate. I seek leave to continue my remarks.

Leave granted.

Senator STOTT DESPOJA (South Australia) (4.32 p.m.)—I wish to respond to the tabling of the report on pay parking. I would like to commend the work of the committee, including the secretariat and indeed our chair, Senator Ross Lightfoot, in relation to this report on pay parking. I want to put on record once again the Australian Democrats view in the ACT assembly in relation to this issue, which is that the Democrats believe any discussion about pay parking should be part of an overall discussion that takes into account environmental issues and, of course, access to, and the adequacy of, public transport.

The ACT has the lowest public transport usage in Australia, with more cars per head than any other jurisdiction in Australia. As we know, the ACT was traditionally designed for cars but has yet to develop a comprehensive or adequate public transportation system. The national capital of 25,000 people, as envisaged back in 1911, has grown to be one of Australia’s largest inland cities, with more than 300,000 residents. The failure of successive administrations to develop policies that are more supportive of a balanced approach to managing the transport needs of the city has had a deleterious impact. It has resulted in a reduction in the demand for public transport and, of course, it is then cyclical, with subsequent reductions in services. We have seen cuts that have drastically affected services to national institutions and attractions and which have actually undermined commuter use to places of employment.

With sustainable options being few and far between, we are seeing increased volumes of traffic that add to congestion, overspill in parking and safety problems for cyclists and pedestrians. In the absence of a determined effort to effect a significant shift away from car dependency through the implementation of alternative movement systems, the bush capital does face a very real prospect of reduced visitor appeal and, something that is very important from an environmental perspective, unacceptable greenhouse gas emissions. To meet Australia’s international obligations to reduce greenhouse gas emissions a transit-oriented approach to mobility must be taken very seriously, and practical steps must be taken to demonstrate the value of public transport as a viable alternative to the car. If we expect people to get out of their cars, we are going to have to provide them with a viable and reliable alternative.

The Democrats accept that there are problems associated with pay parking in that it provides fewer transport alternatives to tourists who visit places of interest around the parliamentary triangle. We do not want to discourage visitors of any kind, domestic or
international, but we must provide them with better alternative modes of transport—that is, reliable public transport. Suggestions that have been made in the past include the provision of an intra-zone shuttle bus linking the key attractions with a series of car parks. Other more practical means of ensuring long-term and sustainable linkages include the development and implementation of a transit system that links Canberra’s city centre to the rest of the transit network.

We also understand, very much so—and the lobbying was hard and fierce on this one—that pay parking has ramifications for employees who work within the parliamentary triangle. We must therefore provide employees with reliable transport facilities with connecting transit services into the central national area. Ecologically sustainable forms of transport such as buses or light rail must be priorities and, of course, there must be the provision of better bus timetables. Systems that have been successes in other states include the Nepean Nipper service in Sydney’s far western suburbs, Brisbane’s inner city Hail and Ride and Perth’s Central Area Transit. They are model transit service operations, and we believe they should seriously be considered. It is worth noting that the ACT Democrats, to whom I refer on this issue, have also supported the introduction of pay parking in Tuggeranong and Belconnen on the same grounds that I have outlined here today: with priority given to equity, environmental issues and the development of a sustainable and viable public transport system.

Senator HOGG (Queensland) (4.37 p.m.)—I rise briefly to speak on the report on pay parking. As a member of the committee I participated with interest in this inquiry, not having been associated with the previous inquiries conducted by the committee. While it was a learning curve in the first instance, the thing that stood out to me in the inquiry was the paramount necessity for visitors to the parliamentary triangle, from either interstate or locally in Canberra, to have an unfettered right to visit the various icons in the area without the need to pay for parking.

The other issue that arose, which Senator Stott Despoja has mentioned, was the case of employees who have been in the parliamentary triangle zone over a long period of time and have not had to pay for parking, and the difficulties that would be associated in getting those people out of their cars and into some alternative form of transport. In the inquiry I was struck by the fact that all Australians should have unfettered access to the parliamentary triangle zone to visit these icons. Options were put to us about making limited parking available to tourists who might visit the icons, but that seemed to have no clear resolution in my mind. Another case put to us was that of the volunteers who help out in some of those areas and who freely and willingly give their time. If pay parking were imposed, they would be faced with the prospect of having to pay for their voluntary work in that particular area.

The title of the report is really quite apt because the parliamentary triangle clearly is Not a town centre. No comparison could be made to the other areas that were referred to throughout the inquiry—areas such as Woden, Belconnen or Civic. The thing singularly lacking in the parliamentary triangle zone is a major shopping complex with all the facilities that go with a major shopping complex in this day and age. When I suggested—tongue in cheek—to a couple of witnesses that the solution might be to put a major shopping centre in the parliamentary triangle to overcome some of the parking problems, shock and horror was expressed, and rightly so. That is simply not a solution. There is no doubt that there is a parking problem in the area, and that parking problem is going to be exacerbated by the fact that the ACT government is going to impose
a parking regime in the adjoining areas which will force those people who currently park in the Barton area to seek refuge, so to speak, in the parliamentary triangle. And that is unfortunate.

I was not impressed by the singular lack of vision by the NCA—the National Capital Authority—to resolve the parking problem that exists in the area. One would have hoped that they would have brought a better program to the committee to address the issues. Simply imposing pay parking without realistic solutions in place is not going to be the answer. In my view, there was no convincing evidence that the alternatives put up by the NCA, and others who appeared before the committee, will address the problem that exists.

As an aside, I asked various people who appeared before the inquiry—and the inquiry was held in this place—if they had used public transport to come to the inquiry. My straw poll showed that the majority of witnesses who appeared before the inquiry did not access public transport but chose to drive because of the difficulties in accessing reasonable public transport in this region.

I commend the report to the Senate. I believe it represents a thorough investigation by the committee. I heard part of the opening statement by Senator Lightfoot, and I must say I went to this hearing with an open mind, like others on the committee, but the evidence that was presented to establish pay parking was far from compelling. One would hope that urgent action will be taken to address the issue that is still a major problem in that area—that is, parking. If one takes a cursory drive around the area, one will see the problems that exist, where cars are parked and the difficulties that people experience in that area. One would hope for the sake of the national capital itself that this matter can be resolved in the fullness of time. I commend the report to the Senate.

Senator HUMPHRIES (Australian Capital Territory) (4.44 p.m.)—I would like to comment on the report on pay parking as well. Although I am not a member of the Joint Standing Committee on the National Capital and External Territories, I have an obvious interest as a senator representing the ACT. In my brief overview of this report, I have found a great deal with which I can agree. It is extremely important that we address not merely the question of parking efficacy in an area like the parliamentary triangle but also the perceptions that people approach such issues with when governments propose such ideas as pay parking.

The reality is that many members of our community are deeply suspicious of the motives governments employ to introduce devices that cause them to pay, particularly in relation to the car. Whether it is paid parking, revenue arising from speed cameras or other road behaviour-changing devices, people have the suspicion on occasions that measures are designed more to fatten the coffers of government than they are to effect some appropriate change in behaviour in the use of a public infrastructure. I think it is important that any proposal that affects access to the parliamentary triangle in this city be approached with a great deal of care and on the basis that a clear case is made for there to be paid parking where none exists at the moment. The fact is that Canberra is a city which has been built for the car. It is one of the few national capitals in the world which has been established entirely in the age of the automobile, and its planning has been built substantially around the use of the car. Although we might all see reasons why that ought to change—for many good reasons that perhaps ought to see changes in the future—to make that change requires the greatest care, and the most convincing case
should be made for a restructuring of the way in which people access transport around and through the city.

The question of the extent to which Canberra is a city built on the use of the car and to which the car should continue to be catered to will itself be catered to in a debate later on today, and I look forward to that, but the committee appears to have properly identified a number of shortcomings in the immediate proposal to impose paid parking in the parliamentary triangle. One of those is the inadequacy of public transport. As I said in an earlier debate in this place, Canberra does have an excellent system of public transport, but it is also true to say that the adequacy of public transport with respect to the parliamentary triangle could be in some doubt. As the committee has quite appropriately picked up, there is the problem of people wanting to access other services, particularly shopping, during their lunch periods. When there are simply no shopping facilities or other services available close to places of employment, the need for a car increases commensurately.

As Senator Stott Despoja said in the course of this debate, people will need a viable alternative to be presented to them before they will step outside their motor vehicles. I particularly commend the committee for having taken the trouble to survey people who choose to drive into the parliamentary triangle and to have identified the reasons why commuters, employees, who work in the triangle drive rather than use some form of public transport. The reasons people give for not using public transport do not surprise me. It is perhaps a reflection of the characteristic of residents of this city and may not be typical of residents of other parts of Australia. Those behavioural factors which this survey identifies simply must be addressed if the National Capital Authority or governments in the future are going to move towards the imposition of paid parking or other measures to modify people’s behaviour with respect to the use of their cars.

I am not necessarily opposed to asking commuters—that is, people who work in the parliamentary triangle or close to it—to pay for parking, but it does need to be part of a comprehensive strategy to ensure the plan is sustainable and that it does not deter other Australians from getting access to that triangle and the facilities and institutions therein. As the chairman of the committee has properly pointed out, this area is full of places which are of national significance and Australians should not be deterred from using, seeing and experiencing those institutions and those places. It is extremely important that people who come here from other parts of Australia by car—and I think that is still the way that the majority of visitors to Canberra arrive—not be deterred from being able to see those places in the parliamentary triangle by virtue of arrangements made to deter commuters or employees. It is extremely important they be able to see those places which their taxes have helped build and which represent the spirit of the Australian nation. I believe that the call in the report for more work to be done by the National Capital Authority is a clear and transparent invitation. I hope the National Capital Authority will not interpret the report as a flat rejection but as a call for more work to be done on the appropriate way in which these issues can be advanced. The issues raised by the committee do need to be addressed and I hope that the National Capital Authority will take that on board in the next stage of this project. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
SPAM BILL 2003

SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003

First Reading

Bills received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.51 p.m.)—I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.52 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

SPAM BILL 2003

The Spam Bill 2003 provides a direct response to a groundswell of business and community resentment and anger that the tidal wave of unsolicited commercial electronic messages, or “spam”, is causing to their online activities. The Government is taking strong and decisive action to protect Australian online users from the growing, costly and disruptive occurrence of spam. This bill is one, key, element of the Governments strategy to deal with spam.

Spam is often sent to millions of recipients, at a time, worldwide. It is a common vehicle for promotions that are often illegal, offensive, unscrupulous or use tactics that would not be commercially viable outside the electronic environment. Some of the key issues raised by spam include invasion of privacy, misleading and deceptive trade practices, illegal or offensive content and the cost and distress it causes recipients. The large volume of spam threatens the effectiveness and efficiency of electronic communication and legitimate online business.

Significant privacy issues surround the manner in which electronic addresses used in spamming are collected and handled, without the knowledge or consent of the address owners. Lists of electronic addresses are flagrantly traded over the internet, as are the means to generate them. This activity contributes to the indiscriminate nature of spam and the automated and repeated sending of messages causes disruptions to electronic messaging networks.

Spammers employ a range of misleading and deceptive methods of disguising their identity. They do this by altering or falsifying the point of origin of their messages and to make it appear that the author is legitimate. They can also hijack an account and send spam messages from that account. Spam is diverted through a string of “open relays” - essentially non-secure servers—through which large volumes of spam can be routed, typically without the owners knowledge, and often across different countries.

The dominant categories of spam are pornography, financial scams and promotions for dubious “health” products, and we are seeing a disturbing emergence of virus-borne spam. This is of particular concern to the Australian community and the Government because the nature of spam means that messages with pornographic, illegal or offensive content is sent indiscriminately, including to minors. Many people find that escaping this deluge is well-nigh impossible and have to resort to changing their electronic address.

The extremely low cost of sending spam coupled with the ease of sending large volumes, has led to hundreds of millions of spam, messages sent around the world each day. It has reached the point where there is as much, or more, spam email as there is legitimate email.

The cost to business is substantial—around $900 per employee per year. It can cause a loss of productivity, damage to reputation, and loss of customers and business opportunities.

This bill shows the Governments is serious about addressing the problem—both in Australia and by working with other Governments as part of an international effort.
The key features of the proposed legislation include:

- a consent-based, or “opt-in”, basis for commercial electronic messaging;
- a recognition of existing customer-business relationships;
- restricted, and appropriate, recognition of implied consent, where people advertise their electronic address;
- a requirement for accurate sender’s details and a functional unsubscribe facility;
- support for the development of complementary industry codes; and
- a flexible and scalable civil sanctions regime for breaches.

The bill will ban the supply, acquisition and use of addresses harvesting and address list generation software for the purpose of sending spam, as well as the lists produced using that software. Courts will also be able to compensate businesses who have suffered at a spammers hands, and the courts will be able to recover the financial gains made from spammers.

Enforcement of the legislation will be undertaken by the Australian Communications Authority (the ACA). This is a careful and deliberate choice—the ACA has a good understanding of the telecommunications sector, prior experience in conducting investigations and enforcing legislation, and experience in working with industry to develop appropriate codes of practice—all essential qualities for the successful implementation of this initiative.

To ensure that the ACA has the means to effectively enforce the legislation they will be able to issue formal warnings, seek injunctions and seek investigative and monitoring warrants from the Courts. At the lower end of transgressions an infringement notice scheme will provide an efficient and cost-effective way of providing a fast and fair decision. For those organisations that choose to ignore the law the penalties could be significant, as the courts can award damages of up to $1.1 million dollars per day, in the most severe circumstances.

Enforcement will be just one of the ACA’s roles. They will also participate in education campaigns to inform individuals and businesses about options and tools available to minimise spam and research issues relating to spam. In concert with other Government agencies they will also be able to help tackle “the big picture”—working to develop global guidelines and cooperative mechanisms to combat spam. This bill enables recognition of international agreements, treaties or conventions that include provisions relating to spam.

To ensure that there is no untoward restrictions, for example on government to citizen communications, it will also avoid any unlikely, but unforeseen, impacts on the charitable sector. This in no way gives governments a “license to spam”—we remain bound by, and committed to, the Privacy Act.

The bill is the result of extensive consultation. The National Office for the Information Economy has provided both an interim and Final report on the problem of spam and consulted widely in preparing both. This consultation has continued in preparing this bill, including a detailed examination of an exposure draft of the bill by a diverse group of key community and industry peak representative groups. This has been invaluable in crafting this bill.

A challenge, and a driver, for this legislation is that it must be both technology neutral, and able to be adapted to new situations as they arise. The bill allows for the making of regulations for certain provisions to enable the legislation to remain relevant for future technologies and situations. To ensure that the framework remains optimal in this dynamic medium it is proposed that a review of the operation of the legislation take place 24 months after the commencement of the penalty provisions.
The Spam (Consequential Amendments) Bill 2003 which accompanies the Spam Bill makes amendments to the Telecommunications Act 1997 and the Australian Communications Authority Act 1997 to enable the effective investigation and enforcement of breaches of the Spam Bill.

This bill will send a powerful message to those engaged in the activities associated with sending spam. It tackles head-on the problem of Australian-originated spam and sends a strong message to overseas spammers. Coupled with relevant industry codes of practice it defines acceptable future conduct and demonstrates the seriousness of Australia’s intent in seeking to develop international cooperation to achieve longer term solutions to a growing world-wide problem.

SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003

The Spam (Consequential Amendments) Bill 2003 which accompanies the Spam Bill 2003 makes amendments to the Telecommunications Act 1997 and the Australian Communications Authority Act 1997 to enable the effective investigation and enforcement of breaches of the Spam Bill. The main elements proposed include:

- a framework for spam-related industry codes to be established and registered;
- appropriate powers for the ACA to investigate possible breaches of the Spam Bill; and
- monitoring and investigatory warrants relating to compliance with and breaches of the Spam Bill.

Ordered that further consideration of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

NATIONAL CAPITAL PLAN (GUNGAHLIN DRIVE EXTENSION)

Motion for Disallowance

Senator BROWN (Tasmania) (4.52 p.m.)—I move:

That Amendment 46 of the National Capital Plan (Gungahlin Drive Extension-Black Mountain Nature Reserve), made under section 19 of the Australian Capital Territory (Planning and Land Management) Act 1988 be disallowed.

I move this disallowance motion because it, again, is a direct infringement on the important environmental amenity as laid down in the Walter Burley Griffin view of Canberra nearly a century ago and is part of an attrition of that natural amenity which we ought not be allowing when there are alternatives. I am indebted here to Save the Ridge campaigners, in particular to John Lowey, for providing information. I will take that information to explain to the Senate why this disallowance motion should be supported. The reasons are that the draft amendment, which I am moving to disallow, would severely impact on areas of high conservation value to the national capital—and I will come back to that. The environmental process undertaken so far of the areas affected by the draft amendment is at best questionable. The draft amendment is therefore inconsistent with the goal of the National Capital Plan as stated in the source legislation itself, which is to ensure that Canberra and the territory are planned and developed in accordance with their national significance.

Draft amendment 41 was required to permit the proposed Gungahlin Drive extension to be built from the Barton Highway to Belconnen Way. This area includes remnant grassland adjacent to the suburb of Kaleen and dry sclerophyll woodland through the O’Connor and Bruce ridges adjacent to the Australian Institute of Sport. Now we have draft amendment 46, which is required to allow the proposed section of the Gungahlin Drive extension to continue from Belconnen Way but through Black Mountain Nature Reserve to the Glenloch Interchange. The purpose of this draft amendment is to modify the boundary between the ‘urban areas’ land use policy and the ‘national capital open space system’.
The amendment, which I am opposing, would move the boundary between Black Mountain Nature Reserve and the Gungahlin Drive extension road reserve further east into Black Mountain Nature Reserve. Both the O’Connor and Bruce ridges and Black Mountain Nature Reserve are areas of native bushland that have been specifically set aside for protection in the Canberra plan of Walter Burley Griffin. I did note Senator Humphries’s comment that Canberra’s planning has been built around the use of the car. But was this part of that plan? I do not think so. Was the preservation of Black Mountain part of the plan? I do think so. Even if it were true that the planning was for cars—I think it was for people as a national capital—I have never believed that was a dominant component of the planning for this great capital of ours. I think there has to be a very urgent reassessment indeed of the idea coming from the government that the car dominates and that planning requirements should be set aside, like we are seeing right here and now, to allow that domination to continue, even if it does mean rolling back the environmental amenity and death by a thousand cuts to particularly the native and natural environmental amenity of this great city.

Black Mountain is the host of a rich diversity of native flora and fauna, some of which are restricted to the ACT and found only on Black Mountain. Intrusion of a road into the reserve not only sets a precedent for the destruction of valuable inner city bush elsewhere in order to build freeways—and that is contrary, as I said, to the Burley Griffin concept and plan; the required environmental studies to determine whether building a road will result in an irreplaceable loss of Australia’s dwindling fauna and flora have not been carried out satisfactorily. That means completely. Canberra Nature Park is the nature reserve that protects the ACT’s hills, ridges and buffers from development, including the mountain. It gives Canberra its bush capital character and that is one of its unique features. There are few national capitals, if any, in the world that have such ecological riches so close to the city centre. In these days of increasing environmental awareness and ecotourism, we should be protecting these assets on ecological, economic and social grounds rather than diminishing them. The extension road would destroy much native habitat of conservation value, including of high-conservation value, and put endangered, vulnerable and near-threatened species at risk. I will come to those matters in a moment.

In particular, Black Mountain reserve is regarded by the community as the jewel of the ACT’s ecological crown, at least in the city, being the highest quality vegetation and fauna habitat within Canberra National Park. The extension would encroach up to 65 metres into Black Mountain Nature Reserve, up to 85 metres when roadside vegetation outside the reserve is included and 10 to 15 metres into Aranda bushland along Caswell Drive when proposed construction areas are included. The road would also fragment the grassland and other habitat at Glenloch Interchange. In reality, construction impacts go far beyond the actual areas used. Furthermore, there would be more habitat loss arising from the need to reroute cycle paths, fire trails and walking tracks within the national park and from fuel reduction burning where the forest is adjacent to the Gungahlin Drive extension.

Black Mountain reserve encompasses an area of 450 hectares, and it has over 500 plant species on record. It is considered to be, floristically, the richest area of the ACT, according to the Department of Capital Territory Nature Guide 1976. There are at least 54 orchid species recorded in that reserve. Many orchid species from this site are not found elsewhere in the ACT, and their loss from
Black Mountain would mean their extinction from the ACT. The following is a list of orchid species that are found exclusively in this survey area and nowhere else in the ACT—and Senator Humphries and others might like to comment on this: Acianthus collinus, Calochilus paludosus, Chiloglottis trapeziformis, Corunastylus sagittifera, Diplodium truncatum, Lyperanthus suaveolens, Orthoceras strictum, Paracaleana minor and Peta lochilus mentiens. Not only are some very rare ACT orchid species found exclusively at sites on Black Mountain but also there are other rare species on Black Mountain. Their loss is likely to have a significant effect on their chance of survival in the ACT. They include Arachnorchis sp. Aff. Tentaculata, rare in the ACT but well represented at one site on Black Mountain; Calochilus sp. aff. Campestris, possibly endemic to the ACT; Cyrtostylis reniformis, which is rare in the ACT although there are good populations on Black Mountain; Diuris semilunulata, confined to the Southern Tablelands with a large population on Black Mountain; and Stegostyla congesta, which is very rare in the ACT and southern tablelands although there are good populations on Black Mountain.

To put the high biodiversity of the terrestrial orchid population in the Black Mountain area into perspective, the following is a very good summary of the situation. Over half of all species of orchids located in the ACT are found in this area. Black Mountain has about twice the number of native orchid species recorded for the state of California—30 species—and more than the number of species recorded for both Great Britain and Ireland—50 species. Mount Richmond National Park in western Victoria, a park noted for its very rich floral diversity of 450 species, has 50 recorded species of orchids in an area of 1,733 hectares—that is fewer than on Black Mountain—and all plants and animals in that park are protected.

The draft amendment, which the Greens oppose, bases its assertions on a preliminary assessment for the western alignment of November 2002 which assessed a number of environmental issues related to the western alignment of the Gungahlin Drive extension. Given the information presented above, we find unacceptable the preliminary assessment report conclusion that no further environmental studies would be required when a number of the consultants’ reports included as attachments to that assessment do recommend such studies—for example, Fitch in relation to air quality studies on elite athletes and Hogg in relation to environmental impacts. It is therefore unacceptable that, although the ACT Land (Planning and Environment) Act 1991 provides for more thorough assessments such as a public environment report or an environment impact statement, neither has been prepared in this case.

In addition, there are concerns about the validity of the preliminary assessment’s environmental assessment itself—that is in attachment 10. The task of an environmental assessment consultant is to provide impartial, independent information to allow the government and the community to make an informed decision on whether or not the environmental damage—or benefits—which would result from a proposed development going ahead is justified. However, it is clear from attachment 10 that the consultant has accepted a priori that the extension will go ahead and his judgment has been swayed as a consequence. How often have we seen that failure in the starting position if not the concluding position of consultants? For example, the consultant writes that, while a selective tree survey might be useful in identifying trees to be protected along the margins of the roadwork’s corridor, there is no point in surveying trees within the road alignment which will need to be removed irrespective of their quality. This attitude is unacceptable,
I am sure you will agree, Mr Acting Deputy President.

The draft amendment asserts that most of the more important orchid sites on Black Mountain Nature Reserve would not be affected and specific measures can be implemented to minimise impacts, without fully elaborating on the effectiveness of the proposed mitigation measures. I invite Senator Humphries to comment on this and to come back with whether or not he accepts this report. As for one foreshadowed measure, the statement in the draft amendment that orchids can be ‘translocated to another suitable site within Black Mountain Reserve’ is very similar to the speculation by a former minister of this place in the Fraser government that the Huon pine trees in the Franklin Dam flood area could be preserved by lifting them out of the valley and planting them on top of the ridges. It shows a crass inability to understand ecological systems, not least orchids. Past experience shows that very few terrestrial orchids survive introduction to new areas owing to their specific nutrient requirements and their obligate associations with soil microbes and insect pollinators. That assertion is well known to people who are interested in orchids and you can find reference to that in Jones et al, 1999. Consistent with these concerns, the draft amendment should be disallowed.

I sum up by saying this. Black Mountain Nature Reserve is the nature feature of the national capital. Not only is it known for its natural profile in the middle of a growing city of 300,000 people—the largest inland city in Australia—but it is packed full of very important rare and endangered orchids. Past experience shows that very few terrestrial orchids survive introduction to new areas owing to their specific nutrient requirements and their obligate associations with soil microbes and insect pollinators. That assertion is well known to people who are interested in orchids and you can find reference to that in Jones et al, 1999. Consistent with these concerns, the draft amendment should be disallowed.

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The draft amendment asserts that most of the more important orchid sites on Black Mountain Nature Reserve would not be affected and specific measures can be implemented to minimise impacts, without fully elaborating on the effectiveness of the proposed mitigation measures. I invite Senator Humphries to comment on this and to come back with whether or not he accepts this report. As for one foreshadowed measure, the statement in the draft amendment that orchids can be ‘translocated to another suitable site within Black Mountain Reserve’ is very similar to the speculation by a former minister of this place in the Fraser government that the Huon pine trees in the Franklin Dam flood area could be preserved by lifting them out of the valley and planting them on top of the ridges. It shows a crass inability to understand ecological systems, not least orchids. Past experience shows that very few terrestrial orchids survive introduction to new areas owing to their specific nutrient requirements and their obligate associations with soil microbes and insect pollinators. That assertion is well known to people who are interested in orchids and you can find reference to that in Jones et al, 1999. Consistent with these concerns, the draft amendment should be disallowed.
it is only a minimal impact that is occurring at a time when, as far as native ecosystems are concerned, Australia is suffering the greatest loss in history.

I am sure that the Democrats will continue to support the protection of native bushland in the ACT as they have done so well in the past. But I say to the opposition and the government, if it is in your mind to vote against the Greens motion: where do you put an end to this? You tell us which national park in Australia you would not take a little piece of for a compelling reason like an expressway because there has been urban expansion. It is not and should not be allowed. That is why I have made such a strong submission this afternoon on what might seem a minor matter to some, but it is a major matter to local residents—to people who have been fighting to protect this woodland and this piece of national park. They are right; once you allow the scissors to carve a bit out of the map, the bulldozers to carve a bit out of the national park, you are into the death by a thousand cuts—a bit more will not hurt either. We should be mature enough as a nation to say, ‘No; national parks are inviolate.’ Every survey done in Australia shows that that is what people think. It is backed up by 80 to 90 per cent of people. They do not want roads in national parks. This parliament will not be representing that sentiment if it does not support the Greens motion.

Senator HUMPHRIES (Australian Capital Territory) (5.11 p.m.)—I rise to oppose the motion of disallowance which Senator Brown has moved. To explain why, I think that the motion on his part is an overreaction to the proposal that has been put forward, essentially by the ACT government but which facilitates an earlier decision made by the ACT government and, indeed, by this parliament, to support the building of the Gungahlin Drive extension down a corridor between North Canberra and Belconnen.

Only a few weeks ago the Senate voted on a disallowance motion moved by Senator Brown to draft variation 41. At that time the Senate endorsed the capacity of the territory to proceed to build the road which has been proposed on this occasion to the east of the Australian Institute of Sport. I have some doubt as to whether, having made the decision to allow that variation to proceed, it is now possible to go forward and say the road should proceed as indicated by the Senate to the east of the Australian Institute of Sport but should end abruptly on Belconnen Way and not be able to proceed as would be necessary, given the alignment of the road, to the other side of Belconnen Way, to more closely follow the route of Caswell Drive beside Aranda, down to the Glenloch Interchange. It may be possible to have one and not the other but, from the maps that I have seen, I have grave doubts about whether in fact that is the case. I would say to the Senate that a case needs to be made for us to have the capacity to accept draft variation 41 and then not accept draft variation 46 to the National Capital Plan.

I said that the arguments that Senator Brown has put forward today have an element of exaggeration in them, and I think that is the case. He has put forward, essentially, an argument based on the integrity of the Black Mountain reserve and has said that it is an area of high conservation value and should be retained in its present form and that this variation unacceptably impinges on the conservation value of that area.

Let me say first of all that I completely agree with Senator Brown in describing Black Mountain reserve as an area rich in flora and fauna; an area of very significant environmental value to the ACT and, indeed, to the whole Australian community. It is the home of a large number of significant species of plant and animal, and it deserves to be protected appropriately to ensure that
those species survive. Senator Brown made reference to the orchids which grow on the reserve, and I have heard about the value of those orchids in the past as well. During the time that I was minister for the environment in the ACT I was told about a large number of rare species of frog that live on the reserve. In fact, it was put to me that there are more species of frog to be found on Black Mountain reserve than are to be found in the entire British Isles. That is what I was told. I cannot vouch for the accuracy of that statement, but it certainly sounded credible to me at the time. So there is no dispute about the fact that this is an area of very significant environmental value.

The question on which I think Senator Brown and others in this place would differ is whether or not the proposed variation amounts to a significant impingement on that environmental value. Senator Brown made reference to the size of the encroachment into Black Mountain reserve. In fact, on my advice, the encroachment averages about 35 metres beside an existing road; an area already somewhat degraded.

Senator Brown—That is an average. Senator HUMPHRIES—That is an average. It does extend, as Senator Brown suggested, beyond 35 metres at some points, up to approximately 90 metres. But it averages 35 metres. You would think, from what has been said by Senator Brown, that the proposal is to put a road through the middle of the reserve—

Senator Brown—No, I didn’t say that. Senator HUMPHRIES—You did not say that, but what you said—trimming the Mona Lisa or putting a scratch across one’s favourite Beethoven record—implied significant damage to the integrity of the area. I have a different analogy to use: I would equate it to a man who gets up in the morning and shaves his beard. I see you react with some alarm to that suggestion, Mr Acting Deputy President, as would I—until recently, at least.

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—I see that you have done it in part, Senator.

Senator HUMPHRIES—I have in part, and I am sure I have improved as a result. But the extent of the encroachment on the integrity of the head in that case is about as extensive as the proposal which has been put forward by the National Capital Authority. It is extremely minor. If you were to look at a map of the entirety of the Black Mountain reserve on an A4 page, you would see that the size of the encroachment is so minor as almost to be invisible on a map of that description. It is a very small encroachment. I do not have a percentage in front of me, but if it went anywhere near one per cent of the total area of the reserve I would be extremely surprised. It would be a very small infringement on that area.

What is more, the area that is being infringed upon with this variation is, according to the preliminary assessment conducted by the ACT government, one that does effect the removal of some trees, shrubs and ground-cover, but none of the species that will be affected are listed as nationally rare or threatened species. Yes, some trees have to be removed and yes, some shrubs, a small amount of vegetation and perhaps some habitats for some animals have to be removed, but none of those species identified as being threatened or rare at the national level—not one of them—will be affected. This was a survey conducted by the present ACT government, not the former ACT government.

I can say from my own experience of the area that it is already, in parts at least, significantly degraded. There are car parking spaces already infringing on this area where people have parked their cars, presumably
for the purpose of going into the reserve. Those are the sorts of areas which are going to be taken out by this extension of the road reservation. I am sorry, Senator Brown, but it is a gross exaggeration to describe the area to be excised from the nature reserve as being of any environmental significance whatsoever. It is a gross exaggeration. Let me use other illustrations of that fact. The ACT community is extremely finely attuned to the question of encroachment on its environment. This community, more than any other, is prepared to go to the wall to defend the value of its environment. I and other people who have served in the ACT parliament know full well how strongly and passionately the ACT community feels about such questions. My assessment of the public reaction to this proposal is that there is much greater support for it than there is opposition to it.

It is significant that Senator Brown has quoted in support of his arguments here today the Save the Ridge group. It is, essentially, a group that is based in the communities of O’Connor and Lyneham. It has been arguing for the retention of the bushland to the north of Belconnen Way—that is, the area about which the Senate voted earlier this year. There is a much older environmental support group: Friends of the Aranda Bushland—it is much older than the Save the Ridge group—which has been working for years to protect the environment around Aranda. To the best of my knowledge, that group has not taken the same view about this proposed road reservation as the Save the Ridge group.

I believe that the reason for that is that they understand the compromise to environmental values is fairly minimal and that the benefits to the residents of Aranda by virtue of this road reservation being made are significant—and, indeed, they are. I think that if the Friends of the Aranda Bushland had taken the same position on this that the Save the Ridge group has taken, I would pay a little more attention to what Senator Brown has had to say but, to the best of my knowledge, they have not. In those circumstances, I take the suggestion of a threat to the environmental values of the area with a very large grain of salt.

After the events of earlier this year, I am surprised that any member of this place needs to be reminded of the other important consideration in widening that road reserve. There was, as I am sure every senator is well aware, a very serious fire emergency in this territory in January. That saw large parts of the Bush Capital burn, particularly places where there was inadequate protection of the urban interface against the bush. One area that, thankfully, did not burn during that emergency was the Black Mountain reserve. If it had burnt, the effect on the rest of the ACT community would have been extremely significant.

Senator Ferris—It came very close to burning.

Senator HUMPHRIES—Fire burnt right up to the Glenloch Interchange, and it was only through the valiant efforts of volunteer and employed firefighters that it was prevented from crossing the interchange and getting into the Black Mountain reserve itself. The impact on the city would have been enormous had that been the case. We cannot exclude the possibility of fire in that reserve in the future, as there has been fire in the not very distant past. The widening of the road reserve, where Caswell Drive presently lies, will help better protect the people of Aranda from any fire which may occur in that area.

Senator Brown—So you bulldoze it to save it from burning!

Senator HUMPHRIES—that is an argument that has been had outside this place before, Senator Brown. It is a very real ar-
argument, and it is an argument you cannot get away from. But it is sometimes necessary to take the step of clearing bushland in order to protect properly both the environmental values of other parts of that bushland and the urban interface that it abuts. From a fire-fighting view, I think there would be very few people who would argue that that road reserve being enlarged would not assist in the protection of Aranda from fire. That is a significant argument, and I think it cannot be ignored in this debate.

The broader argument is really about the necessity of proceeding with the road, which has been designated by this ACT government—and previous ACT governments—as an important priority for the infrastructure of the territory. The road itself is necessary. It is an important part of the infrastructure of the ACT. It cannot be substituted by enhanced public transport, for example. Only today I spoke to an ACT resident who happens to work in this building, and he said he intends to move from Gungahlin because he is sick of the daily crawl along existing clogged roads to get to this building in order to do his job. He reflects the view, in making those comments, of a large number of other people who live in Gungahlin and who are sick of being unable to access other parts of the city in the way that residents elsewhere in Canberra can. We have no right to block the building of that road, and I suspect that the passing of this disallowance motion would affect that because it is incompatible with the route already designated to the north of Belconnen Way. It is therefore important that we proceed to back the decision the Senate made earlier this year in reserving the road, as part of draft variation 41.

Senator Brown suggested that, because Australians are of the view that national parks are inviolate, we should not proceed to make this variation and encroach on this reserve. I am sure you would appreciate, Senator Brown, that the Black Mountain Nature Reserve is not a national park. I am also sure that if most members of the community, after having put forward the view that national parks are inviolate, were asked whether they thought a variation to a national park that would affect perhaps one-tenth of one per cent of the park would be acceptable, they would not be so zealous as to deny that kind of variation—particularly when it enhanced the safety of residents who abutted that piece of reserved area. I think the argument for this disallowance motion has not been made. It is a very small encroachment on the integrity of the reserve. I would be the first person in this place to rise and argue for the maintenance of the integrity of the reserve, but I do not believe that—no matter which way you look at it—such an argument can be put forward in respect of this variation.

Senator LUNDY (Australian Capital Territory) (5.28 p.m.)—Labor will be opposing this disallowance motion, although not for the exact same reasons as Senator Humphries has articulated. The point I would like to make that best represents Labor’s view is in relation to the fact that this has been a hotly contested and debated issue within the ACT for such a long time. We have had debates here previously on the issue of the Gungahlin Drive extension. There have been many reports, some of better quality than others, on the merits and otherwise of the various proposed routes of the Gungahlin Drive extension. The bottom line is that the elected government of the ACT have determined that a road to alleviate the difficulties facing Gungahlin residents is one of their highest priorities. To the extent that they were forced to accept a route effectively imposed on them by the National Capital Authority, they have determined to take the road through the eastern route. That compromise position was very difficult to take. The decision we are now discussing—on the
encroachment on the Black Mountain reserve—falls into exactly the same category: it was an extremely hard decision to make in the face of competing priorities.

I have no doubt there are some environmental values and that the preferred approach would be to be able to preserve those. I accept that. What I do not accept, given the debate that has occurred at the local level under the auspices of the ACT Legislative Assembly, is that it is appropriate for the federal parliament to effectively veto that. I do not think that would make the action of the federal parliament any better than what I saw as the unreasonable veto by the National Capital Authority on the proposed western alignment for the Gungahlin Drive extension. I felt that was an inappropriate intervention and I put this debate into the same category. I know the same people who are expressing these concerns have had the opportunity to make their concerns known to the elected members of the ACT assembly. I am full of confidence—and, indeed, I rely upon—their ability to make a judgment about those competing priorities, given that they form the elected body. I do not believe there are grounds for a disallowance in terms of the role that we have in safeguarding Canberra’s role as the national capital. I do not believe there is a crossover with this issue.

I will not take up any more of the Senate’s time, other than to say that I do respect the concerns and issues raised by advocates of environmental protection in the area. It is a sensitive area. Those issues have been taken into account in the decision by the ACT government to proceed with the extension in the way it has. I think it is appropriate for the Senate to respect that decision and move forward. I therefore oppose this disallowance motion.

Senator STOTT DESPOJA (South Australia) (5.31 p.m.)—I rise on behalf of the Australian Democrats to express our support for the disallowance motion that has been moved in the chamber today relating to a proposed amendment to the National Capital Plan. This is in addition, as others have pointed out, to previous comments and debate in this place on this issue. I am very mindful of the issue of jurisdiction to which Senator Lundy just referred. She and others know that this is clearly going to be an ongoing debate, particularly when you have a very powerful, unelected federal agency in the form of the NCA, which seems to have quite extraordinary powers when it comes to planning and other issues in relation to the Australian Capital Territory. Nonetheless, the Australian Democrats do have a representative in the ACT assembly, Ms Roslyn Dun-das, who has put on record on a number of occasions her opposition to the Gungahlin Drive extension—and, more specifically now, in relation to the Black Mountain nature reserve aspect of that extension.

There has been some debate in the chamber—although it was a little underground—between senators about whether or not the draft amendment should have been dealt with in this form or at the time the other part of this debate was before the Senate. I certainly have some sympathy for that argument; we should have been dealing with both aspects of the amendments. However, as we have the opportunity to debate this today, I again put on record the views of the Australian Democrats. I will refer to a bit of the history of this debate—though not in great detail—and to the issues that are specific to the Black Mountain nature reserve. The purpose of draft amendment 46 is to modify the boundary between the urban areas land use policy and the national capital open space system. The boundary is represented in the location of Aranda as the boundary between the Black Mountain nature reserve and the Gungahlin Drive extension reserve.
A few years ago now, in 2000, the ACT government initiated some action to confirm the alignment of the Gungahlin Drive extension between the Barton Highway and the Glenloch Interchange, as part of its investigation into the design of the GDE as it passes the suburb of Aranda, to which the ACT government has sought to refine the boundary of the road reserve to achieve a balance between the impacts on Black Mountain nature reserve and the residential suburb of Aranda. While there have been a number of assessments, the preliminary assessment indicated that the design of the GDE, as a parkway, will be to the east of the existing Caswell Drive alignment. The design retained Caswell Drive as an off-ramp from the GDE and included a south bound on-ramp from Caswell Drive that would cross over the GDE. That design sought to reduce the impact on Aranda residents by maintaining local access to the suburb while minimising the noise impacts that may come from future traffic loads on the new road. However, this means that the new design, or that design developed for the GDE past Aranda, requires significant intrusion into the existing Black Mountain nature reserve. It cuts a 65-metre swathe into the reserve, further exacerbating the concerns that have previously been raised in the Senate about the potential environmental degradation that the eastern alignment could potentially inflict on valuable bushland.

The Senate has been over the electoral history of this debate: the fact that the Labor Party went to the last election promising to protect the Bruce and O’Connor ridges. We understand that, in the face of opposition from the National Capital Authority, that promise was overturned. Just before Christmas last year the NCA announced that it would not support a road to the west of the Australian Institute of Sport. The basis for this decision was the alleged concern for the health of athletes, claims about which were brought into doubt by the Fitch report, which I have referred to in previous debates on this issue. The NCA instead forced a road to the east of the AIS through valuable urban bushland where many athletes train. This was an unfortunate decision, as we have been over; but also unfortunate was the decision by the Stanhope government not to challenge that decision by the National Capital Authority. Again, that relates to some of the jurisdictional issues that have been raised in this place.

The Democrats went to the last election with a very clear policy on this: we oppose the eastern alignment of the GDE. Roslyn Dundas has made it clear that she will stick to that commitment. She has been involved in many of the debates on these issues in the assembly and has articulated in the media and in the community on many occasions her opposition to the eastern route. I have certainly placed on record our concern both in the Senate and, obviously, through the Joint Standing Committee on the National Capital and External Territories.

I think Senator Humphries’s comments about theCanberran and ACT community being finely tuned when it comes to environmental issues is an astute observation. I suspect he has been perhaps more in the thick of it than many of us here and perhaps is in a position to assess that public reaction. Certainly the reaction that the Democrats have been aware of is one that seems very heated and very strong. The Save the Ridge campaign has been mentioned in the Senate a number of times today, and I think it is a catchcry of which we are all increasingly aware. Certainly the community viewpoint has been very strong and very angry for a range of reasons, not least of which is the environmental impact.
One of the main concerns in this debate has been the environmental devastation that many believe would be caused by the eastern alignment of the GDE. We do accept that perhaps there are environmental considerations with the western and the eastern routes, but we believe that the eastern alignment is the less preferable option. We are concerned about the ACT government’s dogged determination to push the Gungahlin Drive extension through the east, despite this overwhelming public concern and also evidence that suggests there are environmental and other impacts. The government has maintained its stance regardless of community concern. Besides major public opposition to the eastern option, there is also some evidence to suggest that the western route could be better—it could be more economical, it may have less environmental impact and it may arguably be more efficient than the eastern route. The eastern route could require the running of an inferior highway up and down slopes through the most ecologically significant parts of valuable bushland.

I will not go on about the electoral impact of this issue, but I think it is important for people to note that this does involve a broken promise. Whether or not the Labor Party in the ACT put up a sufficient fight is clearly a debate that continues to rage within the community—that is, the territory government made clear its concerns to the NCA, but how far it could pursue those concerns and what kind of a fight it could put up for a whole range of reasons is something that we will debate far beyond this disallowance today. The Democrats remain concerned about the powers of the NCA. We are concerned that, as a consequence not only of this draft amendment but of the decision more generally, valuable bushland could be destroyed. This bushland provides a rare and valuable inner urban recreational amenity as well as a habitat for wildlife. It is enjoyed and has been enjoyed by generations of Canberrans.

I am not going to attempt today to read out the names of the various orchid species that are claimed to be threatened as a consequence of this decision. Suffice to say that many orchid species from this site are alleged to not be found anywhere else in the ACT. Indeed, it is claimed that their loss from the Black Mountain area would actually result in their complete extinction. I think that is what Senator Brown was trying to interject when that conversation about beards was taking place. Senator Brown was taking that one step further, suggesting it was not so much that you are shaving off something that can be replaced but that you are actually nicking the skin. I think the idea was to illustrate deleterious impact, but I am not quite sure how effective the beard analogy is in this case. Suffice to say there is a real concern that we will see the extinction of those very rare orchid species to which all speakers have referred. I think that is something that is certainly driving a key part of this campaign and an issue that should be taken into account.

My colleague Roslyn Dundas, on behalf of the Democrats in the ACT, and I, on behalf of the Democrats on a federal level, believe that transport planning for the people of Canberra and the Capital Territory is a big issue—that relates to a debate earlier in this place—and that there has been an ineffective allocation of funds to that particular area. We want to see a scheme developed that focuses on the needs of the ACT for the next few decades—not just the next few years—and that takes into account everything from road structures through to issues of paid parking, broader issues of environmental sustainability and, of course, the specific issue of money and resources for public transport. We will be supporting the disallowance of amendment 46 of the National Capital Plan...
(Gungahlin Drive Extension—Black Mountain Nature Reserve) as part of our long-running campaign and our opposition to that route. We will watch with interest not only the outcome of this vote but, if this fails today, with interest and concern to see what happens as a consequence of the construction of that route.

Question negatived.

MINISTERIAL STATEMENTS
Constitutional Reform: Senate Powers

Debate resumed.

Senator BROWN (Tasmania) (5.44 p.m.)—Over the weekend the Greens have held a national conference, and I can report to the Senate that we will be mounting a nationwide campaign—particularly now that the Western Australian Greens are part of the Australian Greens, which is a great event—against the proposals by the Prime Minister for disempowering the Senate. Previous speakers have outlined those proposals. I think the Prime Minister, in announcing the document Resolving deadlocks: a discussion paper on section 57 of the Australian Constitution, pronounced that second word ‘dead luck’, which may have been Freudian, because I do not think he is going to have the luck to get this past the Australian people. In the document, on page 32, the Prime Minister gives an indication of why he does not think the current situation—which allows a double dissolution if there are obstructed bills in the Senate, as the means of the government testing with the people whether it wants to take on the Senate and then go to a joint sitting and have the matter resolved—is good enough. The document says:

Facing the possible loss of seats in a full-Senate election … and the potential loss of government altogether, it is a major risk for any government to call a double dissolution election.

So the Rt Hon. John Howard sees a double dissolution as risky. He is asking: why should a government have to face a risk—that is, being turned down by the people—in order to get its way? A curious contra argument is involved there—an argument against himself. If the Prime Minister is confident that there is legislation in this place which is being held up or blocked but for which he has a mandate then he should go to the people with confidence. It is hardly a rousing matter of confidence that he sees any government calling a double dissolution as taking ‘a major risk’. That points to the Prime Minister’s diffidence about a double dissolution next year and the difficulty he sees in taking that course of action, much as he might want to try it out. I think it is a risky course of action for Prime Minister Howard, particularly when the matters he will put up as warranting that double dissolution, including the sale of Telstra, are so profoundly unpopular out there in the electorate.

I was amazed, at the weekend, at the collapse within the National Party, against the wishes of its own constituents, of the move to protect Telstra from privatisation. I do not think that majority out there in the bush—and it is over 80 per cent—is going to support the government if it calls a double dissolution, amongst other things, on the matter of selling Telstra. No doubt the Prime Minister does know it is a risk, and he is right.

On page 30 of the document, the Prime Minister says this:

While the democratic compact encourages a diversity of views, to be effective it requires respect from those who hold the balance of power over the express platform upon which the government of the day was elected.

He ought to take off his blinkers about that. It takes every bit the same size vote to put somebody into the Senate as it does to put somebody into the House of Representatives. The parties and the Independents represented in the Senate go to the people with a platform, no less than does Prime Minister How-
ard. We stand here because people have endorsed that platform. In the case of the Greens, we are here because we oppose the industrial relations demolition job—100 years of worker protection that the Howard government wants to undermine. We do oppose people having to face steep rises in pharmaceutical benefits. We do oppose the sale of Telstra, and many of the other issues for which the Prime Minister claims he has a mandate. As Senator Nettle said this morning, 43 per cent is hardly a mandate.

Prime Minister Howard says, ‘I have a majority government.’ Well, Prime Minister Howard, you have a minority vote. You only have a majority government because of one thing—that is, the House of Representatives is unrepresentative. It does not reflect the vote of the people, and that is highlighted by the fact that more people voted against the Howard government than voted for it. One million more voted against the Howard government than voted for it, but it is in government, and Prime Minister Howard is claiming a majority. He does not have majority support, nor does the Labor Party. There are a number of extremely effective Independents in the House of Representatives, but there would be a whole tranche more of them were there to be proportional representation in the House of Representatives.

That is why the Greens have released, prior to this paper from the Prime Minister, a discussion paper advocating our long-held policy of proportional representation in the House of Representatives. Mr Acting Deputy President Bolkus, you will remember me raising that a number of times in here, because it is the Labor Party which has protested most vociferously when I have done so. Whoever is opposing it is doing so, I think, for political rather than democratic reasons, because the democratic sense says you go for proportional representation.

Mr Acting Deputy President Bolkus, what will be of particular interest to you because you are from South Australia is the role of South Australia in the whole debate on proportional representation in Australia. As a Tasmanian I am pretty proud of the fact that Andrew Inglis Clark, an Attorney-General of the 1890s, instituted proportional representation voting in Hobart and Launceston in 1897. It is little known that, because of that, the first House of Representatives members from Tasmania—the five of them—were elected on a proportional representation basis. They were the most fairly elected back in 1901. Each state elected their representatives according to the state’s form of voting at the time.

Tasmania moved ahead of the rest of the country in democratic reform, thanks to Andrew Inglis Clark. However, he had a fore-runner by a long shot. Her name was Catherine Helen Spence, and she is on the $5 note. But that is not why she is so important to this place. She was a world-renowned advocate—which is saying something for the 19th century—of proportional representation throughout most of that century, and she survived the first decade of the 20th century. A vote in 1841 in Adelaide involved proportional representation. In 1859, Catherine Helen Spence read the work of Mr Hare of the United Kingdom, who gave rise to the Hare-Clark system that is now used in Tasmania, Ireland, Malta, the Australian Capital Territory and many other places at least at local government level. John Stuart Mill became a proponent of this fair system.

Catherine Helen Spence brought that system into the public domain in Australia, in particular through her pamphlet of 1861 called ‘A plea for a pure democracy’. It was a remarkable document. This was 140-plus years ago. Catherine Helen Spence released her document, paid for by her brother—it cost a thousand quid!—and, with great zeal,
spread it about in South Australia and the other colonies. It gained great recognition in Britain. The document said: ‘Let’s have proportional representation so that the voting system reflects as far as possible, in the most exacting way, the actual votes of the citizens.’ Single member electorates do not do that; proportional representation does. Single member electorate systems allow us to have minority vote governments acting as a majority in the House of Representatives, like the current government, and therefore treating the House of Representatives—without the authority of the people, without the vote of the people that is commensurate with it—as a rubber stamp, and the executive rules. That is what the Prime Minister wants to do with the Senate through his reforms.

Catherine Helen Spence’s system, taken up by Andrew Inglis Clark, is quite different: if you get five per cent of the votes—if the quota is that low—you get five per cent of the representation. If Catherine Helen Spence’s not only elegant but most democratic of systems of proportional representation were in play on a statewide basis in the House of Representatives today, not only would we have the current Independents—I believe that, statewide, they would easily get the two per cent to six per cent quota in their various states—but we would have a government with 43 per cent of the seats, an opposition with something like 37 per cent or 39 per cent of the seats, and the other 20 per cent or so of the seats would be taken up by the minor parties. The government might well argue that that cannot be countenanced—and I am sure the Labor Party would—but I tell you this: the only way you can argue that is by saying that a person who does not vote for the coalition or the Labor Party should have their vote devalued and discounted—their vote is not as important as a vote for the government or the Labor Party, and you go back to the old days of corrupt assertion that the person who could spend the most money could buy the most votes. It is not the same thing, but it says that one vote does not have the same value as another.

It is time this system was changed. It is time that Catherine Helen Spence was recognised as the founding mother of our democratic system. She was the first woman to stand for a democratically elected post in the Australian political system, although she stood for office in 1897 and was not elected. However, it was through her influence at those constitutional conventions of 1891 and 1897 that our Constitution allows for proportional representation in both houses of parliament. The Greens proposal—thank you, Catherine Helen Spence and Andrew Inglis Clark—does not require a change to the Constitution as does the Prime Minister’s proposal. The Greens proposal for proportional representation brings more democracy into the parliament, as against less democracy under the Prime Minister’s proposal. The Greens proposal means that one vote, one value is brought back into the system rather than the Prime Minister’s proposal, which leaves in the House of Representatives one vote, one value provided you vote for the big parties but tries to take the much more democratic and proportionally represented members of the Senate and remove their essential powers.

The balance of power between the two houses is a cornerstone of our Constitution and, in particular, the structure of the Senate. The Senate was a states house of review. We all know that it does sometimes have that function, but it has become much more politically dominated, as was forecast 100 years ago. It has grown in stature in the public mind as an essential brake on the government of the day and an essential other equal vote for the citizens of Australia in a set of checks and balances between the two houses, which all the indications of past elections
and recent opinion polls show the people of Australia want kept.

I would bet London to a brick on that, if Prime Minister Howard takes this issue to a referendum—if the Labor Party is blinkered enough to support it—he will lose it hands down. He will get a rollicking at the poll from the Australian people, because they like what the Senate does. They respect a house that has responsibly over these recent decades been a hand on the shoulder of government, a directing hand on occasions. It is very finite—98 per cent of legislation gets through but some parts do not. People in the Australian electorates respect that. The Senate has enormous kudos in Australia. We are not the Senate in the United States, we are not the House of Lords and we are not the abolished upper house in New Zealand. We are a democratically elected and responsible chamber keeping a brake on the excesses of rubber stamp democracy by an executive that treats the other half of this parliament as if it is not here.

The decisions are made in the Prime Minister’s office and they go to the cabinet. There is a loss of value in the representation in the House of Representatives because it is made. There is not going to be change there no matter how salient, incisive and important the matters are that may be generated by debate in the House of Representatives. That is where the Senate makes this parliament work. That is where the different nature of the Senate is essential for the excellence of the democracy that is delivered out of this parliament. If you take away the Senate, you will have a Prime Minister elected with total control to do or say what he or she wants. These proposals, particularly the proposal for a Prime Minister to have a joint house sitting, take just that configuration. Get a majority in the House of Representatives which is larger than the minority in the Senate of the governing party and that Prime Minister will in effect treat the whole of the parliament as a rubber stamp and will be unchecked in his or her ability to make decisions. Do you think the Australian people want that? No, they do not.

Senator Kemp—And keep his promises.

Senator BROWN—Senator Kemp interjects about, presumably, Labor and Liberal prime ministers keeping their promises. That interjection is important because you know how serially they cannot and do not. When it gets to the matters of parliament they deal with all manner of issues that are not involved in previous elections—that is the nature of it.

This Senate is much closer to the people. The committee system and the time lag since the introduction of legislation give the Senate the responsibility to reflect what people are thinking and to be a fail-safe mechanism, a backstop. The Greens stand very strongly against what the Prime Minister is proposing and for proportional representation in the House of Representatives, and we will take that to the ballot box next year if necessary.

Senator MURPHY (Tasmania) (6.04 p.m.)—I was led to believe there would be a division on the previous matter before the Senate in respect of a motion moved by Senator Brown, but that was not the case.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Senator Murphy, you will need to seek leave to continue your speech.

Senator MURPHY—I seek leave to continue with my remarks.

Leave granted.

Senator MURPHY—I will just go back to the issue of resolving deadlocks and the document that has been circulated by the government and the Prime Minister. As I think I said earlier, on page 6 the document says:
First, the introduction of proportional representation in 1948—
this refers to the legislative changes that have been made since 1948—
taking effect in 1949, has fostered the development of minor parties.
This has been a valuable evolution in the representative character of the Australian Parliament.
Yet here we are debating a document that proposes to get rid of all that, that says we do not want to have a representative character in the parliament and that we want to have a rule by the government of the day approach. Our forefathers wrote the Constitution in the way they did for exactly that reason: they wanted to make sure that the parliament, and section 57 in particular, did not allow for governments of the day to run riot and roughshod over the public in general. They wanted to ensure that there were better outcomes. If you look back through the history of the parliaments in this country since 1901, at the number of times that the government of the day has had a majority in the Senate up until 1983—because 1983 also plays an important role as a date in the document entitled Resolving deadlocks—the governments of the day held control of the Senate on 19 occasions, and on 17 other occasions they did not. So that in itself is reflective of what the people want. Even under the proportional representation system, the system of election of the Senate, at a normal three-year half-Senate election the government of the day can still obtain a majority in the Senate—it can.

One of the reasons that the people of Australia will ultimately reject what is proposed in this document is the fact that in more recent times governments hold to a practice in which they must win at all costs: ‘Let’s get elected. It doesn’t matter what we tell the public. We’ll do other things after.’ That has led to the diminution of the value that the general public place in politics and in politicians generally. Governments say one thing before the election and do something else after.

I find it difficult to understand how the Prime Minister and the government can argue for changes to section 57 for a popularly elected mandate that they cannot implement, when there have been governments that have said: ‘We’ll never, ever introduce the GST,’ and, ‘We won’t sell more than one-third of Telstra.’ We have heard others promise the l-a-w law tax cuts. There have been ‘core promises’ and ‘non-core promises’. There have been attacks on Medicare and on education and changes to industrial relations, many of which have been proposed after the government has been elected. We have heard the ‘children overboard’ and the ‘no children overboard’ claims. There have been various claims about security and weapons of mass destruction in Iraq. Often these issues lead people to decide how they will vote. Subsequently they turn out to be incorrect, and the public have been grossly misled. That is why the public choose to have a Senate structured in the way that it is structured. The real way to resolve deadlocks in this place is for the government to bring forward good legislation. When you consider how much legislative work is done through this chamber, deadlocks are not all that significant. The government achieves the great bulk of its legislative program.

Another aspect this document somehow tries to promote is that the minority has effective control over the majority. It does not matter whether you are an Independent or a member of a minority party, at the end of the day to oppose and defeat something coming through this place you have to have a majority of the votes. And I think the majority of the votes represents the majority view of the public.
Prime ministers have strived for all the power. They have thought that they were undefeatable. They have taken the approach of believing that everything that they say is exactly what the public wants. Yet I know of many issues on which, if you asked the public whether they support the government or the opposition position for instance, you might get a different outcome. There have been many polls, albeit conducted through the media, that have demonstrated that the public favour one party—because we have what is commonly a two-party preferred system—over another with respect to certain matters. If you ask the question on health, the Labor Party gets the tick. If you ask the question on industrial relations, the Labor Party gets the tick. If it is a question that relates to economic management, the polls suggest that the coalition gets the tick. People make decisions based on various things. But if you look at the last election, the government lied its way into office. I do not know where the popular mandate lies when a government is elected purely on a lie about the ‘children overboard’ incident.

It is so terribly wrong for a government to imply that this chamber is somehow destroying its legislative program. If you go back in history, as I said, the government of the day has not had control of the Senate 17 times, and 19 times it has. Through all of those years until 1983—and this document refers to 1950 and 1959 and the proposals to look at amendments to section 57—those governments have been either in control or not in control of the Senate, yet they managed to govern. The government program went on. As Senator Murray pointed out earlier with regard to industrial relations in this country, we seem to be rolling along reasonably well.

The discussion paper talks about the importance of reform to small business. On page 32, it states:

This is a reform that, if implemented, would help create thousands of new jobs and reduce costs to small business.

If ever there was a cost burden that was lumped on small business it was the GST. That is not to say that I am opposed to the GST, but one thing is for certain—it could have been much simpler for small business. It still could be made much simpler for small business. But are we focused on that? No; there is not the slightest bit of interest. The cost of implementing the GST for small business runs into tens of billions of dollars per year in this country. Compare that to the imposition of what the government considers to be an industrial relations difficulty with the unfair dismissal laws, or whatever they are called now—fair dismissals. We have a new name for them each time they come forward. If you compare the imposition of requiring an employer in small business to take care when considering employment and ensuring that they comply with their responsibilities as an employer versus the cost imposition of the GST, there is no comparison—not one. It also says on page 32:

The government of the day is often acting to fulfil the mandate it won at the last election ...

I am pleased with that choice of words ‘often acting’. And often not. Let me deal with the sale of Telstra in the context of ‘often acting to fulfil’. The government said at the outset, ‘We will never sell more than one-third of Telstra.’ They then proceeded to sell 49.9 per cent of it. They are now proceeding, by way of legislation introduced into and passed through the House of Representatives, to try to sell the lot, but they are proceeding on that basis if services in the bush and in the regions are up to scratch. We have had two or three inquiries and reports, the last of which suggested that there were still some improvements to be made, and the government committed a further $180 million to bring
about those improvements. Now, of course, the National Party—

Senator McGauran—The Nationals.

Senator MURPHY—Sorry. Senator McGauran, the Nationals. That’s right, you have changed your name. I tell you what: you have not changed your spots. You have changed the name but not your spots. You are still the same party: you still cannot make up your minds whether you are in the ‘sell Telstra’ basket or not. The Deputy Prime Minister, Mr John Anderson, participated in a joint statement with the former Minister for Communications, Information Technology and the Arts, Senator Alston, in making a big hoo-ha about announcing the $180 million expenditure and saying that Telstra was ready for full sale. It was not that long ago—in fact, only a few weeks ago—I recall seeing Mr Anderson saying that the sale of Telstra was a long way off. He was in the position where there was a question over the leadership of the Nationals, so his position seemed to be somewhat, shall I say, coloured by the circumstances he was confronting at the time.

Telstra is clearly not ready for sale. If you are a subscriber, if that is the right word, to Telstra’s BigPond dial-up network you certainly would not say that things are up to scratch—in fact, far from it. As one of those subscribers, I find Telstra’s BigPond service leaves a great deal to be desired. On page 32 of the statement it says:

It is thus contrary both to the principles of democracy and good government that the will of the people as exercised through the ballot box can be repeatedly and completely frustrated by the opposition joining with minor parties pursuing sectional interests.

‘Pursuing sectional interests’. Goodness me. What does the coalition government do in respect of big business? What does it do in respect of at least some of the farming interests in this country? Some of the proposals brought in by this government are now about to be changed. They brought in self-regulation for the great bulk of business in this country, and what happened? Was it good policy? Was that the type of social and economic reform that this country really needed? According to the Treasurer now, no. We have to re-regulate. So what was opposed at the time, despite the fact that most of the changes got through, has turned out to not be a good process for this country, and it is clear from the evidence of all the business failures at the big end of town that self-regulation has simply not worked.

So it is a responsible role—a very significantly responsible role—that the Senate has. I am sure that the Australian people, at the end of the day, will assess this paper for what it is and that they will make the decision that they do not want to support the Prime Minister’s approach to resolving deadlocks. In fact, I think they will ask the Prime Minister to be more responsible, to be more honest and to bring forward legislative programs that actually reflect not only the will of the people but also what they would like to see done in this country. It is only by having a chamber that is representative of a great cross-section of the views of the Australian community that will bring that about. I oppose the proposal in the document, including that which is proposed by Michael Lavarch.

Senator STOTT DESPOJA (South Australia) (6.22 p.m.)—I wish to add my comments to those of my colleagues who have spoken in this debate on section 57 of the Australian Constitution, particularly prompted by the discussion paper entitled ‘Resolving deadlocks’, released last week by the Prime Minister. It seems to be part of an ongoing and well-established pattern by this Prime Minister and his government. In the almost eight years that I have been in this
place, I have watched with increasing alarm, particularly over the period of this government, the increasing attacks on institutions which express or symbolise our democratic aspirations. These bodies represent the people of Australia, be they the High Court, a public broadcaster, the judiciary or advocacy and representative groups and organisations. Now it is the Senate that is under concerted attack.

There have been a number of interesting and impressive contributions to this debate, all arguing for the retention of various Senate powers or arguing against the political or practical debates or proposals that have been put forward. But, of the writings or contributions I have seen in this debate in recent times, I think the Clerk of the Senate says it best. I refer honourable senators and others to Harry Evans’s work on this subject. He has effectively called the bluff of our Prime Minister, essentially claiming—and I am paraphrasing—that the Prime Minister finds power attractive and those in the executive will always want more power. In Australia, the executive has a check on it. The Senate is effectively the check on executive power in this country. The Prime Minister has claimed that the Senate is now a house of obstruction instead of fulfilling its so-called constitutional vision of being a states house or a house of review. I always find it interesting to compare that statement with a quote from 1987 when Mr John Howard claimed:

The Senate is one of the most democratically elected chambers in the world—a body which at present more faithfully represents the popular will of the total Australian people at the last election than does the House of Representatives.

How quickly things change. We have heard in this debate so far the fact that the Senate is indeed not a house of obstruction and that, in fact, the figures put a lie to this. We have heard a number of contributions that refer to the figures. We know that from 1990 the Senates of the previous four parliaments passed between 97.6 per cent and 99 per cent of all bills which came before them. The current Senate has passed more than 95 per cent of all bills—in fact, some figures show 98 per cent, depending on which date you refer to. Indeed, as we all know, you rarely hear about those bills which are passed often with amendment and you rarely hear about those many bills passed without any amendment. What we do hear about is the legislation, particularly controversial bills, that are not passed by the Senate. I think the Senate passed 103 bills in the first 40 days of sitting in 2003. So it is not the Senate being obstructionist; it is the Senate doing its job, and in a climate where doing that job is becoming increasingly difficult.

As we all know, the Senate is scheduled to sit for only 60 days this year. I believe that is the equal shortest number of sitting days in a non-election year for the Senate. The expectation that the Senate can perform its valuable and necessary examination and review of legislation in ever-shortening time frames is unrealistic and even dangerous. The public response, I note, to the Senate, and in particular the recent debate about reform of the Senate, has been overwhelming, particularly for an issue dealing with potential constitutional change. I remain convinced that Australians want a check on executive power. You would think that our seemingly navel-gazing discussion of the Senate may not appeal to all members of the community or even a broad section because, understandably, they are dealing daily with real life, difficult hip-pocket issues, yet there have been an overwhelming number of letters to editors and even comments on talkback radio. I am sure my colleagues have received letters, emails, phone calls, faxes et cetera. I know that Australians have other things that they need to and prefer to focus on.
I note that Media Watch pointed out that, according to the ratings, the show *Big Brother Up Late* commanded twice as many viewers as the broadcast of Senate question time, which was on at the same time. Twice as many Australians preferred to watch people sleeping in the roundhouse than watch the government being held to account in the upper house. But that is not to say that Australians do not understand the role of the Senate or that they do not care about the role of the Senate. The letters to the papers in the past week since this model was released have been interesting and overwhelming, as indeed have the opinion polls. Suggestions, though, by the Prime Minister that this model or this proposal may be jettisoned after a number of months if there is insufficient support among the public, the community or political parties I think is an interesting notion. There is a part of me that wants him to brazen out this debate, not shelve it once it has been road-tested, albeit road-tested for the sole motivation of perpetuating this false notion of Senate obstructionism.

I am happy to go to an election where the Senate is the centrepiece. I think it would be interesting to test the views of Australians on the role of the Senate and ask Australians, ‘Do you want to water down the powers of the Australian Senate?’ and see how they respond. Bring it on. I suspect, however, that this is simply yet another ruse by a canny government and, indeed, a canny Prime Minister to cajole, to intimidate and maybe to persuade other parties into succumbing to legislation which is flawed. It is all about building up that public, political and electoral pressure, perpetuating this notion of a Senate which is obstructionist, in order to put pressure on people in this place either through this place or through the community generally, expecting us perhaps to lower our standards in order to protect our precious seats. I am one senator happy to take that chance. Certainly the Democrats, and I as a senator, will amend and negotiate on legislation, whether it is the student income support bill right through to the Backing Australia’s Ability bill—which I negotiated with the government on—but I will not compromise on principles and policies that see flawed or unfair legislation pass this place. That tactic will not work on some of us.

In relation to the core issue of constitutional reform and debate, I am one of the first to say: let us bring on constitutional debates, broader debates; let us not shy away from them. I have never believed that our Constitution is perfect. Of course it is an evolving document. I find it ironic that some politicians who argued in 1999 ‘If it ain’t broke, don’t fix it’ are the first now to claim the Senate is broken and therefore in need of a fix.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator STOTT DESPOJA—I continue my remarks in relation to proposed changes to the Senate and, in particular, what the Democrats perceive as an attack on the Senate in an attempt to water down the Senate’s powers. Before the dinner break, I was saying how ironic it is that the proponents of the view ‘If it ain’t broke, don’t fix it’ in relation to constitutional change, specifically the 1999 referendum on a republic, are the same people who are now arguing for Senate reform. That is okay, because I have always believed that the Constitution is an evolving document and that we have the right to discuss any perceived constitutional imperfections and, indeed, put the case for change if we think that that is appropriate. I am very proud of the fact that our nation has been innovative in relation to constitutional reform. We have quite an impressive range of feats in constitutional innovation—universal suffrage, women’s suffrage, the secret ballot.
and postal voting. All of these changes were pioneered in Australia many years before democracies such as the UK and many other democracies around the world.

Our system of government is recognised as one of the most successful and enduring. Indeed, that is something to which the Prime Minister refers in his document *Resolving deadlocks: A discussion paper on section 57 of the Australian Constitution*. The authors of our Constitution were concerned with states rights, not citizens rights. There are a number of things missing, arguably, from our Constitution. There is no declaration of the objectives of nationhood or the rights of citizens. There is certainly no mention of equality between the sexes or equality for Indigenous Australians or, indeed, the pursuit of happiness. Our history books and our laws have long ignored Indigenous cultures and the fact that Indigenous people have been dispossessed for a long time, and our Constitution continues to ignore that.

More importantly and germane to this debate, the Constitution does not even mention the office of the Prime Minister, even though it is the most powerful position in the land. Neither the Senate nor the House of Representatives has acted as envisaged by its constitutional authors. I am the first to acknowledge that. I believe that the House of Representatives is captive of the executive and that the Senate has upheld the role of scrutinising legislation rather than functioning as a states house. I note that the Constitution does mention, however, ‘peace, order and good government’. I am very happy to see us debate constitutional reform and constitutional change but, if we are to do so, let us not do it through the narrow parameter of what is set down in section 57, particularly an attack on the Senate. Let us debate some broader questions. Let us debate everything from ratification of troop deployments to the powers of the Governor-General. Let us talk about the Senate’s power to block supply, something which I and probably the majority in this place would argue should be abolished. Let us talk about whether or not we should have fixed terms. What about a bill of rights? How about whether or not we should have a British monarch as our head of state? We are all entitled to make contributions towards the debate involving constitutional reform. Those issues are dear to my heart. There are certainly many others on which I might not be as strong—issues to do with citizen initiated referenda, for example—and ones on which I am strong, such as the Constitution.

Should the Constitution mention local government? Should the Constitution enshrine protection of the environment, as we have seen in the constitutions of not necessarily more modern democracies but democracies that have penned their constitutions more recently. For example, in the constitution of Namibia there is a strong acknowledgement of the role of the environment.

On the broader issue of the role of the Senate, we do some unique things and have some of the best ways to ensure accountability and transparency of government, a check on executive power. We have private senators’ bills and the committee system and its cross-party nature that is so important to ensure accountability. I am sorry to see that often this debate gets bogged down in the ‘My mandate is bigger than your mandate’ argument. It is an argument very hard for this government to sustain when it was elected on 43 per cent of the primary vote. In fact, it is ironic, if not ridiculous, to see chapter headings in the document ‘Resolving deadlocks’ that talk about a minority-led Senate when all of us understand that legislation in this place is either passed, amended or stopped as a consequence of a majority of voters, a majority which I believe reflects and represents the will of the Australian people.
The accountability aspect of the Senate has been more than elaborated on by colleagues before me. Senator Murphy, who spoke before me, in response to an interjection from Senator Kemp, talked about the notion of promises. Senator Kemp was saying to us, ‘You should keep government accountable. You’re stopping us from introducing or implementing our promises.’ For the record, there are many broken promises in this place and all political parties are guilty of that. What matters most is that the diversity and difference of our population is reflected and represented in our parliaments and I think that the Senate does that better than any parliament, largely as a consequence of the proportional voting system that we have in this place. On that note, I acknowledge the contribution earlier by Senator Bob Brown in relation to Catherine Helen Spence. I am all for naming her the foremother of the modern Australian democracy. I would like to see more women given their appropriate place in history. I find it interesting when I thumb through this document to see that there is a reference to the dominant intention of the founding fathers.

In my contribution I have mentioned that, because the Constitution is an evolving document, we should on the one hand pay due respect to those founding fathers but also recognise that they allowed for our Constitution to change. I hope we will allow our Constitution to change for the better and not for the blatant purpose of perpetuating the notion that the Senate is obstructionist, so that we can pass through legislation that is unfair. I think this is part of a political push that has more to do with bludgeoning the Senate into submission either through theoretical and constitutional change or, indeed, in practice by wanting to debilitate us, to weaken the Senate and other parties in this place in the same way that repeated attacks on everything from the judiciary to the High Court and the ABC are designed to maximise the power of the executive—moves that I think will ultimately debilitate the power of the people.

Senator BRANDIS (Queensland) (7.38 p.m.)—It is some 19 years since the Senate was last seized with a thorough debate about the nature and limits of Senate powers. The last occasion was when the Hawke government brought forward referendum proposals, including a proposal for simultaneous elections of the two chambers—the third time such a proposal had been introduced in a decade and the third time it went on to be defeated by the people at a referendum.

There are only seven senators—including, I note, yourself, Mr Acting Deputy President Cook—who participated in that debate in 1984 who are still members of the Senate today. So in publishing the discussion paper ‘Resolving deadlocks’, the Prime Minister last week gave this generation of senators its first opportunity to address itself to the question of the proper limits and the proper uses of Senate power.

I would like, if I may, to approach the discussion paper in an historical context. I would like to go back to the aspirations held for this chamber by the founding fathers. If one reads the convention debates leading to Federation, it is perfectly clear that in creating the Senate the founding fathers were seeking to do two things in particular: first, to protect the rights of the states and, secondly, to entrench in our Constitution the principle of bicameralism by instituting a powerful house of review. It is commonplace that the Senate ceased to be a states house, as Deakin always predicted it would, with the rise of the political parties. But its role as a house of review has not atrophied; it has only been strengthened with the passage of the years, as the discussion paper suggests.
The founding fathers created the most powerful house of review in the world, even more powerful than the United States Senate because, under our Constitution—unlike the American Constitution—the Senate has the capacity, only once exercised, of dismissing an executive government. The question of deadlocks between the chambers is not merely a question about deadlocks in relation to legislation; it also raises squarely the question of the Senate’s powers in relation to supply bills. I have always felt—and I said this in a debate I had with Senator Brown on Lateline on Friday night—that it was never realistic to think that one could have a debate about deadlocks between the houses about legislation and confine discussion to section 57 of the Constitution when the most acute form of deadlock, the blocking of supply bills, is raised not by section 57 but by section 53. To introduce the debate, inevitably, is to enlarge its scope.

Sir Samuel Griffith said at the 1891 convention:

But it must be remembered that it is not proposed to deny the Senate the power of veto. Surely if the Senate wanted to stop the machinery of government, the way to do that would be to throw out the Appropriation Bill. I, for my part, am much inclined to think that the power of rejection is a much more dangerous power than the power of amendment; yet it is a power that must be conceded.

Six years later, Deakin, at the 1897 convention said:

Under this Constitution, that right—that is, the right to deny supply—

is given without qualification; the special circumstances and certain special occasions are left for the senators themselves to determine. This power of veto may be exercised absolutely. Suppose the two houses came into conflict—and the main thing they are likely to come into conflict about is finance—what is the only remedy? Dissolution—an appeal to the whole people.

In enshrining the Senate as a house of review, the founding fathers acknowledged their debt to the American Senate. They were more influenced by that model than by any of the other historical or comparative models which they considered.

The role of the Senate as a house of review has, I suspect, never been more eloquently captured than by Alexander Hamilton in Federalist Paper No. 63, which he published in 1788. Using the elegant language of those times, Alexander Hamilton said this:

History informs us of no long-lived republic which had not a senate.

And then he went on to discuss the senates not only of Rome, but of Sparta and Carthage. He said:

Many of the defects ... which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people ... The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

Those were the high hopes of the founding fathers, and they were bound—at least in the early days of the Federation—to be disappointed. Lord Bryce, writing in 1921 in his famous work Modern Democracies, assessed the performance of the Australian Senate in its first two decades in a most negative and discouraging fashion. He wrote:

All the expectations and aims wherewith the Senate was created have been falsified by the event. It has not protected State interests, for those interests have come very little into question. ... Neither has it become the home of sages, for the best political talent of the nation flows to the House of Representatives, where office is to be won in strenuous conflict.
Senator Ellison—You might dispute that!

Senator BRANDIS—I will come back to that, Senator Ellison. Lord Bryce goes on:

The Senate has done little to improve measures, though this is largely due to a cause unforeseen by its founders. Not having any special functions, such as that of control of appointments and of foreign policy which gives authority to the American Senate, its Australian copy has proved a mere replica, and an inferior replica, of the House. Able and ambitious men prefer the latter, because office and power are in its gift, and its work is more important and exciting, for most of the Ministers, and the strongest among them, are needed there, while the Senate is usually put off with two or so of the less vigorous. Thus from the first it counted for little.

That is what Lord Bryce said in 1921. But, when we look at ministers like Senator Ellison, whom I see sitting at the table today, one can confidently assert that the early negative appraisal of the Senate by the first commentators on the Australian Constitution has been well and truly falsified in the result, so that, today, far from not being the house of sages—when we see men like you, Mr Acting Deputy President Cook, and gentlemen like Senator Ellison and Senator Sherry and others among us—we can be satisfied that, were the shade of Lord Bryce to visit the galleries today, he would recant his words.

In the years since, but in particular in the last quarter century or so, the Senate has asserted itself in a way unforeseen in the first half of the 20th century. In particular, it has asserted its role in relation to legislation. What is the criterion by which the propriety of the Senate’s conduct in relation to the amendment of legislation is to be judged? It is whether or not in exercising its powers as a house of review the Senate properly accepts that a government elected in the House of Representatives does have a mandate for its key bills, so that the power of review can only be exercised properly and beneficially if it is exercised with restraint.

Yet, in the last few days, in debating this most important issue in this chamber, we have heard language—in particular, language coming from opposition senators—which would, were he there, have made Gough Whitlam turn in his grave, but, since Mr Whitlam, happily, is still among us, must cause a rich appeal to his very abundant sense of irony. Senator Faulkner, the unsmiling face of hypocrisy, has said that the Labor Party will oppose the measures suggested by the Prime Minister unless they go further. So the opportunity for incremental change to make the exercise by the Senate of its powers of review more democratic—not less democratic—is being denied from the lips of the very people who seek to keep alive the torch of Whitlamism. How can it be the case that incremental reform to the Senate is to be opposed in the name of a demand for more sweeping change? The Labor Party’s position is hypocritical and it is illogical—but perhaps not quite so illogical as the position taken by the crossbench parties and the Australian Democrats.

I have listened carefully and respectfully to the contributions made by Australian Democrat senators and by Senator Brown on behalf of the Greens in this debate. All of them, in the unlikely guise of constitutional conservatives, have asserted that were the Prime Minister’s proposals to be adopted the power of the Senate would be eviscerated. Not so—at least not in relation to the second of the options put forward in the discussion paper; that is, the Lavarch proposal. Let me remind you that, according to the Lavarch proposal, if a bill is rejected by the Senate, there is an interval of three months. It is rejected a second time by the Senate, the Prime Minister chooses then to go to a general election—not a double dissolution, but a general election—on the grounds of the rejected bill,
fights and wins an election campaign. The bill is then once again rejected; there can be a joint sitting to pass the bill in question.

How can that be undemocratic? How can it be an abuse of a government’s mandate if it goes to the people, and places the very legislation in question before them, and is re-elected? The Lavarch proposal—I think very cleverly—by making a general election the centrepiece of the process, the key procedural stage in the process, means that the public are always the arbiters of the bill. The speeches we heard from Australian Democrat senators and the speech we heard from Senator Brown proceeded as if the Lavarch proposal were not one of the two options set forth in the discussion paper. Yet it is, and it is for my money the option most likely to succeed. It is impossible to assert that the Lavarch proposal for reform of the Senate is anything other than the perfect democratic compromise. Even the Clerk of the Senate, whom I see at the table, has come out in favour of the Lavarch proposal. Mr Evans was quoted in the Age on 12 August 2003, referring to the Lavarch model, as saying:

It would be a vast improvement over his— that is, the Prime Minister’s— original proposal ... But it would also be an improvement over the current arrangement.

What Mr Evans wisely saw was that putting a general election right in the middle of the process makes all the difference. It provides the democratic validation which makes irrelevant all the arguments we have heard from the crossbench parties about the limitations of mandates. The election confers the mandate. The legislation at issue could not possibly be more emphatically endorsed than by the people voting to return the government which has gone to them in an appeal based on that very legislation.

I said a moment ago that, although this has been so far largely a debate about section 57 of the Constitution, it was always unrealistic to think that a discussion about deadlocks could proceed in the absence of some consideration of the power to block supply. There is no doubt that the power exists. It has been exercised once. I remember in 1975 being of the view that the occasion was not an appropriate one for the exercise of the power. I remember being of the view at the time that the grounds put forward by the then Leader of the Opposition, Mr Fraser, were unconvincing and disingenuous. Twenty-eight years later, I have no reason to change the view I then held. The blocking of supply in 1975 was not something that ought properly to have been done.

Let me put something on the record for the sake of history: there was one other key player in those events who shared my view. As I told the Senate once a couple of years ago, in the last few years of his life I became very close to Sir John Kerr and I had the great pleasure of hearing him in his anecdote. Sir John Kerr confided to me many things about the events of 1975 and about other aspects of his long and interesting life. One thing he told me was that he also was and always had been of the view that what Fraser did in 1975 was wrong, that it would have been better for Australian democracy had Fraser and the then opposition not blocked supply. Sir John Kerr wore the cost of Fraser’s act for the rest of his life. Kerr did the right thing, even though he believed that Fraser’s act was wrong.

Nevertheless, there remains an anomaly in our Constitution in relation to the power of the Senate to block supply and it arises from this: neither under section 53 nor anywhere else in the Constitution is there a requirement that if the Senate blocks supply bills and sends the House of Representatives to the people, the Senate itself must face the people and face the consequences of so grave a decision. The only time it ever happened, in
1975, there was a double dissolution but only because of the coincidental circumstance that there were 21 trigger bills allowing for a double dissolution to occur. But there could easily be a situation in which the Senate blocked appropriation bills but there were not trigger bills for a double dissolution. In 1976 at the constitutional convention in Hobart, Sir Charles Court, then the Premier of Western Australia—and no constitutional radical he—suggested an amendment to the Constitution to address that anomaly by requiring that, were the Senate to block supply bills and send the House of Representatives to the people, it itself after 30 days would have to be automatically dissolved so that it too would face the judgment of the people for its act. I believe that would be a beneficial change. May I, in closing this debate, offer that as an additional consideration which the government might introduce into the discussion.

Question agreed to.

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

In Committee

Consideration resumed from 8 October.

Senator LUDWIG (Queensland) (7.59 p.m.)—From my understanding of where we were last time, this is amendment (1). I am not sure whether the minister is moving (1), (2) and (3) together or simply (1) at this time.

Senator Ellison—We are moving government amendment (1) at this time.

Senator LUDWIG—I indicate that, for the reasons I outlined in my speech on the second reading on this matter, we will be supporting this particular amendment. I think it is appropriate to record at least our understanding that these amendments are not intended to provide for the abolition of the APS by stealth. That issue was raised during the two hearings of the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the relevant bill. At the last hearing of that inquiry, the advice from both the Australian Federal Police and the relevant Attorney-General’s advisers was that the matter was going to be well and truly consulted on, before the ‘one act, one agency’ issue was enlivened and to ensure the industry issues were addressed cooperatively and in good faith. The Attorney-General, and I am sure the Minister for Justice and Customs, would know and understand that different industrial arrangements apply to the APS and the Australian Federal Police.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.01 p.m.)—by leave—I move government amendments (2) and (3) on sheet RC212:

(2) Schedule 1, item 1, page 10 (after line 3), after section 18E, insert:

18F Modification of sections 18A, 18B, 18C, 18D and 18E to confer powers on the Australian Federal Police

References to a protective service officer

(1) A reference in:
(a) section 18A; and
(b) section 18B; and
(c) section 18C (other than subsection 18C(3));
to a protective service officer includes a reference to a member or a special member of the Australian Federal Police.

References to a person, place or thing in respect of which the Protective Service is performing functions

(2) In relation to the exercise of a power under section 18A, 18B or 18C by a member or a special member of the Australian Federal Police, a reference
in sections 18A, 18B, 18C, 18D and 18E to a person, place or thing in respect of which the Protective Service is performing functions includes a reference to a person, place or thing in respect of which the Protective Service has functions.

References to an offence to which section 13 applies

(3) In relation to the exercise of a power under section 18A, 18B or 18C by a member or a special member of the Australian Federal Police, a reference in:

(a) paragraph 18A(1)(a); and
(b) subsection 18B(1); and
(c) paragraph 18D(5)(b); and
(d) paragraph 18E(3)(a);

to an offence to which section 13 applies includes a reference to an offence to which section 13 would apply if references in subsection 13(2) to a person, place or thing in respect of which the Protective Service is performing its functions were references to a person, place or thing in respect of which the Protective Service has functions.

Modification of paragraph 18A(2)(d)

(4) In relation to the exercise of a power under section 18A by a member or a special member of the Australian Federal Police, paragraph 18A(2)(d) is modified in the following way:

(a) if a member exercises the power—the reference in paragraph 18A(2)(d) to subsection 19(3) or 20(2) of this Act is taken to be a reference to subsection 64A(1) of the Australian Federal Police Act 1979; and
(b) if a special member exercises the power—paragraph 18A(2)(d) is taken to be omitted.

References to the day on which a thing was delivered into the custody of a police officer

(5) In relation to a thing seized under section 18C by a member or special member of the Australian Federal Police, a reference in subsections 18D(1), (6) and (7) to the day on which the thing was delivered into the custody of a police officer is taken to be a reference to the day on which the thing was seized.

(3) Schedule 1, page 10 (after line 3), at the end of the Schedule, add:

2 After subsection 21(4)

Insert:

(4A) The powers conferred, and duties imposed, by this Part on members and special members of the Australian Federal Police are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory, and this Part is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory in so far as it is capable of operating concurrently with this Part.

These two amendments deal with AFP powers and insert a new section, 18F, in item 1 of the bill, as introduced, to confer the powers contained in new sections 18A, 18B and 18C on AFP officers. The bill, as amended, would allow officers of both the Australian Protective Service and Australian Federal Police to request a person’s name, address and reason for being in a place, or in the vicinity of a place, person or thing in respect of which the Protective Service has functions, where the officer reasonably suspects the person might have just committed, might be committing or might be about to commit a prescribed offence.

The bill, as amended, will also allow a power to stop and search a person the officer...
reasonably suspects has in their possession a thing that could be used to cause substantial damage to a place, or death or serious harm to a person in respect of which the Protective Service has functions. It will further allow the power to seize a thing the officer is searching for, or any other thing the officer reasonably suspects is likely to be used to cause death or serious harm to a person, or to a person who is in a place, or in the vicinity of a place, person or thing in respect of which the Protective Service has functions. Basically, the powers are there of requesting a person’s name and address, stopping a person, searching bags they may have and seizing anything that may be linked to a security threat. What this amendment does is extend these powers to the Australian Federal Police.

It is worth while to note in this debate that existing arrest powers can only be used by the APS and AFP officers where a person has committed, or is committing, an offence. Officers require greater flexibility. They need to be able to act effectively in suspicious circumstances where the exercise of existing arrest powers is not immediately necessary. This is all about proactive measures that go to prevention. We are not talking about arrest powers here; we are talking about the ability to intervene if necessary, ask a person their name and address and their reason for being there, search their bags and seize any item that could be a security threat.

The Australian Protective Service has primary responsibility for providing protective security for the Commonwealth, including security at airports. It carries out its work at the front line of our changing security environment. It has become necessary to re-evaluate the role of the APS in view of the current security environment we find ourselves in. While APS officers have primary responsibility for providing protective security services, the provision of such services comes with a greater law enforcement jurisdiction of AFP officers. We have looked at a situation where the APS, which does not have sworn officers, could act in a situation but, when it gets to a level where arrest or further action is required, the Australian Federal Police are called in.

These new powers are flexible and allow an appropriate response to each particular set of circumstances. Of course, where you have the Australian Protective Service, such as at an airport, there are invariably Australian Federal Police present as well. We discovered during the assessment of the need for these new powers that the APS would have powers that the Australian Federal Police did not. That could result in a situation where the APS would have these proactive powers—at an airport, say—and the AFP would not.

An AFP officer is a sworn police officer who has the power of arrest. The government formed the view that it would be appropriate to extend those powers to the AFP as well. We had originally planned to present this to the parliament in a separate bill. In the circumstances it was thought best to put those powers in this bill, together with the APS powers, so that this inconsistency did not exist in the meantime. With respect, I suggest that it does make sense for the AFP to have the same powers as the APS. There are restrictions on the exercise of this power contained in section 18 of the bill, which have been touched on in debate on previous amendments during the committee stage. I commend these two amendments to the committee.

Senator LUDWIG (Queensland) (8.06 p.m.)—I think the minister, when he said ‘discovered’, might have gone a little bit further than I would have thought. It was on the drawing board for some time. The minister did allude to that further on in his speech, in that I think there was a view taken on the
powers here to draw forward the legislative program in respect of the parts of the power of ‘one act, one agency’ to ensure that at least there was not an overlap—or in this instance, I suspect, an underlap—where the Australian Protective Service would be operating in areas without the ability to call on the Australian Federal Police. But we can leave that debate for another day, when the bill in respect of ‘one act, one agency’ does come forward.

I understand that the problem, if I could call it that, brought forward by moving the Australian Federal Police provisions into the proposed Australian Protective Service Amendment Bill 2003 is that, because of the lack of consultation, there was concern by various organisations that in effect it was amalgamation by stealth, as I said earlier. But we were assured that in fact that was not the case. The Senate inquiry revealed that it was more to ensure that there was sufficient protection for the Australian Federal Police and the Australian Protective Service in respect of the powers that have been given to the APS and to ensure that the ability to provide secure arrangements was present.

The opposition take the amendments proposed by the government in good faith and are prepared to accept and support them. We do, however, reiterate our concern that proper consultation is progressing smoothly with ‘one act, one agency’ and that all the relevant parties have been informed, are being informed or will be informed, particularly in relation to those industrial issues. Estimates and various committees, including the Senate Legal and Constitutional Legislation Committee, have raised the issue of the Australian Protective Service’s industrial arrangements to ensure that. Now is clearly an appropriate time—in my view, at least—for it to be addressed, if and when ‘one act, one agency’ is contemplated. But the debate on this bill does give me an opportunity to at least make the point that those industrial matters should be addressed, and I would expect them to be addressed.

Paramount to that is that the consultative process is undertaken by the Attorney-General with the relevant persons so at least they can feel as though they have considered the issue fully. Without seeking to prolong these proceedings, we have indicated that we will agree to the amendments that have been proposed by the government.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.11 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EXTENSION OF TIME LIMITS) BILL 2003

Second Reading

 Debate resumed from 17 September, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (8.11 p.m.)—I welcome the opportunity to speak this evening on the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003 with the new Minister for Family and Community Services, Senator Patterson, at—or to shortly be at—the helm. Today the incoming minister has a chance to begin to redeem the failure and mismanagement of the previous minister in the crucial area of family assistance. I only hope that the new minister can learn from her predecessor’s mistakes. Rather than simply defending this ramshackle system of family assistance, the
family assistance, the new minister has a chance to acknowledge the problems and start the task of fixing them. That can start with the bill this evening.

The bill we are debating this evening is deficient in a number of ways. Most fundamentally, it fails to address the core problems with the flawed family tax and child-care benefit payment system. There is no attempt in this bill to address the problems which Labor and, more recently, the Commonwealth Ombudsman have outlined. Central to the problems is the flawed prospective annual income test that families are subjected to if they wish to receive benefits fortnightly. The problems with the system are well documented: 700,000 families are hit with FTB or CCB debts—one in three families who receive benefits—and total accumulated debt now stands at over $1.2 billion. The limited scope of this bill is yet another attempt by this government to stick a bandaid on a system that is haemorrhaging. Nevertheless, the content of this bill has some limited benefit by removing the ridiculous 12-month time limit for families to be paid past period claims where they are eligible for them.

Labor will not be opposing this bill, but we will be insisting on a range of simple amendments that will improve this bill markedly. Labor will be moving amendments to further lengthen the time frame for past period claims to three years so that families who missed out on entitlements for the 2000-01 year may obtain them. Labor will also move amendments to ensure families have a say in whether their tax returns may be used to recover overpayments rather than the clandestine tax stripping that occurs currently. Before discussing these amendments and the content of the bill, I believe it would be beneficial for the new minister to outline the core problems with the system.

The previous minister had a great deal of difficulty understanding the essential problem with the prospective annual income test for family tax benefit and child-care benefit. When the very first bills were introduced to implement this new payment system as part of the new tax system, Labor warned it would be a nightmare for families. The minister of the day, Senator Newman, derided Labor, saying our concerns were nothing but scaremongering. As I mentioned earlier, we now know that around 700,000 families each year are caught in this debt trap, accruing some $1.2 billion in debts after two years.

The core problem is that benefits for families are not paid on the basis of current income; they are paid on the basis of future income. Each year, families who wish to obtain their benefits fortnightly must guess their annual income one year in advance. The problem for most is that they simply do not know whether they are going to get extra overtime or a pay rise or even whether one parent may have to go back to work. With this system, future events actually impact on the benefits they are eligible for now. Even if families tell Centrelink as soon as they know their income is going to change, it is, in many cases, too late. At the end-of-year reconciliation, their income is effectively averaged over the year and the government retroactively claws back benefits that families were told they were entitled to receive. Apart from the one-off $1,000 election year waiver for 2000-01, the government has ruthlessly recouped those benefits.

One of the government’s favourite methods has been the stripping of tax returns, which occurs without warning to hapless families who are counting on the money for payment of bills or school fees. Most do not even know they have a debt, let alone that it may run into the thousands. The government relies on fine print in the Tax Pack that says refunds may be used to offset family assis-
tance debts. The truth is there is not so much as a phone call or a letter before the money is stripped. The ombudsman has called for an end to this practice, but this has fallen on deaf ears. Labor will, this evening, move substantive amendments to the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003 to ensure that the government cannot strip tax returns without the consent of families. Labor’s amendments, which I will outline in detail during the committee stage, will ensure families can have confidence that their finances will not be thrown into disarray by a family tax debt, which they never knew they owed, being ripped from their tax return.

Before I move on to other aspects of this bill, I would urge the new minister to address some of the loopholes Labor has discovered in the family tax benefit rules. The minister should by now have received a briefing on evidence which emerged from Senate estimates, which indicated that hundreds, if not thousands, of high-wealth families have accessed family tax benefit payments. These families, including some who are millionaires, have pocketed payments which are worth up to $4,300 per child.

The outgoing minister has failed to adequately address the loopholes that Labor has raised—namely, that when a claim for family tax benefit is lodged no verification is made of current family income; payments are made on the basis of customer estimates alone. Margin lending losses from playing the share market may be used by families to artificially reduce assessable income, and the government relies on the self-reporting of foreign income with no verification mechanisms in place. The government’s response to these loopholes has been inadequate, to say the least. The double standard will infuriate many hardworking families, who are utterly frustrated with the way this system treats them while the top end of town takes it for a ride.

Turning now to the bill itself, as I mentioned earlier it seeks to extend the time limit that applies to families to obtain a catch-up payment of FTB or CCB or to make a lump-sum claim. Of the 2.1 million families who receive payments each financial year, approximately 95 per cent receive their payments fortnightly. The remainder obtain a lump sum amount through Centrelink or the ATO once their income is known. The system allows families who overestimate their annual income to receive a so-called top-up payment when they lodge their tax return. However it is more a catch-up payment, since these families have received less than their full fortnightly entitlement throughout the year and the government is only paying them an amount that should have been paid to them earlier. In both of these cases—where there is a lump sum owed or a catch-up payment—there is a 12-month time limit from the end of the financial year when these claims must be lodged. Should a family miss the deadline, they can kiss goodbye to the money the government owes them. Unsurprisingly, many families have missed the deadline. This legislative fix is in response to Labor’s discovery in February this year that 25,072 family tax benefit customers who lodged 2001 tax returns after 30 June 2002 and/or whose partners lodged 2001 tax returns after 30 June 2002 were denied $37 million—an average of $1,477—in top-ups of their 2000-01 FTB entitlements. These figures do not include information on those who were owed lump sum amounts.

Through this bill, the government has decided to extend by a further 12 months, to 24 months, the deadline for catch-up payments and lump sum claims. This little patch-up hits the budget bottom line to the tune of $180 million over the forward estimates. While it is welcome, it does nothing to ad-
dress the core problems with family tax benefit and child-care benefit. The simple fact is this: few families can afford to defer payments until the end of the year to claim as a lump sum or a catch-up payment, so the announcement is of no benefit to most. In light of the other bandaid changes the government has made to this system, it is obvious that it has a great deal of difficulty grasping this concept. Families cannot afford to forgo fortnightly benefits. Raising kids is expensive and the costs incurred do not arrive conveniently at the end of the financial year, but this government has designed a system that leaves families with two unpalatable choices. Either they forgo fortnightly payments and really struggle financially or they seek to obtain their entitlements and run the risk that they get a nasty end-of-year debt. Either way, they lose.

As it is, we have seen all of the government’s strategies to reduce families’ accruing debts come to nought. One of the disturbing things about the debt figures is that, whilst there has been no decline in families acquiring debts, there has been an increase in the number receiving catch-up payments. Why is this disturbing? While the government changes have done nothing to reduce the number of families being hit with debts, they have resulted in a greater number of families receiving less than their full fortnightly entitlement. If this is not an indictment of their failure to fix the problems with this system, I do not know what is. What families desperately need is a family payment system that can properly adjust for changes in family income throughout the year and pay the correct entitlement without the risk of a nasty end-of-year debt.

The truth is that the extension of time limits that this bill provides for does not scratch the surface of the problems with this system. As it is, the further 12-month extension to 24 months is inadequate. Families who missed out on family payment top-ups in the first year of the scheme’s operation—2000-01—are not assisted by this legislation. Why should these families be treated differently? They have been short-changed by the government, and it ought to pay them their entitlements. It is also at odds with the government’s repeated claim that FTB and CCB are ‘tax benefits’. The government would be aware that tax deductions and offsets may be claimed up to four years after the financial year to which they related. Accordingly, Labor will be moving amendments to bring the time limit for FTB and CCB claims closer into line with other tax benefits by allowing for a three-year time frame for claims. This three-year time frame will allow families who missed out on a lump sum or catch-up payment for 2000-01 to obtain their entitlement by 30 June 2004.

There is a cost to this amendment—in the vicinity of an additional $45 million in expenditure during the 2003-04 year. However, given the recent budget surplus, the government can hardly argue that this cannot be afforded. It will certainly make a big difference to the families affected. As I outlined earlier, it will provide on average $1,477 for 25,000 families who were paid less than their fortnightly entitlement and somewhat more for families who missed out on their entire benefit. I would urge the government to accept Labor’s amendments. The government should remember that it is the one encouraging families to claim part or all of their benefits at the end of the year, and it ought to provide a fair time frame for those entitlements to be made. I would also urge the government to contemplate the fundamental reforms that are needed in this failing system.

Labor has consistently said that a new approach needs to be adopted in order to pay family assistance. A new method of assessment needs to be introduced so that benefits are responsive to changes in earnings. This
means doing away with prospective annual income estimates and moving closer to actual current income. Such a system would not punish families for something that will happen in the future and should also help to restore incentives to earn extra. Currently 75 per cent of taxpayers who lose more than 60 per cent of their extra earnings in tax and the withdrawal of benefits are families with dependent children. Excellent work by NATSEM has established the numbers losing this much are approaching double those of 1997. So much for tax reform!

To sum up, I will return to where I commenced. In this bill this evening we have yet another attempt by this government to stick a bandaid on a system that is haemorrhaging. Hundreds of thousands of families across the nation have been hit with debts two years running and, as they lodge their 2002-03 tax returns, many will get their third debt. The system is drowning families in debt. It is both socially and financially irresponsible. The failure to fix the flawed system contrasts sharply with the loopholes left open for the wealthy. The system is a bonus for wealthy families who play the share market but a burden for average families who can barely afford a trip to the supermarket.

This bill does not scratch the surface of fixing the problems with this system; nevertheless Labor will support it. We will be insisting on both our amendments this evening—the extension of top-ups and the moves to give families a capacity to have debts recovered other than by tax stripping. Labor would ask that the government take some time to consider the merits of these changes and adopt them both. I want to be very clear that, when this bill comes back, we will not insist on the further extension of top-ups if we meet further opposition from the government. We do not want to see this bill delayed because the government claims there are not the funds to pay for this amendment, but we will not back away from our amendment to give families the capacity to avoid having their tax returns stripped. This amendment will not cost money. It is a sensible change that will help families caught by the government’s family payment rules, so there is no reason to oppose it.

Senator GREIG (Western Australia) (8.26 p.m.)—I rise also to speak this evening on the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003. In doing so I note that, three years after the government pushed through its new family tax system, it has to be time to admit that the ideology behind that has not matched the reality. It is clear that this government has not been able to reconcile its tax system with the family payments system. It is ironic that a government that has quite zealously pushed through industrial relations reform that has created a more uncertain, often unpredictable environment for ordinary workers—a government that has presided over a massive expansion in casual and temporary work with fewer guaranteed conditions and stripped of the protection of industrial awards—expects low-income families to rely on the tax system for their day-to-day income needs.

The government had an excellent opportunity with the A New Tax System reforms to do some serious work to achieve better harmonisation of the tax and transfer systems. But it blew it. Without taking into account the actual needs of families—the so-called battlers Prime Minister Howard would like us to believe that he identifies with—the government decided that families who have little extra cash at the end of the week should really be topped up on an annual basis rather than a fortnightly basis. So the government hit upon the 1950s version of families—a stable, pay-as-you-go wage with little fluctuation, where dad gets the extra cash at the end of the year. To accomplish the transition
of welfare fortnightly payments to annual tax top-ups, the income support system enabled families to estimate their annual income. The first year saw massive debts where over 700,000 families had to repay. The government then introduced a new initiative that it bravely badged as ‘more choices for families’, which in fact encouraged people to underestimate their income so that their fortnightly payments were less than their actual entitlement. While this means that these people are less likely to get a rude shock at the end of the year, it also means they do without the income when they most need it—that is, during the year when they need new shoes, school uniforms, school excursions and 101 other things that under this government people now need to pay, such as the average $13 copayment for seeing a doctor.

In February, newspapers reported the extent of this repayment fiasco. Nearly half a million families had to pay back $801 in family tax benefit that produced more than $400 million worth of debt last financial year, in 2001-02. Another 128,900 families have had to pay back some $34 million in overpayments in child-care cash benefit. More than one in four of the two million families receiving the benefit were caught out by the new family tax benefit system that requires them to estimate their annual income a year in advance. According to more recent reports, the number of families affected was 640,000 when the remaining 20 per cent of family tax benefit recipients finalised their tax returns.

In February estimates hearings it was revealed that a further 380,684 families had received a family tax benefit top-up averaging $746 after they had overestimated their earnings. These families were underpaid the family tax benefit each fortnight and had opted to take the money at the end of the financial year. So the number of families receiving top-ups was significantly higher than last year. The increase in top-ups follows a push by the government for families to overestimate their incomes to avoid a debt. A senior departmental official said:

The proportion of those reconciled who had top-ups was 15 per cent last year, and this year it is 27 per cent...

Changes to the system in November last year were made after families were shocked to discover their tax refunds were plundered to repay the debts. From November last year, families who notify Centrelink of a pay rise can reduce their future fortnightly family tax benefit payments to avoid a debt. This is obviously an untenable situation. It strays significantly from the fundamental principle that income support is there when you need it and that it will give you extra security.

I would also question the extent to which Centrelink is adhering to the spirit of the law. According to section 77 of the A New Tax System (Family Assistance) (Administration) Act 1999, Centrelink is obliged to inform people about the options available to them in terms of repayment. Yet information I have received from constituents is that this has been ignored by Centrelink in that people are being told the date by which they must repay the lump sum, with no other options being provided to them.

The extent to which the administration of income support entitlements has become dysfunctional is obviously partly due to the philosophy of this government, which still treats income support recipients so differently from other members of our community. A government that can provide handouts of $6,500 per doctor or practice without any strings attached, which occurred in May this year, merely because the annual allocation money has been unspent for a program is clearly providing a system of income support that is unknown to many people who enter Centrelink’s doors. So too with tax treat-
ment. Most of us are trusted sufficiently to provide a minimal amount of documentation and a self-assessment process, with an administrative system that allows for a margin of error. It recognises that, within certain bounds, people will get it right 99 per cent of the time. This is not so with the income support system for the poorer members of our community. The stress created by an inflexible policy and a poor administration system is immense. When we have Senator Vanstone defending Centrelink staff suggesting that people take out loans on credit cards to pay back debts, we have a government without a heart.

I will be moving amendments that will mean less stress for working families due to less harsh repayment options and provide for the waiving of debt should the error be that of Centrelink. We Democrats believe that the government needs to take responsibility for its policies and its administration. Where there are other opportunities in bills from this portfolio, we Democrats will also be pushing for less harsh treatment of people’s debts where they are primarily the result of poorly considered policy.

Senator MOORE (Queensland) (8.34 p.m.)—I also wish to speak very briefly on the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003. I welcome the fact that this legislation is before us, because we can see that the government has seen that this legislation can be changed and that it is prepared to make some changes to a payment that has caused enormous stress to the community and that has caused amazing numbers of questions to be asked from the time it was introduced three years ago. Those questions have been raised not just by people on this side of the house. Since this payment was introduced in July 2000, it has been the subject of major questioning at a series of Senate estimates hearings, of representations to members of parliament from all parties in both houses and also of a report by the Commonwealth Ombudsman.

Basically it has been said that this payment has faults. No-one actually questions whether there is a need for the payment. In fact, we all agree, everybody in this place agrees, that there is a need for an effective family payment. We celebrate the fact that governments of all flavours have acknowledged that there need to be payments for families in Australia who are raising children. Those payments have been around in one form or another for many years. But, since its introduction, the family tax payment has caused stress, more so sometimes than the benefit gained from receipt. Why has it caused stress? It is because of the basic flaw in how the assessment of eligibility is determined.

Basically any payment that totally relies on people making a forward estimate of their income, being held to that estimate for 12 months and then being punished by the incursion of a debt if their income has changed cannot be promoted as a positive way of applauding the work of families, which was one of the positive aspects of this payment’s introduction. This payment was going to respond to the needs of Australian families and people would be rewarded for the efforts of raising children; indeed, that was the intent.

We should be working together to ensure that that intent is actually implemented. But rather than people being able to work effectively in an honest, positive way with their government and with the department that implements the policy of their government, rather than developing that relationship, there is a relationship of fear. As I have said before in this place, that damages the whole process. We need to re-establish the trust and the respect on which, I believe, this payment was based.
The estimate process actively gives people the opportunity to put down honestly what they expect their income to be during the next 12 months. We have heard that over 95 per cent of the families who make the claim for this payment—and millions of Australian families have made claims for this payment since it was introduced—choose to receive fortnightly payments. There is a range of options, and the options have increased over the years because the government and the department have proved that they can be flexible. The range of options has changed to allow people to make a concrete choice of how they will take their payments. As we know, because the stress and strain on Australian families have been increasing, people need the money immediately.

Senator Greig referred to the kinds of expenses that Australian families have and the kinds of immediate expenses that they have in raising children. The intent of the payment was to help families in our Australian society. Over 95 per cent of families have chosen to take a fortnightly payment, and that means that they can budget around that. The other small number of families, although the figure has been growing over the last 12 months, has decided to take a lump sum payment at the end of the year. That is a wise option, and one that the government has been actively encouraging because that enables the reconciliation—a wonderful term which we use in other ways in this place—of the payment and your estimated income at the beginning of the 12 months to be more effective.

Reconciling people’s estimates with their actual income creates a huge workload for the people in the department. It takes a lot of time. One of the regular Senate estimates questions we ask is: how is the reconciliation of the payments going? When people reconcile their actual income with their estimate—the core aspect of this payment—they discover that mistakes have been made in the estimate. People’s lifestyles and circumstances change in 12 months—for instance, being retrenched and having retrenchment payments coming into the family income. While it is a tragedy to have to receive a retrenchment payment, it is made worse because not only is your immediate and future lifestyle affected but your family payment situation is affected as well. No family can predetermine whether they are going to have a payment of that kind or not.

We have heard the former minister say in this place on a number of occasions that ‘a debt is a debt is a debt’. That was the response to questions about how payments under the social security system can be arranged. When a family receives notification from Centrelink—the department they rely on so intrinsically for their regular payment—that they have a debt, they feel that they have done something wrong. As I said previously, the relationship between the claimant and the department is not always as positive and as trusting as we would hope. I have had the experience of dealing with families who have felt as though they were criminals and that they had done something intrinsically wrong because they received notification from the department that they have a debt.

The figures we have heard show that hundreds of thousands of people have incurred this debt. Over 600,000 people have incurred debts under this one particular payment in the Centrelink system. When these people receive notification that they are in debt, they feel that they have done something wrong and, in terms of the ongoing relationship, they are more reluctant to further engage in the system and to be as open and honest as the system demands. People feel guilty and feel as though they have been at fault in things over which they have no control.
In fact, we have heard that the department and the minister acknowledge that the vast majority of people who are caught up in the cycle of debt with this particular payment are not people who are defrauding or trying to manipulate the system to improve their circumstances; they are purely victims of a process and a payment system, the onus of which relies so totally on estimation. As we heard from Senator Bishop, any system that relies so totally on estimation allows itself to be vulnerable to mistakes. But these mistakes actually translate into trauma for families, into fear and sometimes into people being reluctant to further engage with the process.

They also translate into what I think is one of the meanest aspects of the interaction between Centrelink and clients that I have seen over the last years: the absolute right of the department to strip the tax returns of claimants who have had an overpayment in this process. The methodology to collect ‘the debt is the debt’ is the stripping of the annual tax return. Many members of the community budget so closely in the previous 12 months that they are reliant on receiving their tax return to be able to make payments on bills and expenses that build up over a period of time. We have all had the experience of waiting for the tax return. What we have now is people waiting for the tax return to find that, without any notice in a number of cases—and I cannot understand any system in which people’s money is taken away before they are told that that is going to happen—that money is taken.

Whilst we acknowledge that a debt is a debt, basically the people caught up in this system would more than likely be very capable of negotiating a repayment process with the department. If the relationship between the department and the claimant is established as one of mutual respect and if there is an understanding of the process, we have enormous experience in negotiating repayment schedules. However, under this particular payment, the money is immediately withdrawn from the tax refund. So what you have is the double whammy. People are then caught up in another cycle of debt. If you have not got your tax refund to make payments on the various causes that you have, then you are working from behind. The sheer horror that these people find themselves caught in with this process damages them, damages the people who are working in the department and damages the integrity and effectiveness of the payment. Remember that this payment was not introduced as a revenue raiser but introduced as a way to help families in their economic circumstances.

I cannot understand how anyone could think the way the payment is operating could be defined as helpful for those people who have been caught up in the debt cycle. What we have in the proposal before us is an acknowledgement that the government is prepared to change, and we welcome that. However, the sadness about this process is that it does not go far enough. We are strongly in agreement that the family payment process must be maintained and must be strengthened. What we need to do is work out a way of making it effective. This legislation is a step towards achieving that. But why is the step so small? I have concentrated so far on people who have a debt out of the process but, as we are told, there are people who receive a top-up as well, and we welcome that. We welcome the fact that people do receive top-up payments, and the introduction of this legislation takes one small step towards making that easier for families by allowing them to have a longer period to claim their top-up payment. I emphasise it is their top-up payment. They would not be receiving a top-up payment from a government so focused on the debt aspect if they were not entitled to it and if they had not been receiving, on a fort-
nightly basis or at the end of the year, a smaller amount of money than that to which they were entitled.

Up until now, they have only had 12 months to put in their tax return to claim their top-up payment. Everybody knows that, under other aspects of the taxation system, you have a longer period to put in your tax return. This once again focuses on the complexity of the system. Why have one set of rules for the social security aspects of payments and a different set for the taxation aspects of payment? If we are looking at taxable income, surely under a simpler system—and we have heard discussion about simpler systems for many years in this place—the rules would be, if not the same, at least similar. We have identified this issue of the variation of the amount of time you have to put your claims in. The government has acknowledged that and extended the time now to two years—for a system that has been in place for three years. So anyone in the first year is not affected by this catch-up. I cannot understand the rationale behind that decision.

When the member for Throsby in the other place was speaking on this legislation, she referred to a family in her constituency that actually fought the good fight on this payment. Being small business owners who were working themselves through the GST process, they found themselves in the situation of being late with their tax return. When they were late with their tax return, they were late with the family tax payment catch-up arrangement and missed out on $4,189.69 to which they were entitled. But this family—and I think with the great assistance of the member for Throsby—worked through the existing system of appeal. I am a great believer in appeals and I think we have a fairly reasonable appeals system the way we operate now. This family did the right thing: they went through the appeals system. They first went through the internal review with the department and then went through the Social Security Appeals Tribunal. Through their activity, they have highlighted the very change this legislation is addressing. They highlighted, through their situation, the need for a greater period, particularly for families putting in their tax returns and going through the reconciliation process.

This should have been a major victory. The family, through the SSAT process, had identified the issue. However, their case related to the first year of the payment. So the change we are welcoming in this legislation, whilst acknowledging the very point about the timing of tax returns, will not help them. They will not be rewarded by receiving the money to which they should be entitled. I am at a loss to know how we can be moving legislation and not acknowledge the flaws in the system. Senator Bishop and Senator Greig have acknowledged the flaws in the system. Instead of fixing up just one element of it, why not go the whole way? Why stop at two years? So far, I have seen no explanation that covers that point.

So we move now to the next round of Senate estimates. In the next round of Senate estimates, exactly the same questions will be asked that have been asked over the last three years: how many payments, how many families have been caught up in debt in this process, what is the amount of the debt and how is the reconciliation process going? It will be the same series of questions about the same payment. Surely by now we should have been able to identify the basic flaw in the system. We should have been able to acknowledge that there are ways to make it work. We should have been able to identify that there is a willingness to make it work, and we should have been able to work effectively to ensure that the family tax payment, which was designed to help families, can with just a little bit more effort be made to do
Senator HARRIS (Queensland) (8.52 p.m.)—I rise to contribute to the second reading debate on the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003 and to place on the record that One Nation will support the government’s legislation. I will also make some comments about the amendments proposed by the Democrats and the Labor Party. The bill amends the A New Tax System (Family Assistance) (Administration) Act 1999 to allow a longer period for families to make a claim for a lump sum payment, as Senator Moore has just very clearly described in her contribution. The bill also allows the time frame for payment of top-ups to be extended for 12 months.

The problem with the present system, I believe, is in a situation where the person involved has provided the Department of Family and Community Services with the correct information and it is the department which has made the error. I give an example of one parent, who just happens to be a custodial parent, who spent two years without receiving child support from the non-custodial parent. At the end of that two-year period there was some form of resolution of those non-payments of child support. An amount of money was paid into the custodial parent’s account. Then, out of the blue, comes a notice from the department that an overpayment had been made, based on the correct information given to the department, and this person was required within one month to repay $6,000. They contacted the department and explained that they had had extreme difficulties over the previous two years and that they needed some time to be able to make the repayment.

The next step in the process was for this person to receive a letter of demand from a debt collection agency. There was no further contact from the department—just a commercial debt collector stepping up at the door saying, ‘You owe $6,000.’ The single custodial parent contacted the department again. Did they get a hearing from the department? No, they did not. The department had swept the person’s accounts and had determined that the $6,000 was there and they wanted it back there and then. That single parent, who had lived in abject poverty for two years as a result of not receiving child support payments for their child, then found themselves back in exactly the same boat because the department took that $6,000 straight out of their account. This is the attitude that we are finding with this department—not one of compassion but one of absolute power.

This brings me to the two lots of proposed amendments. I will speak first of all to the amendments proposed by Senator Bishop on behalf of the Labor Party. They, to a large degree, address the issue where the department is seizing a tax refund. Labor’s amendment seeks to insert after the word ‘may’ the words ‘with the prior written consent of the person’. Although I understand the Labor Party to be saying that if this amendment were passed the department would not be able to seize that tax return without the consent of the person, I put to the chamber: what if that person is in exactly the same position as the person I described, the single parent, that had put in the correct information and the overpayment was an error by the department? The department merely say, ‘You can’t have my tax refund.’

I believe that the amendment which will be put forward by Senator Greig on behalf of the Democrats is a much better amendment, and One Nation will support that amend-
ment. That amendment clearly sets out that, if there is a debt due to the Commonwealth which is an overpayment that has been made as the result of an error by the Commonwealth and the person receiving the overpayment did not contribute to the error, the overpayment is not a debt due to the Commonwealth. That is absolutely and succinctly clear. If the department gets it wrong, then that is not a debt to the Commonwealth. I believe, for that reason, the Democrat amendment is a much better amendment which will resolve all of the issues. It does not resolve the issue of having their tax refund swept and removed but actually removes the debt for the person who has not contributed in any way to the situation.

The second amendment I like that Senator Greig will move on behalf of the Democrats is that if there has been an error and a person has given the department what they believe to be their projected income for the year and has received a benefit based on that projected income but subsequently their actual income is higher than they estimated—so, yes, the person has contributed to the error by underestimating their income—the person be given double the time to pay back that overpayment. Rather than have their tax refund stripped from them, the Democrat proposal is that, if they received an overpayment over a 12-month period, they would have the next two years in which to repay that overpayment. One Nation believes that that is a much fairer and far more acceptable social process.

In conclusion, I place on record that One Nation supports the government’s bill because it will allow people an extra 12 months if they do not get their tax return in on time. Let us face it: for various reasons all of us have found ourselves in that situation, including me. That will help families to still be able to get that lump sum payment when they have underestimated their income. The government is on the right track, but I believe that the amendments of the Australian Democrats resolve two of the other major issues: firstly, if the debt occurs as a result of the department’s error it is not claimable as a debt; and, secondly, if a person has inadvertently underestimated their income that person should be given a longer period to make restitution.

 Senator CROSSIN (Northern Territory) (9.03 p.m.)—I rise to comment on the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003. This legislation will go only partly towards fixing the shocking debacle that was left by the former Minister for Family and Community Services. The family tax benefit requires most families to provide forward estimates of their income—in other words, to look into a crystal ball—to receive their fortnightly family benefits payment. Ninety-five per cent of people choose this option rather than claiming the benefit at the end of the financial year, but 95 per cent of people do not have a crystal ball—this government would expect them to have one. This is due to the fact that most Australian families rely and depend on that little bit extra each fortnight to keep the household running. They simply cannot afford to wait until tax time, which is why most of them choose to provide forward estimates of their income. While the tax legislation provides families with the opportunity to claim additional deductions and offsets up to four years after the relevant financial year, the family tax benefit rules currently only allow for top-ups and lump sums to be paid within 12 months of the relevant financial year. This limitation meant that 25,072 family tax benefit recipients who lodged 2000-01 tax returns after 30 June 2002 were denied more than a staggering $37 million—an average of $1,477 per family tax benefit recipient—in top-up payments of their 2000-01 family tax benefit entitlements.
Let me focus on what is happening to Northern Territory families. There were 6,938 families in the Northern Territory with debts from the 2001-02 financial year. The total of these debts is an enormous $12,483,940—that is, an average of $1,799 per family. I can give you many examples of people in my electorate who have been hard hit by this government’s policy. I have had people in my office in tears, particularly women, some of them Defence Force family members, who are facing debts of a minimum $2,000 and some of them up to $7,000 and $8,000. Let me provide you with one example of a message from a Northern Territory constituent which I received on Monday, 6 October. It says:

Having moved to the Territory 12 months ago and enrolling as a voter here, I wish to advise you of a situation we are experiencing.

They may take some comfort in knowing that they are not the only ones in this country who are experiencing this sort of situation. This family has a four-year-old child and for the first three years one partner stayed at home. After they moved to the Territory, the higher cost of living forced one of the partners to re-enter the workforce in January beginning to work part time and in May working full time. They outline in this message to me a whole history of what has happened to them under the family tax debt arrangements. They say:

To ensure we correctly filled out our Tax returns for the last financial year we sought the service of a fully qualified accountant. The returns were signed and we eagerly awaited for the returns to come back.

When they did to our surprise my partner received a cheque for $0.00. We contacted the Taxation Office who advised that due to the FAO over paying us $1,580.71 the anticipated return of $1222.00 was forward to them. We also still owed them a balance of $358.71.

This is the thing that is staggering—they say:

Can you please explain to me how you tell a 4 year old that he can’t go back to Adelaide to see his grandparents. We were to use this Tax return to visit them, who he hasn’t seen since October 2002.

They ask these very valid questions of me, which I think it is this government’s responsibility to answer. They say:

How could we be in this position when we were totally honest with the FAO advising them regularly when our estimated income changed. ... For them to say “Sorry, we made a mistake in the calculations” is totally unacceptable.

Why were we not advised of their error, until we contacted them after receiving a cheque for $0.00. I’m sure it would have cost money to raise this cheque.

Why weren’t we given an option of paying back the owed $1,580.71—

That is a very good question; why were they not given the option of paying that money back, rather than simply having $1,580 garnished immediately and instantly from their tax return? They continue—instead of taking the Tax return. They never over paid us in a lump sum so why take it back in this manner.

Then they say:

What incentive do we have for my partner to continue full time work, or do we need to consider moving back to South Australia where we can live on one wage.

These are ordinary people and this system is affecting them in their normal day-to-day family life in the Territory. They are trying to make ends meet, bringing up children and, of course, anticipating eagerly that they will be able to get back to Adelaide at Christmas time. These are genuine, honest, hardworking, normal Territory people, who ask the very valid question as to why such a large amount—$1,580—was simply taken out of their tax return and they were not even given a chance to repay that over a period of weeks and months. Many of these families have
been hit with debts two years running. If they lodge their tax returns this year, many will get a third debt.

This government have failed to fix the flawed system for the last two years and so far they have refused to close the loopholes that allow wealthy families to claim family tax benefit part A and the ever-confusing maternity allowance. One in three families fell foul in the first years of operation of this failed system. To hide the scale of the problem, at the last election the Prime Minister was forced to allow a tolerance of up to $2,000 per family for overpayments. Instead of fixing the system back then, the government advised families to lie about their income and deliberately forgo fortnightly assistance. Labor wants to solve the problem rather than ignore it, as the government is doing. Under Labor, changes will be made to reduce the chance of overpayments and the support and work and caring patterns of individual families will be recognised. I can assure the minister that many families in my electorate will not forget this shambles come election time.

I might add that this system has particularly affected families in the electorate who belong to the Defence Force. These are people who expected that allowances they received as members of the Defence Force—particularly their remote leave locality travel allowance and airconditioning allowance, which the government only reinstated to them this year—would be given to them over and above everything else, because that is what they expected as part of their responsibilities in being a member of the Defence Force when they accepted a posting and went to the Territory. Under the fringe benefits reportable system, it is now part of their claimable and declarable total income for the year.

In anticipating their family tax debt, these people never realised they would have to add in those allowances. They never dreamed that the very incentives they were getting for working with the defence forces in the Northern Territory would be the very incentives that would be used against them and that they would incur a family tax debt. Many families, particularly Defence Force families in the Territory, have been hit hard by this policy. They have tried to anticipate their yearly income and, of course, they have not included any allowances they would get automatically for being part of the Defence Force.

This just shows that the government is out of touch with many things. It is out of touch with what happens to ordinary families. It is out of touch with what happens to Defence Force families and, most importantly, it is out of touch generally with Australian families across the board. Ask any Centrelink customer or any member of this government what they think the weather will be on 7 May next year in Canberra. They will not know; no-one could possibly know that. That is the same as asking what anyone’s income will be for the next 12 months, particularly if they are a casual or part-time worker or, in the case of the Territory, a member of the Defence Force. Mothers who may be considering returning to work as casual workers—for instance, relief teachers, casual nurses or subcontractors—cannot possibly calculate their projected income, yet they simply cannot afford to wait until the end of the year. It is simply not as easy as predicting that Carlton will be the wooden spooners or close to it at the end of the AFL season next year. That would be much easier to predict than something under this government’s family tax system.

Stripping families of their expected returns at tax time is a very harsh measure. Families are paying for it. It is indicative of
this government’s hardline approach to the average Australian family. Families should be given the opportunity to discuss repayment options, as in the case of this family whose message I received just two weeks ago. Tax returns should not be automatically used to pay back Centrelink debts. Most families would be happy and would recognise—and do recognise—that they have a debt and would come to some arrangement to repay that debt. But not to be given an option is unconscionable. It reminds me of bailiff-type tactics—but even then bailiffs sometimes have scruples. It also reminds me of an interview on aged pension debts that the previous minister, Senator Vanstone, had in August this year when she appeared on A Current Affair. The interviewer asked:

What if they don’t have the cash?

Minister Vanstone said:

Well, we would look at their assets.

The interviewer asked:

So would you be prepared to sell up their family homes?

And the minister replied:

Well I would be.

So this government will stop at nothing. Tax returns provide many families with a little cash—or a windfall, if you like—in the lead-up to Christmas. To seize this money without the consent or knowledge of the customer is simply outrageous. Earlier this year the Commonwealth Ombudsman recommended wholesale reform of the scheme because minor policy changes would still not prevent a large number of families from accruing un-avoidable debts. We are yet to see any changes that significantly benefit families.

This government has failed Australia’s working families, and these pressures have placed too many families under stress. Parents have had to sacrifice more and more time with their kids just to keep the family budget together. Working hours have become unpredictable. Under the Howard government we have seen household debt go up to a record $550 billion; credit card debt now stands at $20.5 billion; and, on average, households owe more than they can earn. This is hardly something to be pleased about, but the government is doing very little to address these issues. Services are harder to access and are less affordable. The costs of education and health care are rising. Of course, under the government’s packages for Medicare and higher education, that will be even more the case.

A Crean Labor government, though, will ensure support to working families through a fairer payment system. A Crean Labor government will focus on helping families, especially in the first five years of their children’s lives, through paid maternity leave, more accessible and affordable child-care services, and a modern approach to workplace relations. Under a Crean Labor government, parents could be certain that payments would be adjusted correctly when they advise of a change in income. Parents would be better supported during transitions in and out of work, without the risk of big debts. Labor will make family payments fairer by removing the guesswork and providing greater certainty. Amendments that enable families choice about how they pay their debts are welcomed as an initial step. However, they still go nowhere near fixing the mess that the former minister has now handballed to Senator Patterson. I sincerely hope that the new minister will recognise this mess and do something to fix the system.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.17 p.m.)—I cannot go through in absolute detail everything that has been said this evening, although I have been listening in my room, but
I will start by saying that around two million Australian families—with 3½ million children—benefited from the introduction of the family tax benefit. That is the vast majority of Australian families with dependent children. Government expenditure on family assistance increased by around $2 billion a year. The income testing arrangements under the FTB are more generous, with more families receiving maximum levels of assistance and families able to keep more of each dollar they earn.

In addition, when Labor was in government and people had to make an assessment of their income, if they overestimated their income there was no top-up. Tonight I do not think we have heard one person mention the fact that, if people overestimate their income and get a lower family tax benefit, they can get a top-up at the end of the year. That never happened under Labor. The family allowance was not topped up. Nobody tonight has mentioned that. Nobody has actually said that there is a positive on this side if people overestimate their income either to hedge against an increase in their income or to hedge against the possibility that they may have an overpayment at the end of the year. Some people choose to do that. Some people underestimate their income to get a higher family tax benefit and see that they can pay it back at the end.

People are told that they will have their overpayment taken out of their tax refund. That information is in a number of places. I am looking to see whether I think it is in a sufficient number of places and whether recipients are told sufficiently often. Being very new to the portfolio, I am not totally on top of how often they are told, but I tell you that I will guarantee that they will be told very often to make sure that they are very clear that if they get an overpayment it will come out of their income tax refund, because it is a debt to the Commonwealth. I think it is important that they understand that they need to try to estimate their income as accurately as possible and that it is better to overestimate their income and have a windfall at the end of the year than to underestimate it.

The Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003 makes a number of important changes to the family assistance law. In broad terms, amendments are made to the A New Tax System (Family Assistance) (Administration) Act 1999 to give families more time to claim family tax benefit or child-care benefit as a lump sum for a previous income year and to provide greater capacity in the family assistance law to pay top-ups of FTB—top-ups that were never available under Labor. These changes address issues raised by the Ombudsman in his own recent investigation into family assistance administration and impacts on Family Assistance Office customers, and are consistent with suggestions made by tax agents for enhancements to the existing administrative arrangements for FTB.

The bill extends the time limits for making past period claims for FTB and child-care benefit by 12 months. The effect is that families will have two years after the end of the relevant income year in which to make a past period claim. These changes will apply to the 2001-02 income year and to subsequent income years. For the 2001-02 income year, this means that families will have until 30 June 2004, instead of the current 30 June 2003, to make a past period claim. The bill also extends the time frame for payments of top-ups—again, top-ups that were not available under the previous family allowance payments of the Labor government. The time frame has been extended for top-ups to the FTB by 12 months.

Under the current rules, families can be paid a top-up of FTB only if the relevant tax returns are lodged within 12 months of the
end of the income year to which the payment relates. This rule facilitates the process of income reconciliation and enables top-ups to be paid when the customer has been paid family tax benefit on the basis of an overestimate of income. If tax returns are not lodged on time then actual and estimated income cannot be reconciled, and the amounts of the FTB paid in the relevant income year become a debt until such time as income reconciliation can occur. This bill does not change the legal requirement for families to lodge tax returns within 12 months of the end of the income year to which the payment relates. However, it does enable families to receive a top-up of FTB if they do not lodge within those 12 months, provided that they lodge in the subsequent 12 months.

This measure will enable top-ups to be paid in respect of the 2001-02 income year if the relevant tax returns are lodged by 30 June 2004 instead of by 30 June 2003. The new time frames will also apply to later income years. The deadline for lodging tax returns for taxation purposes is not affected by this measure. Centrelink has already paid out $870 million in top-ups since the introduction of the FTB. Extending the deadline by an additional 12 months will be a further boost to approximately 35,000 families at an estimated cost of $45 million per annum. The time frames related to the exchange, use and destruction of tax file number data for income reconciliation purposes is extended from two to three years. This change is consistent with the extended time frames for the past period claims of FTB and child-care benefit and for the payment of top-ups of FTB. Consequential amendments are made to the Income Tax Assessment Act 1997 to enable families who use the services of a recognised tax adviser to make past period claims from 1 July 2003 to 30 June 2004, and they continue to be able to claim the adviser’s fee as a tax deduction.

A number of measures were introduced by the former minister to assist clients of Centrelink to assess their income and to take up various options of their FTB payments in an attempt to reduce the likelihood of overpayments. We are trying to make sure that clients are as aware as possible of those various options. I think it is important that we do everything to ensure that we reduce the risk of overpayments. There will always be situations in which clients are unable or have not been able to assess their income and will require top-ups or will incur a debt. We have to make sure that they are as informed as they possibly can be about the need to be as accurate as possible and about the need to take up the options offered to Centrelink clients who are eligible for an FTB in More Choice for Families, and we have to make sure that they are more aware that their tax rebate will be affected if they have an overpayment. The information is there and, as I said, I am trying to make sure that they get that information as often as possible so that they are very aware that the debt they have incurred will need to be repaid and that one way in which it will be repaid is through their tax rebate.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The CHAIRMAN—Is it the wish of the committee that the statements of reasons accompanying the requests be incorporated in *Hansard* immediately after the requests to which they relate? There being no objection, it is so ordered.

Senator MARK BISHOP (Western Australia) (9.25 p.m.)—by leave—I move opposition amendments (1) to (8) on sheet 3124:
That the House of Representatives be requested to make the following amendments:

(1) Schedule 1, item 1, page 3 (line 9), omit “2”, substitute “3”.

(2) Schedule 1, item 2, page 3 (line 31), omit “2”, substitute “3”.

(3) Schedule 1, item 3, page 4 (line 5), omit “2”, substitute “3”.

(4) Schedule 1, item 4, page 4 (line 8), omit “2”, substitute “3”, substitute “4”.

(5) Schedule 1, item 5, page 4 (line 10), omit “3”, substitute “4”.

(6) Schedule 1, item 6, page 4 (lines 12 to 29), omit “2001”, wherever occurring, substitute “2000”.

(7) Schedule 1, page 5 (line 6), after “the”, insert “2000-2001 or”.

(8) Schedule 1, page 5 (line 9), after “the”, insert “2000-2001 or”.

Statement pursuant to the order of the Senate of 26 June 2000—

The effect of the amendments will be to allow an increase in the number of claimants entitled to family assistance payments and to increase the time period for which claims for payment will be accepted. These payments would be met from a standing appropriation providing for family assistance payments.

This extension of benefits under the bill will have the effect of increasing expenditure under a standing appropriation in section 233 of the A New Tax System (Family Assistance) (Administration) Act 1999, and the amendment is therefore presented as a request.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation in an Act amended by the bill. This request is therefore in accordance with the precedents of the Senate.

In speaking to opposition amendments (1) to (8) on sheet 3124, I should advise that they seek to further extend the time limit for catch-up payments and lump sum claims to three years rather than the two years sought in the government’s bill. These amendments will bring the family assistance claims closer into line with the tax rules, which allow variations in offsets and deductions for up to four years. Importantly, these amendments will allow families who missed out on their entitlements in the 2000-01 year to claim them up until 30 June 2004. As I said in my speech on the second reading, we will be insisting on these amendments this evening but, if the government decides not to support them, if and when this bill returns to the Senate we will not insist upon them.

The government’s incremental increase in the time limit will not allow entitlements to be paid to these particular families. We know that these families number more than 25,000 and that they were denied over $37 million in the 2000-01 FTB entitlements—an average of $1,477 per family. There was no reason why these families should have missed out on their entitlements in the first place, and there is certainly no reason why they should miss out now. Labor has been approached by a number of these families. Many of them are desperate for some financial relief, many are on modest incomes and some are owed more than $8,000 in family tax benefit payments. The government ought to remember that it was the one encouraging families to claim at the end of the year or to seek a catch-up payment to minimise the risk of getting a debt. Now it has turned around to these families and said, ‘You can’t have your entitlements.’ It is a double standard. Labor has no problem with the 12-month limit for families to lodge tax returns for compliance purposes, but this has nothing to do with eligibility for past period claims. If a family subsequently proves its entitlement, it should be paid the benefits.
I would like to address howls from the government that Labor did not provide any sort of top-up payment. This is an argument that simply does not stack up. The previous family payment system had very little use for top-up payments, as most families were paid on the basis of their previous year’s income. With wages growth, this was a very generous system, as it allowed families to be paid greater payments than they would have been eligible for if a prospective annual income test had been used. For those whose income was going to fall, the system allowed a 10 per cent income buffer, which allowed families to retain all entitlements even if their actual income was up to 10 per cent more than their estimate. The amendments Labor has moved will come at an estimated one-off cost to the government of $45 million in 2003-04. This is not insignificant, but the government cannot credibly argue they cannot be afforded. The government is swimming in money, principally due to its tax grab on families. The money is there. There is no reason why the government should not pay families what they are owed. I would urge all senators to support Labor’s amendments.

Senator GREIG (Western Australia) (9.29 p.m.)—Without wanting to echo Senator Bishop, the Democrats endorse and support the amendments he has outlined. I do note, though, that he has made it clear that, if the government were to insist that the Senate not insist on the amendment, that would be the ALP’s position. It would seem that insisting and not insisting on amendments is the issue of the moment on a range of fronts, and in this instance I think that is disappointing. Having said that, I do think the most significant amendment, and the one that will potentially have the most profound and positive effect on families under the system, is the next amendment. I am keen to see whether we can get some agreement on insistence with that.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.30 p.m.)—The government will be opposing these amendments. The proposed bill gives families an extra 12 months in which to claim FTB and child-care benefit lump sum claims and receive a top-up payment. This will give families up to two years after the end of an income year to claim their entitlements. Two years is a very generous time frame, particularly compared to time frames applying to other welfare payments. The proposed amendments would weaken the purpose of the payments, which is to assist with the costs of raising children. Families need this support when they are raising children, not three years later.

In relation to the proposal to backdate payments to the 2000-01 income year, it would not be possible to identify all the FTB customers who missed out on lump sum payments or top-ups to their FTB as a result of lodging their tax returns late for the 2000-01 income year. This is because the link that is used to align Centrelink and the ATO for reconciling incomes and FTB payments has already been broken. There are privacy requirements contained in the family assistance legislation governing the link between the two agencies. It is a legislative requirement that the link be disconnected two years after the relevant income year. As a result, from 30 June this year it has not been possible to identify those people who had not lodged their tax return for the 2000-01 year. The opposition’s amendment to extend de-linking by an additional 12 months, making the time frame for linking four years rather than the three years proposed in the bill, is not required unless the overall time period is extended to the three-
year time frame proposed by the opposition. So, as I noted earlier, we oppose the amendments.

Question agreed to.

Senator GREIG (Western Australia) (9.32 p.m.)—I move Democrat amendment (R1) on revised sheet 3115:

3A Section 70

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

3A Section 70

Repeal the section, substitute:

70 Debts due to the Commonwealth

(1) Subject to subsection (2), if an amount has been paid by way of family assistance, the amount is a debt due to the Commonwealth only to the extent to which a provision of:

(a) this Act; or

(b) the Data-matching Program (Assistance and Tax) Act 1990;

expressly provides that it is.

(2) Where an overpayment is made and:

(a) the overpayment is the result solely of an administrative error made by the Commonwealth; and

(b) the person receiving the overpayment did not contribute to the error and received in good faith the payment or payments that gave rise to that proportion of the debt;

the overpayment is not a debt due to the Commonwealth.

This amendment goes very much to the heart of what we have been discussing tonight. It will go very much to section 70 of the A New Tax System (Family Assistance) (Administration) Act such that, if a family debt is the result of a Centrelink error but the overpayment is received in good faith, the debt must be waived. There will be critics who say that provides for a system of abuse. I am therefore keen to make the point that this amendment does not extend to recipients who have deliberately omitted to provide information, to those committing fraud or to those who clearly know they do not have an entitlement. In other words, if the government or its agency is to blame, the government wears the cost.

I can think of no better way of not only ensuring that the department concerned is utterly scrupulous and accurate in the administration of its affairs and the distribution of its money but also placing on it a much greater emphasis and stronger onus to ensure the people to whom the money is rightfully going understand what it means and what their commitments and responsibilities are—if you like, placing pressure on both the provider and the recipient in terms of accuracy, while ultimately making sure that if the government or its agency is at fault then the government wears the cost. We would not have the current situation where the victims cop the blame and the cost but would have a situation where a greater emphasis and stronger onus is placed on Centrelink to ensure fairness and accuracy.

Senator MARK BISHOP (Western Australia) (9.34 p.m.)—I indicate for the record that the opposition supports the amendment moved by Senator Greig. I will not speak in great detail to this amendment, because it was adequately explained by Senator Greig. I highlight that the key is in subsection 2(b):

(2) Where an overpayment is made and:

(a) the overpayment is the result solely of an administrative error made by the Commonwealth; and

(b) the person receiving the overpayment did not contribute to the error and received in good faith the payment or payments that gave rise to that proportion of the debt;

the overpayment is not a debt due to the Commonwealth.
This is a general waiver provision which, under the circumstances surrounding this bill, the opposition is prepared to support.

Senator HARRIS (Queensland) (9.35 p.m.)—I rise to place on the record again that One Nation supports the Democrats’ amendment. In my speech on the second reading I raised the issue that a considerable proportion of these overpayments are incurred as a result of the departments themselves making an error. However, before I continue with that I would like to draw to Senator Patterson’s attention the fact that, while it is not very often that she does get it wrong, she did most definitely get it wrong during her contribution. In relation to supporting the government’s bill, I very specifically raised the issue of extending the time frame by 12 months and giving families two years to make a past claim. I also raised the fact that the time frame for the payment of the top-ups is extended for 12 months as well. The debate in this chamber is not about knocking for the sake of knocking. When the government does get it right, One Nation is very prepared to put that clearly on the public record—and the government has got it right with that extension of time.

Coming back to the amendment by the Democrats, the departments have the ability to sweep accounts, as I said earlier. They know what is in people’s bank accounts. The example I gave was of a custodial parent who had not received child support payments for over two years, got that issue resolved and then found that the department had swept the bank accounts, removed the $6,000 and put that person back in exactly the position where they had been for the last two years.

The other reason that it is important that this amendment by the Democrats be supported is that it brings accountability to the department. It will make the department be more accurate in the determinations that they make because, if they do not, it is the department that comes into disrepute, not the person who has received the overpayment. We have a situation at present where the department could well say, ‘Well, gee, we got that wrong, but don’t worry because we can just turn around and make the person pay it back.’ With this amendment by the Democrats, this will stop because the department will have to get it right. They will have to be accurate. I believe it is socially unacceptable for people, through no fault of their own, receiving an overpayment to then be told by the department, ‘Gee, we got it wrong—let’s have that payment back now.’ This will resolve one of the major issues in relation to the legislation.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.40 p.m.)—The government will be opposing this amendment. The current legislation allows for an overpayment to be waived if the following conditions are met: the overpayment was caused by or contributed to by an administrative error, the customer received the payment in good faith and the customer would suffer severe financial hardship. Unlike income support entitlements, FTB payments are part of the tax system and are available well up the income range to assist families with costs of raising children. Families who choose to receive fortnightly payments need to estimate their income, which is then used to work out a provisional annual entitlement. Families who have overestimated their income during the year and have been underpaid receive a top-up payment at the end of the year, as I said before. Families who have underestimated their income and have been overpaid will be required to pay back the amount they were paid during the year. The reason we have done this is to
make sure that people who receive the same income are treated equally.

As most honourable senators know, I have just recently come into this portfolio—a week ago tomorrow. I want to have a look at whether, because there can be reconciliation at the end of the year, there has been sufficient auditing of the accuracy of information being taken from clients. There may be a case where people think, ‘Because it is going to be reconciled, we may not have to be quite as diligent in auditing.’ I think that is a possibility; I have not been in the portfolio long enough to know. I would like to go back to Ms Vardon, talk to her about this issue and see if there are ways in which we can have much tighter reviewing of the entering of data.

What happens is that people ring up and say, ‘This has happened.’ They get a receipt. There is an error made, and they could be receiving an underpayment or an overpayment during the year because somebody has punched in the data wrongly. I want to double-check that there is a sufficient control; it may not be as tight as it ought to be because there is the likelihood of reconciliation at the end. Where you are in receipt of other benefits, they just go on forever and, if there is an error made, it might never be discovered; this gets discovered at the end of a reconciliation period.

I have not done the costings for this amendment but I believe it would be enormously costly. It will also mean that, because somebody had made an error in entering the data, some people either get a top-up they do not deserve or a bill that they do not deserve at the end and which should have been dealt with during the year. It would mean that two people on the same income could get treated differently. I do not think that is really fair either. Under this amendment, I ring up and tell Centrelink what is happening—I want to check this with the people advising me—the person keys in the right amount and I get treated in the right way at the end of the year. Somebody else rings up and the information gets keyed in differently, and they end up having that debt waived. They would in fact be treated differently from the person who got it entered correctly. I just do not think that is fair. I think what we should do is make the system more accountable, and I would prefer to have a go at doing that before I agree to an amendment like this.

Question agreed to.

Senator GREIG (Western Australia) (9.44 p.m.)—by leave—I move Democrats amendments (R2) and (R5) on sheet 3115:

(R2) Schedule 1, page 4 (after line 6), after item 3, insert:

3B At the end of paragraph 77(1)(f)
Add “including the fair instalment repayment options provided for in section 91; and

(fa) that the person must be offered a choice of the methods of recovery specified in section 82”.

(R5) Schedule 1, page 4 (after line 6), after item 3, insert:

3E At the end of section 91
Add:

(6) In this section, where an overpayment has been made and the overpayment was not caused by deliberate fraud or omission by or on behalf of the person receiving the payment, then the arrangement entered into under subsection (1) or (1A) must not (unless the debtor agrees) require repayment:

(a) at a rate greater than half the rate at which it was received; and

(b) over a period of time less than twice as long as the period during which the overpayments were received”.

Collectively, these amendments aim to do two things. Firstly, amendment (R2) will...
amend paragraph 77(1)(f) to allow for a new option to be provided for people to repay and to make it compulsory for Centrelink to convey that information by letter. As I said in my speech during the second reading debate, there is some anecdotal evidence, at least, that this kind of communique from Centrelink is not, perhaps, being made according to the letter of the law. This amendment will ensure that it is.

Amendment (R5) specifies that, rather than collecting 95 per cent of a debt all at once, which the current guidelines recommend, no more than 50 per cent of the family payment fortnightly debt should be recovered each fortnight. This means that if someone has accumulated a debt of $1,200 over the year, for example, and has received the money at a percentage per fortnight, they can repay it at, say, $25 per fortnight over the next two years. Collectively, these amendments seek to ensure both better accountability and fairness in the operation of the act.

Senator MARK BISHOP (Western Australia) (9.46 p.m.)—Democrat amendment (R2) on sheet 3115 will require that the option to repay overpayments by instalments is detailed in debt notices that are issued to customers. This is a fair change and the opposition supports that amendment. The second amendment, (R5), seeks to alter the schedule of periodic instalments, in cases where there is no fraud, so that repayments are made at no greater than half the rate at which they were received—as Senator Greig just outlined—and are repaid over twice the period over which they were originally paid. Whilst the opposition wants to put on the record its concern that this amendment will only apply to some forms of repayment and not to others, nonetheless it does have merit and the opposition is prepared to support it.

Senator HARRIS (Queensland) (9.47 p.m.)—The two amendments that we have before us go to the heart of the problem. That problem is the manner in which the department is actually carrying out the process—not only the process of assessing a person’s payment. There ought to be very clear guidelines as to what the processes are if the person is either overpaid or underpaid. These guidelines do exist. If we look at the department’s own debt recovery steps, we see that there are actually 10 steps that should be followed through. I will start with step 1. The targeted audience for this procedure is recovery staff in area recovery teams and customer service officers in customer service centres. So we have, clearly listed, the departmental people who are instructed to follow this process. However, they are not doing so, and this needs to be brought out in this debate and put very clearly on the record.

In step 1, the first question they ask is: will the customer agree to make a full refund by the due date? The instruction is: if the answer is yes, accept the offer and go to step 10; if the answer is no, go to step 2. Step 2 is to ask: will the customer finalise the account within 14 days of the due date? If the answer is yes, accept the offer and go to step 10, but if the person says no then they are required to go to step 3. Step 3 asks: will the customer pay a partial lump sum payment now? If the answer is yes then the department is instructed to negotiate the lump sum amount. If this is successful, they then go to step 4.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Agriculture: Dowerin and Newdegate Field Days

Senator JOHNSTON (Western Australia) (9.50 p.m.)—During August and September
this year I have had the good fortune to be able to venture into the heartland of Western Australia’s wheat belt to attend the famous Dowerin and Newdegate field days and to see first-hand the remarkable transformation that this current season has brought to this part of Western Australia. This time last year saw barren paddocks with, at best, a stubble pretending to be a crop, with dust storms and water carting the order of the day.

Hopefully—and barring any natural or other catastrophes—Western Australia’s grain producers are in for a very good harvest. Despite current appearances, there are still the ravages of fungus and frost, hail and other weather extremes to be negotiated. So, while there is an air of optimism, it is still tempered by the reality of Australian farmers being at the mercy of so many variables. Commentators are currently talking of a gross tonnage harvest somewhere between 10 and 16 million tonnes in Western Australia alone. A harvest delivering at the upper end of this range has the potential to create something of a logistical receiveal and storage problem for my state’s single grain handler, Co-operative Bulk Handling. CBH is quite a remarkable organisation, with over 170 receiveal points throughout Western Australia and a massive port and storage infrastructure capable of moving and storing in excess of 12 million tonnes of grain—namely wheat, barley and oats.

Whilst I have used the word ‘problem’ in anticipation of a good harvest, it is a welcome problem for Western Australian grain growers after the heartbreak of the last couple of years. Western Australian farmers are very optimistic about the future. Nowhere has this been more apparent than at the two field days which I mentioned that I have attended over the past few months where, in discussions with farmers and grain industry people, the upward swing in people’s attitude towards a return to more prosperous times is very evident.

I attended the Dowerin Field Day on Wednesday, 27th August along with 30,000 other people. This field day is a serious ‘big time’ event and, according to the Dowerin people, the total attendance of approximately 60,000 over the three days ranked second only to the nation’s largest field day, the Orange Field Day in New South Wales. This year some 750 exhibitors fielded about $70 million worth of products and equipment. The event has grown from its humble beginnings in 1968 to such an extent that a waiting list of prospective exhibitors has had to be established. This year 70 new exhibitors put up their displays for the first time, ranging from enterprising small business operators that have developed innovative products particularly suited to primary industries to the newest equipment from the biggest names in world agriculture. What makes this field day so attractive for the farming community is the opportunity to see the latest agricultural machinery being put through their paces in actual field trials and demonstrations. With the prospect of a good season, the interest in the latest and greatest agricultural machinery was very high. The only dampener for farmers was that many suppliers have already closed off their order books for many lines of harvesting equipment.

One group I want to make a special mention of is the Kondinin Group, which have been operating all over Australia for the past 40 or so years, having had their genesis in Western Australia. They took their name from the famous town in Western Australia. All those years ago a group of enterprising farmers took a long-term view of their industry and identified the need for agricultural research in areas not normally undertaken by the CSIRO. This included practical advice on field tests on machinery and on what works
best in particular areas of Australia’s agricultural regions.

With the frenetic change in technology, this advice has proven invaluable to farmers when they make their machinery purchases, especially considering that to purchase the latest seeding rig a farmer is looking at a price tag approaching half a million dollars. The Kondinin Group faced a big challenge last year because of the Australia-wide drought that affected many farmers. Unfortunately, annual subscriptions to fund this research enterprise were crossed off many farmers’ ‘to pay’ lists. However, once it became clear that the group might fold, the farmers of Australia rallied and the business is once again on the road to recovery. Indeed, I am happy to report to the Senate that it is a thriving enterprise.

The second field day I attended was at Newdegate, 400 kilometres south-east of Perth, on Wednesday, 3 September. This is a two-day event and caters primarily for the farmers in the south-east region of Western Australia. Once again there was a spirit of optimism. Within the machinery section alone there were over 160 displays. Although the focus was on machinery, there was also a wide representation in the display of sheep, particularly rams for sale and cattle. But machinery was where the attention was mostly focused at Newdegate.

I was particularly pleased to see the continuing growth of regional Western Australian businesses that specialise in the production of agricultural equipment. One such piece of machinery that caught my eye was a boom spray that was built by a company based in the small wheat-belt town of Narembeen. This company produces one of the largest sprayers in the world. It is a single axle boom spray and has been designed as a tractor drawn unit, with a 7,000-litre tank, a 1,200-litre flush tank and a boom width of 46.3 metres. It is hydraulically driven with a multistaged second line that gives greater flexibility in water rates, pressures, speeds and jet combinations and, best of all, can be easily operated by a single operator.

Another small regional company based in Beverley had a similar machine that was highly rated by the Kondinin Group. What both of these companies showed is the ability of small regional manufacturers to be competitive in the wider market. To these two companies and to the many other small regional manufacturers I give them my hearty congratulations. It is very good to see that entrepreneurship is still alive and thriving in the Western Australian country towns, notwithstanding the very severe drought that we went through last season.

I want to extend my hearty congratulations to the two organising committees at Dowerin and Newdegate for a job very well done. Both committees are outstanding examples of community ‘can do’ attitudes that focus attention on their respective towns and, above all, recognise the invaluable contribution that Western Australian agriculture makes to the state’s and to the nation’s economy.

B’nai B’rith

Senator FORSHAW (New South Wales) (9.57 p.m.)—Today, 13 October 2003, is the 160th anniversary of the foundation of the Jewish organisation B’nai B’rith. B’nai B’rith means ‘children of the covenant’ in Hebrew. On 13 October 1843, 12 men gathered in Aaron Sinsheimer’s café on Essex street on New York’s lower east side. They were German immigrants in a foreign country experiencing the loneliness and the prejudice that only immigrants can appreciate. At that time, if you were Jewish it was even more so. Out of that small meeting, that gathering of 12 men, was born the organisation B’nai B’rith. Its preamble states:
B’nai B’rith has taken upon itself the mission of uniting people of Jewish faith in the work of promoting their highest interests and those of humanity; of developing and elevating the mental and moral character of the people of our faith; of inculcating the purest principles of philanthropy, honour and patriotism; of supporting science and art; visiting and attending the sick; coming to the rescue of victims of persecution; providing for, protecting and assisting the aged, widows and orphans on the broadest principles of humanity.

Today, as I said, is the 160th anniversary of the founding of B’nai B’rith. The organisation pledged to support Jewish people in need, whether it be in the United States or in any other part of the world. A particular commitment from the preamble of B’nai B’rith was their support for those in need of medical care. In a short time, only 45 years later, the national Jewish Hospital in Denver was founded. In 1890 B’nai B’rith sent funds to poverty stricken victims of pogroms in Russia. In the same year they raised the huge sum at that time of $26,000 to give support to the victims of floods in Galveston, Texas. In 1904 they established a fund to help needy Jewish people in Romania. The following year, in 1905, they launched a relief appeal to raise funds for victims of the San Francisco earthquake.

In one year they were raising funds for disasters within the US; in the following year they were raising funds to support people in countries in other far-flung parts of the world. Out of this history were born two enduring commitments: one was a commitment to support Jewish people worldwide and to offer them support in times of persecution and suffering; the other was a commitment to provide community service and to help people in times of natural disasters, whatever their religious beliefs or ethnic backgrounds, whatever their country or creed. Those commitments have continued unbroken for 160 years to today. B’nai B’rith has continued, despite attacks from totalitarian regimes, particularly in Nazi Germany and the former Soviet Union.

From its beginning in New York B’nai B’rith spread to many other countries, particularly in Europe, bringing together Jewish people to form branches of the organisation. In Berlin in 1880 a branch of B’nai B’rith was established and flourished, along with similar branches in many other European countries. However, in the 1930s and during World War II, Nazism meant that B’nai B’rith branches were closed down, property was resumed, members were imprisoned, indeed many members were consigned to the gas chambers simply because they were Jews and simply because they were members of B’nai B’rith. The story was similar in the former Soviet Union, where Jews were persecuted for no crime other than that they were Jews. Mr President, we should never forget, as this organisation celebrates its 160th anniversary today, that this has happened in our lifetime, in the USSR only a few decades ago and in Nazi Germany only 60 years ago.

B’nai B’rith is the largest Jewish community service organisation in the world today. It operates in 51 countries, it is accredited to the United Nations and it has status with UN organisations such as UNESCO and the UN Commission on Human Rights. In 1944 B’nai B’rith established its first branch in Australia, in Sydney. In 1945 a branch was set up in Melbourne. In subsequent years branches have been established in Adelaide, Brisbane, Perth and Canberra, and in Auckland and Wellington, New Zealand. Indeed, in Australia B’nai B’rith has continued to demonstrate that longstanding support for humanitarian relief and assistance to people in their times of need and suffering. In recent years it has contributed to, and assisted with, relief programs both in our region, in East Timor and in Papua New Guinea, and more recently in Australia during the floods in
Katherine and the bushfires in New South Wales. Support for victims of natural disasters is a particular focus of the relief assistance provided by B’nai B’rith both in Australia and internationally, and it continues today.

As I said, today B’nai B’rith celebrates 160 years of service to humanity, but it is also an organisation dedicated to support for the sciences and the arts, supporting always those noble pursuits that seek to celebrate man’s search for knowledge and the human creative spirit. Today in the Senate I gave notice of a motion congratulating B’nai B’rith on its great achievement of 160 years of existence, and I look forward to that motion being passed by the Senate.

At a time when racial prejudice and intolerance seem to be on the rise throughout the world, when anti-Semitism is again raising its ugly head in various parts of the world, and indeed in Australia itself, I think it is appropriate that today we recognise the founding of the B’nai B’rith organisation and its commitment to, and work for, the principles of peace and assistance to those who are less fortunate than ourselves.

**Nuclear Weapons**

Senator ALLISON (Victoria) (10.05 p.m.)—Last week was the International Days of Protest to Stop the Militarisation of Space—otherwise known as Star Wars. It was organised by the Global Network Against Weapons and Nuclear Power in Space. This week at the UN General Assembly, resolutions are being debated that could take us towards a nuclear weapon free world—the so-called new agenda.

I pay tribute to the work of Dr Michio Kaku, an American nuclear physicist who is a very inspiring man. He signed up 8,000 other nuclear physicists worldwide to a commitment to not work on Star Wars research and technology. I have drawn on the speech that Dr Kaku gave to the 11th International Conference of the Global Network Against Weapons and Nuclear Power in Space, organised by OzPeace in Melbourne back in May.

Dr Kaku has a very interesting history. His parents spent four years behind machine guns and barbed wire at Tule Lake camp during World War II even though they were US citizens. He says most Japanese Americans in California can trace a relative who comes from Hiroshima, as indeed he can. He argues that we are living in a period of extreme danger because of the Bush administration’s expansion of nuclear weaponry.

The US Missile Defense System—MDS, previously known as Star Wars under President Reagan’s administration and reignited by the Clinton administration as National Missile Defense—has not generated a lot of interest in Australia but it is still alive and well. The US Space Command say MDS is for the United States to intercept incoming intercontinental ballistic missiles before they strike US soil. But Space Command admit that MDS is a part of a ‘war-fighting system’. Their Vision for 2020 document says:

> Space is critical to both military and economic instruments of power—the main sources of national strength ... Thus, protecting our freedom to use space and having an ability to deny an enemy’s use of space will grow more important in the future.

This may sound like very bad science fiction but, for the Bush administration, it is deadly serious. To Mr Bush, space is the final frontier. Imagine not being constrained by overlapping military alliances, no need to guard any borders, no troop deployment and no casualties. According to the Washington based Centre for Defense Information, the United States has already spent upwards of $US$95 billion on the MDS since the Reagan era. Each MD test costs the US government $100 million.
Dr Kaku wrote a book some time ago called *To Win a Nuclear War*, which drew on the archives of the US Joint Chiefs of Staff—secret documents that are gradually being declassified. They show that the US had planned to drop atomic bombs on Vietnam, North Korea, China and the Soviet Union in a first strike. In 1954, the French wanted help from Eisenhower in Vietnam and the offer was made of two to six atomic bombs to be used on the Vietnamese people at Dien Bien Phu. Fortunately, Dien Bien Phu fell before the bombing could start.

The same year, the Russians were fielding long-range bombers and, for the first time, the US was within their range. The US considered a surprise first strike on Russia with 737 nuclear bombs hitting simultaneously. The reason they did not follow through was that the US had no defence against a retaliatory strike. There was no way to shield America in an all-out nuclear war—hence the quest for a Star Wars solution and hence the Cold War that bankrupted Russia, as it and the United States tried to work out how they could strike first without retaliation. For 50 years, we have had containment because Star Wars was little more than an expensive idea.

In January 1991, Newsweek magazine ran an article saying that American generals had proposed an elaborate plan to George Bush Sr to use nuclear weapons against Saddam Hussein. Firstly, the US would hit Baghdad with the electromagnetic pulse. A hydrogen bomb would be detonated over Baghdad. The shock waves from that bomb from space would wipe out all communication systems in Baghdad, paralyse them and wipe out all surface-to-air communications. Secondly, neutron bombs would be used against troop enforcements and troop positions in the desert. This is a weapon that preserves property but incinerates people—the so-called landlord’s bomb. Thirdly, they would drop bombs that penetrate deep into the desert and detonate underground to cave in all underground bunker positions. These were the bombs the military wanted to unleash more than 10 years ago.

One reason the US did not use its electromagnetic pulse weapons called E-bombs in Iraq this year is that China would soon have E-bombs, and Russia already does, and the United States has at least as much to lose if it cannot protect itself against a retaliatory E-bomb attack. We heard during the attack on Iraq this year that the use of bunker busters might be necessary to get all of those as yet undiscovered biological and chemical weapons hidden underground. Our government apparently did not bother to find out whether or not President Bush would, or actually did, use nuclear bunker busters—just one of the many questions not answered in our haste to join the coalition of the willing.

The next generation of nuclear weapons designed to be used in outer space are called Excalibur. Dr Kaku says that in future, if the US military has its way, you will look up into the sky and see about a hundred hydrogen bombs overhead, permanently stationed in orbit. The Bush Jr administration has just given the green light for funding Project Prometheus—the building of an atomic rocket to go into space. This would not be the first time nukes were put into space. In the early seventies, a Russian satellite carrying 200 pounds of highly enriched uranium in a nuclear reactor on board Cosmos-954 began decaying in orbit and eventually landed in north-west Canada, depositing the uranium over an area of 200 miles.

NASA’s Cassini space mission contains 72 pounds of plutonium in its power packs. Dr Kaku has conducted a scientific critique of the accident risk for Cassini and says casualties could number 200,000. According to Dr Kaku, the rockets that Star Wars will
depend on will have to be mini-nuclear power stations—the only way they will be able to generate the energy needed to keep them in space. And satellites are now vulnerable because of killer satellite technology that is being developed in the US. This involves putting dynamite in space with a keg or so of nails that could obliterate hundreds of communication satellites or it could be a hydrogen bomb, one of which could wipe out almost 50 per cent of all satellites in orbit.

Dr Kaku says the neoconservatives who have the ear of the President are reaching for what he calls ‘the architecture of the new Roman Empire’ and moving away from the architecture of containment. Rome was a military empire because they could control the roads; they controlled the earth. The British, the French and the Dutch colonised much of the world in the 1800s because they controlled the oceans. Now Dr Kaku says the nation that controls outer space will control a global empire. It could be argued that America has already demonstrated its power to control any country it wishes through military and economic might, but there are still some testy countries out there prepared to challenge this empire.

Some of those countries were once helped by the US, if indirectly, to develop nuclear weapons. North Korea has uranium enrichment technology. It got it from Pakistan. Where did Pakistan get it from? The US. The Reagan administration wanted to ship a billion dollars worth of aid through Pakistan to the Afghan rebels who were fighting the Russians. The deal for Pakistan was that it would get uranium enrichment technology. It has 20,000 ultracentrifuges. It only takes about 1,000 ultracentrifuges operating for one year to build one atomic bomb. We think Pakistan now has 20 atomic bombs, thanks to the US.

According to Dr Kaku, North Korea swapped its Russian missile technology for Pakistan’s uranium enrichment technology. And now Australia has joined the US in exercises to intercept this trade. No-one asks how it is that we landed in this mess. Australia already contributes to America’s Star Wars by hosting the Pine Gap so-called joint defence facility near Alice Springs—the largest CIA facility outside the US. I seek leave to incorporate the remainder of my remarks. I have provided the government and opposition whips with a copy of my speech.

Leave granted.

The speech read as follows—

Pine Gap collects intelligence via geostationary satellites that eavesdrop on a variety of radio, radar and microwave signals. It provides the US with vast amounts of intelligence data from the Middle East, Russia, China, South-East Asia, the Pacific, China, Russia and the Middle East. Yet we know very little about what goes on in this intelligence factory.

North Korea is the latest threat to world peace because it is broke and its population is starving. Perhaps it hopes to get aid as long as it looks to be not contained.

Iran too got its uranium enrichment technology from Pakistan. Of course the US interference in Iran goes back to the 1950s when it facilitated the overthrow of the democratically elected government there to put in the Shah of Iran. But that’s another story.

According to the Los Angeles Times yesterday there is allegedly a plan by Israel to attack six Iranian nuclear program facilities. This and the report that Israel has outfitted its submarines with modified Harpoon missiles that have nuclear warheads indicate that a dangerous game of threats and counter-threats is being played out between Israel and Iran.

Israeli Defence Minister said last week that Iran’s nuclear efforts constituted ‘the gravest danger to Israel’s existence in the future. This is because Iran calls for Israel’s annihilation. We must do our utmost, under US guidance, to delay or eliminate
the prospect of the extremist regime securing weapons of this sort.'

After 50 years of containment and treaties that should have been taking us towards disarmament, we are on the edge of another nuclear proliferation crisis and a new arms race.

To develop its missile defense system, the USA will have had to break the 1972 Anti-Ballistic Missile (ABM) Treaty with Russia which banned the testing, development and deployment of sea, air, space and mobile land-based systems.

Recently Prime Minister Howard declared his support for the US withdrawal from the 1972 Anti-Ballistic Missile Treaty.

Our defence minister expressed ‘understanding’ for the missile-defence deployment decision. How could they?

By developing MDS and maintaining a nuclear arsenal as a part of the war fighting machine, the USA will be in breach of the 1970 Nuclear Non-Proliferation Treaty.

Parties to that treaty are obliged to ‘pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control’.

MD will also breach the 1967 Outer Space Treaty which prohibits nuclear or other weapons of mass destruction from being placed in space (including Earth’s orbit).

That treaty is signed and ratified by the USA, UK, Russia, France, India and 58 others.

In November 2000, 163 nations supported the resolution that said the use of space ‘shall be for peaceful purpose ... carried out for the benefit and in the interest of all countries.’ It states that the ‘prevention of an arms race in outer space would avert a grave danger for international peace and security.’ The United States, Israel and Micronesia abstained.

Canada and China have led the UN challenge of US space military plans.

The UN General Assembly is currently debating the New Agenda Coalition motions, one of which expresses concern about plans for the research, development, testing and deployment of new types of nuclear weapons by the Nuclear Weapon States and the broadening role being given to nuclear weapons in security strategies.

It highlights the dangers of nuclear proliferation and calls on all States, including North Korea, Israel, Pakistan, Iran and India to subscribe to the Non-Proliferation Treaty and accept full-scope safeguards on their nuclear facilities.

The New Agenda Coalition set out practical and necessary steps to curb nuclear proliferation and achieve nuclear disarmament.

Australia abstained in the vote on these motions back in 2002. Hopefully, with changes to the wording on Russia’s tactical nuclear weapons, Australia will support these motions.

It is time we asked where the Howard Government’s ‘all the way with the USA’ mind-set is taking us. Wherever that is, it is unlikely to be in Australia’s interests or in the interests of global peace.

Health: Mental Illness

Senator TIERNEY (New South Wales) (10.15 p.m.)—I rise tonight to contrast the dire situation of the mental health system in the state of New South Wales under the Carr government with the Australian government’s success in improving mental health care at a national level. Last week I addressed the Senate about what can only be described as the chronic failure on the part of New South Wales Health to treat people who seek help for mental illness. The stark statistic of suicides increasing a hundredfold in the immediate period following discharge from a mental health facility is very disturbing.

Although health is primarily a state based responsibility, the Australian government has taken the initiative to improve, at a national level, the quality of care for Australians with a mental illness to help ameliorate the woeful neglect by our state governments. The Australian government is very mindful of the need to ensure that services and systems are responsive to the needs of individuals and
the community. For its part, Australia has achieved much in its mental health reform over the past decade at a national level.

Our National Mental Health Strategy, which was agreed to by all Australian health ministers in 1992, has received favourable international recognition. The World Health Organisation’s 2001 report *Mental health: new understanding; new hope* noted that our National Mental Health Strategy ‘has demonstrated the changes that can be achieved in national mental health reform’. Like many other nations, Australia’s National Mental Health Strategy has deliberately shifted our focus from institutional care to the community. Resources, previously targeted towards maintaining centralised mental health facilities, have now been redirected to provide services in a range of innovative ways.

Although the Australian government has been attempting to partner state and territory governments to improve the quality and effectiveness of mental health services, much more needs to be done. Consumer rights and responsibilities have been codified at a state level through specialist legislation based on the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. These statutes seek to achieve a balance between the rights of the individual and the community’s concern for the individual’s care and the need to minimise the potential for harm. Along with specialist legislation, the individual is protected against arbitrary and unlawful decision making by an extensive mainstream net of administrative laws.

In addition, mainstream antidiscrimination statutes protect against direct and indirect discriminatory actions and decision making based on sex, race and disability, including mental illness, by individuals and government agencies. Australia has also developed other ways of increasing the mental health sector’s responsiveness to the community’s mental health needs. Some of these include a mental health statement of rights and responsibilities, a rights analysis instrument to monitor general legislative consistency with the rights of people with a mental illness, national practice standards for the mental health work force and the measurement of consumer outcomes in mental health. The progress of Australia’s reform agenda in this area has been documented in a series of national mental health reports which provide information that helps consumers, their families and service providers to continually monitor progress against our defined objectives.

However, as noted by the latest national mental health report published in 2002, whilst Australia has made significant progress against the national reform agenda, there remains a number of challenges to be addressed. The main challenge is to convince the states and territories, especially in New South Wales where the situation is dire, that mental health is worthy of more financial and program support. It may not be a glamorous issue but mental illness does affect 20 per cent of the population at some time during their lives. With an eye to addressing the unfinished business under the National Mental Health Strategy, and taking into account the results from extensive community consultations and further expert review, Australia’s third national mental health plan 2003-08, agreed to by health ministers in July 2003, now sets the national reform agenda for the next five years.

I think it is a significant and welcome shift that consumers and their carers are now recognised as equal partners in this process. Structures within the Australian national policy arena in fact require consumer and carer input into the decision-making process at every level. Critical to the success of any strategic policy or plan is, of course, the
people who work tirelessly and contribute year after year to the improvement of the lives of people with mental illness. This is why a whole-of-community perspective is required. Tonight, I call on the New South Wales government to take note of the federal government’s example and the progress we have made nationally and to try to repeat this at a state level and take responsibility for the wellbeing of their citizens by improving the resourcing of mental health care in the state of New South Wales.

Sir Richard Baker Senate Prize

The PRESIDENT (10.21 p.m.)—Before I close the Senate for the night, I have time to make a few comments about the initial presentation which took place tonight of the Sir Richard Baker Prize for journalistic and academic appreciation of the role the Senate plays in our country. I put on the record my thanks to those people on the judging panel who decided upon Verona Burgess, from the Canberra Times, and Stanley Bach, who is an academic from the United States, as the initial joint winners of the Sir Richard Baker Prize. I would like to thank John Uhr from the ANU, Dr Rosemary Laing representing the Clerk of the Senate, Malcolm Farr, the President of the Press Gallery, and my colleagues Senator the Hon. Amanda Vanstone, Senator the Hon. John Faulkner and Senator Andrew Murray for their hard work in arriving at a very tough decision in what I believe and hope will be an ongoing opportunity to promote this Senate in a positive fashion.

Senate adjourned at 10.22 p.m.

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

- Goods and Services Tax Ruling—
  GSTR 2000/23 (Notice of Withdrawal).
  GSTR 2003/12.
- Health Insurance Act—
  Determination—HIA/s3GC(3)/No. 1 of 2003.
  Health Insurance (Amendment) Determination HS/06/2003.
- Product Ruling—
  PR 2001/90 (Notice of Withdrawal).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Prime Minister: Visit to China
(Question No. 1819)

Senator Brown asked the Minister representing the Prime Minister, upon notice, on 22 August 2003:

With regard to the Prime Minister’s recent visit to China to meet the new Chinese leaders: Did the Prime Minister discuss human rights issues pertaining to the abuse and incarceration of Tibetans and/or Falun Dafa practitioners; if not, what attempt has been made to inform the Chinese leadership of Australia’s condemnation of human rights abuses.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

During my visit to China the Chinese Government raised with me the issue of Falun Gong protesters in Australia. I said that Falun Gong had the right to protest in accordance with Australian law.

The Australian Government recently addressed a wide range of concerns about human rights in China at the seventh bilateral Human Rights Dialogue held in Beijing in July/August this year, including the treatment of Falun Gong practitioners and human rights in Tibet. Concerns about Tibet were further raised in detail when the Australian delegation to the Dialogue visited Lhasa for discussions with local officials.

Veterans’ Affairs: Military Compensation Scheme
(Question No. 1868)

Senator Brown asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 4 September 2003:

Are there any instances or circumstances in which the Government has instructed solicitors acting on its behalf in matters relating to military compensation, to claim legal privilege and to withhold any medical reports generated at their request, which substantiate claimants’ statements about injury or illness caused whilst in the service of Australia’s armed services; if so, what is the Government’s rationale for directing solicitors acting on its behalf to withhold information generated at the Government’s own request favourable to the claimant serviceman or woman; if not, what action will the Government take to stop this practice which denies justice to Australia’s servicemen and women.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

The Minister for Veterans’ Affairs advises that she is not aware of any instances or circumstances in which solicitors acting for the Department or the Repatriation Commission in matters relating to compensation under the Safety, Rehabilitation and Compensation Act 1988 or the Veterans’ Entitlements Act 1986 have been instructed to claim legal professional privilege and to withhold medical reports that were generated at the request of the Department, the Repatriation Commission or their solicitors.

Fisheries: Research
(Question No. 1951)

Senator Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 9 September 2003:
(1) Can the Minister confirm that the former Bureau of Resource Sciences engaged in research comparing data on the shark catch and the incidence of seismic testing in south eastern Australian waters, and that this research was due for publication in 2000.

(2) Why was this research never published.

(3) When will the study be made available.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The Bureau of Resource Sciences (now the Bureau of Rural Sciences) has undertaken research into the impact of three-dimensional seismic surveys on the southern shark fishery of south eastern Australia. No formal due date for publication was established.

(2) Staff changes, delays in the provision of data by third parties and competing demands for higher priority work such as on invasive marine pests and the south east regional marine planning have caused delays to report completion.

(3) BRS expects to complete the work by December 2003. A decision will be taken then about how to communicate the results.