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Wednesday, 15 October 2003

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

BUSINESS
Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.30 a.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 4 (Communications Legislation Amendment Bill (No. 3) 2003).

Question agreed to.

COMMUNICATIONS LEGISLATION AMENDMENT BILL (No. 3) 2003

Second Reading

Debate resumed from 21 August, on motion by Senator Hill:

That this bill be now read a second time.

Senator MACKAY (Tasmania) (9.32 a.m.)—We were not aware that the Communications Legislation Amendment Bill (No. 3) 2003 was being put on this morning.

Senator Lightfoot—Are you seeking leave to make a personal statement?

Senator MACKAY—No, I am talking on the bill, Senator Lightfoot. Before I get to the substantive issue of the bill, I would like to make a point with respect to the management of the chamber. The opposition were not advised that this bill was coming on first thing this morning. We were advised that we were going to be dealing with superannuation. If this is the way the government wants to run this chamber, that is fine, but I do not regard it as an appropriate way to behave. We were told that superannuation was coming on first thing, and Senator Sherry was here. I do not blame the duty minister. Senator Coonan was clearly given instruction to bring on Communications Legislation Amendment Bill (No. 3) 2003. I do not know quite what this means, but I think it does mean that the government is in a mess on superannuation. Clearly it is not ready—

Senator Ferguson interjecting—

Senator MACKAY—I do not think this is amusing. These are chamber management issues. My point is that, if that is the way the Senate is going to run, that is the way the Senate is going to run. I do not think it is a very good signal for the rest of the year, particularly when the government wants cooperation with respect to its legislation program. At the moment we have very few bills, and that is an issue that I think people ought to be aware of. Recently the government gave notice of a motion to exempt eight bills from the cut-off because of its lack of legislation. We have a hole in the legislation program and now we have this issue occurring today whereby the government brings on a bill with no notice given to the opposition, and our shadow minister is not here at the moment. This will be taken up, and I do not think it is an appropriate way to behave. We were expecting the Superannuation (Surcharge Rate Reduction) Amendment Bill 2003 to come on. Everybody is here ready to do superannuation. Just because the government cannot get its act together with respect to this set of bills does not mean it should display this level of discourtesy to the other parties in the Senate.

Senator LUDWIG (Queensland) (9.34 a.m.)—I rise to talk about the Communications Legislation Amendment Bill (No. 3) 2003. What I actually would like to talk about is the lack of communication from the government with respect to their legislative program. It seems to be that the communication in this chamber has broken down from the government’s side. Communication is integral to ensure that this place operates in a
smooth and efficient way. The government can help to ensure that this place operates in an efficient way. The government have today demonstrated their lack of communication, which has caused both the opposition whip and now me to talk about communication. We can talk about communication for a long time, but we are a cooperative opposition. We really would expect the government to get in order, to be able to inform us with reasonable opportunity which bill is going to come on in this place.

What I think, in truth, is that this government does not have a legislative program and does not have a bill to debate properly in this house. This government is getting legislation out of its back pocket so that we can talk about it today. The communication bill has been drawn out of its back pocket and thrown on the table. I have just been told that the government was told at 9.26 a.m. today that in fact it was not going to bring on for debate the three bills that were listed on the red—that is, the Superannuation (Surcharge Rate Reduction) Amendment Bill 2003, the Superannuation (Government Co-contribution for Low Income Earners) Bill 2003 and the Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003. Instead it found a fourth bill, the Communications Legislation Amendment Bill (No. 3) 2003, in its back pocket to talk about today in the resumption of the second reading debate.

It appears, and I have thought it all along, that in terms of communication this government has been unable or unwilling to talk about its legislation in this chamber. We find either one of two things. Either the government is incompetent and cannot manage its program—and I am happy for the government to admit to that—especially in relation to communication legislation or it does not have sufficient bills in this house to talk about. As a consequence, if there is a slight hiccup in the program then we get a very late change or an amendment which affects our ability to deal appropriately with the legislation.

We are fortunate that we do have available this morning the relevant people, as I understand it, to talk on the communications legislation bill. I am not sure whether the government has the relevant people here to talk on the communications bill. Is Senator Coonan, the minister in the chamber, going to talk on the communications bill? If the minister who is going to talk on this bill is not in the chamber then perhaps they should be, to at least explain why it is necessary to bring on the bill for debate now. The opposition would like to have the opportunity to understand why this bill is being brought on now. I understand that there were a number of issues relating to the superannuation bill that needed to be dealt with.

Senator Coonan—If you sit down and stop raving, I’ll tell you.

Senator Ludwig—I will take that interjection, because I am not raving. If you want me to take up time then I will.

Senator Coonan—You’re asking for an explanation and I’m willing to give it.

Senator Ludwig—In respect of your comments, you are exciting the opposition to say that this is an abomination and mismanagement. If you want to admit to the mismanagement then I am happy for you to stand up and say, ‘I’m mismanaging this chamber on behalf of the government.’ If that is what you want to do then that is what you should do, rather than accusing us of raving. It is unacceptable in this chamber to bring in legislation and change it when you have a red. The chamber has to work efficiently and effectively, and we are happy to manage it with you and cooperate with you in respect of this program. But if you are going to act
like this then there will not be any cooperation at all and we will see how this chamber works then.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.39 a.m.)—by leave—The indignation of the opposition would be entirely warranted were it not for the fact that at 9.26 a.m. the government received a request for a rearrangement of the business, and I was given the message as I was literally rising to my feet. The request for rearrangement came from the Democrats, not from the government. Obviously the government endeavours to accommodate all of its colleagues in the chamber. It is certainly not the way in which the government normally runs its business and it is certainly not the way in which the whips normally run the business. Unfortunately, as I understand it, this was not raised by the Democrats at the whips meeting, which would have been the ordinary course by which to alert the government, the opposition and indeed all parties to the need to rearrange the business. Had it been done then, I would have thought that, in the cooperative way in which the chamber normally runs, to assist everyone who needs to speak in the chamber and to run the agenda in an orderly way, we would have had an agreement that it be done so.

The government very much regrets that this request came in a way that simply did not provide an opportunity, with the bells already ringing, to properly alert the opposition and indeed all honourable senators to the need to rearrange the business. I did want to take the opportunity—and I thank the Senate for its indulgence—to provide a point of clarification. It was certainly not an intended discourtesy on the part of the government. It is not the way in which the government either desires to, or would normally, run its business. It was unavoidable and, in the circumstances, reasonable to give the Democrats an opportunity, but it certainly is not appropriate to blame the government for this last-minute request. I do not think that anything is served by me continuing to make remarks or respond in kind to Senator Ludwig. I am sure he would not have made the remarks he did had he been aware of the explanation that I have now given and the clarification as to how this has been approached.

Senator BROWN (Tasmania) (9.41 a.m.)—by leave—I would like to respond to that explanation with a short statement of my own. The problem is not with Senator Lundy here; it is with the Democrats. It is about the superannuation legislation. Despite knowing for days that this was coming up, our dilemma is about continuing with the package that the government and the Democrats have worked out to cut superannuation tax rates for rich people and have co-payments for some poorer people. But there has also been a breakthrough with the Labor Party coming on board to remove discrimination against same-sex couples and dependent partners in most of the areas of superannuation.

This is breakthrough legislation for the nation. The House of Representatives, that is the government, has rejected that amendment to get rid of discrimination in superannuation and I have no doubt that is causing a great deal of heartache with the Democrats. But I just want to take this opportunity, because the decision obviously has not been made, to say that the Democrats must stand firm and united on that. An artificial split is a cave-in. The party as a whole must stand firm. They have been champions in getting rid of discrimination in superannuation. The moment is there now. The Labor Party has come on board and the Democrats must stand firm on that. Then the government has to take the pain of considering what it is going to do. I would advise the Democrats strongly not to take the pain themselves.
Senator Boswell—Why don’t you join the Democrats if you want to run with them? If you want to run with the Democrats, take out an application. They are quite capable of thinking for themselves.

Senator Brown—You will see from Senator Boswell’s outburst there exactly what I mean: transfer the difficulty of making this decision of imposing and continuing discrimination onto the government. Listen to them go to town over this. The Democrats will come out of this very strongly if they do that. That is my advice; that is my injunction; that is the best way to go.

Senator Sherry (Tasmania) (9.44 a.m.)—by leave—For the last three days my office and the Labor opposition had been informed that the three messages relating to the superannuation bills were to be considered this morning first thing. Senator Coonan has now given an explanation as to why we are not dealing with the three superannuation messages. She did not give an explanation when she moved to rearrange the business initially. It would have helped the chamber, I think, if she had explained why the government has had to seek a rearrangement of the legislative program at such short notice so that we can now deal with Communications Legislation Amendment Bill (No. 3) 2003. We now have the explanation but it would have been better if it had been given when the motion was moved. That in itself, given the very short notice, would have been satisfactory.

It is not just the Labor opposition that has to be considered here. There are other senators to be considered. We know the position of the Democrats—they are in an absolute mess at the moment. They cannot even meet in the same room on the same-sex couples superannuation bills. That is the guts of the problem they have got. But there are other senators in this chamber. There is Senator Murphy, there is Senator Harradine, there is Senator Brown and there is Senator Harris. There are other senators who are not members of the Australian Democrats or the Labor opposition.

Senator Lundy—And Senator Lees.

Senator Sherry—Senator Lees, that is right—I forget what her party is called. I think it is a gross discourtesy to other senators in the chamber who were expecting the three surcharge bills and the attached messages to be dealt with. It is a gross discourtesy to them because the three messages relating to the superannuation bills are of interest and they may have a crucial say in the success of amendments that will be considered as part of the message. They may have a crucial say and they quite rightly deserve consideration in terms of notice given the crucial nature of the three bills we are to consider. I do not think it is reasonable.

Obviously, the government traditionally in this chamber lays out its program for the day, albeit it is at very short notice. I do not think it is reasonable though when the government has known for some time that the Australian Democrats are in a mess on the issue of same-sex couples and the superannuation bills we are to consider. As I understand it, the mess has got worse as the days have gone on. The minister well knows that the entire package that will be considered in the three messages could go down if the Australian Democrats are not clear in their position and are not going to vote for the government’s package, as they have indicated apparently in writing.

The Labor opposition is ready and willing to deal with the business that we were told would be dealt with first. Apparently, that is not to be the case. An explanation should have been given when the business was reordered; it was not, but that explanation has now been given by Senator Coonan. But at
the fundamental heart of all of this are the problems that the Democrats have got. They are huddled in meetings trying to work out how to deal with the messages relating to the superannuation bills. But Labor stands ready. Labor will also be standing firm on its position in respect of the bills and the messages that I have enunciated on previous occasions.

Senator ALLISON (Victoria) (9.48 a.m.)—by leave—I just want to indicate that the Democrats are prepared to handle the superannuation bills this morning for the good, orderly management of the business of the Senate. I do apologise that a request was made that these bills be put off for a short time and that we deal with other legislation in the meantime. Senator Sherry of course takes this opportunity to suggest that we are in a mess and cannot even meet in the same room. All of that is rubbish. The situation is that we expected last night to have a response from the government on an issue that we had raised with them. That response was not forthcoming. We expected it to be forthcoming early this morning, and it was not. We would like to get some clarification from the government as to what that response might be and when it might be coming. We are quite happy to deal with these bills and I reject the nonsense that the Labor Party has just gone on with. I am sure that the Senate’s time will be usefully spent on the Communications Legislation Amendment Bill (No. 3) 2003 and perhaps even one other until the response from the government that I indicated is available to us.

Senator MARK BISHOP (Western Australia) (9.50 a.m.)—I do have a few comments to make that are pertinent to the Communications Legislation Amendment Bill (No. 3) 2003 on behalf of the opposition. The bill makes minor amendments to the Broadcasting Services Act 1992, the Radio-communications Act 1992 and the Telecommunications Act 1997 in relation to solus and two-service regional television markets, datacasting transmission, digital broadcasting, implementation plans of the national public broadcasters and penalties payable for certain offences under the Telecommunications Act.

With regard to solus television markets, this is a minor technical amendment which helps ensure regional broadcasters in solus commercial television markets can flexibly meet options to increase their programming output, including analog and digital simulcasts through multichannelling. This helps facilitate viewers receiving more services in solus television markets.

With regard to two-service television markets, this section amends the BSA to facilitate the earlier potential availability of new commercial television services in regional two-service television markets. The transmission of datacasting service provisions of the bill amend restrictions on the commencement dates of commercial and national public broadcaster datacasting services. These provisions, which were designed to afford some protection to non-television datacasters, are no longer needed as the government is no longer allocating datacasting licences due to its failed datacasting policy, a matter that some three years ago I foreshadowed would occur. Removing these restrictions will ensure that the provision of any datacasting services by regional broadcasters is not slowed.

There is an amendment dealing with the requirement for variations to approved implementation plans. The national television broadcasters, the ABC and SBS, are obliged to present implementation plans to the minister on their conversion over time from analog to digital television. Variations to plans are also approved by the minister. To date, around 600 services requiring conversion and variations have been put forward. The
amendments therefore delegate approval of variations to the digital implementation plans of the national broadcasters to the secretary or senior officers of the department, and these are sensible amendments.

With regard to penalties payable instead of prosecution, this section amends the Telecommunications Act with regard to offences dealing with customer equipment and cabling. The amendments provide for a ‘penalty in lieu of prosecution’ scheme for these offences. This will help ensure a greater compliance with these sections, as the ACA will be able to more readily pursue a medium-level regulatory response to non-compliance with customer equipment and cabling laws. Labor supports this bill as it is non-controversial. These are all minor technical amendments designed to enhance various pieces of communications legislation.

Senator ALLISON (Victoria) (9.53 a.m.)—The Communications Legislation Amendment Bill (No. 3) 2003 primarily corrects minor anomalies in the legislative framework relating to the introduction of digital services in Australia by making minor technical amendments to the Broadcasting Services Act, the Radiocommunications Act and the Telecommunications Act. The Democrats agree that the amendments are sensible amendments that improve the operation of the various pieces of legislation. However, there is a technical problem in schedule 1 of the bill that in our view needs to be addressed before the Democrats will support the bill. The government noted:

Under section 38B of the Broadcasting Services Act, commercial broadcasters in two-service regional markets can elect to provide a third service in digital mode. The Act currently provides that, where these markets overlap with remote licence areas, the date on which the broadcasters can elect to provide a third service under section 38B is set in the context of the digital conversion arrangements for the overlapping remote area. As arrangements are yet to be finalised for the introduction of digital television services in remote areas, this is likely to delay the availability of new services in the relevant regional markets.

The bill breaks this nexus by allowing the ABA to determine separate dates in overlapping regional and remote markets from which licensees can elect to provide a third service under section 38B.

While the Democrats support such an initiative, we are concerned that the ABA’s power is not subject to parliamentary scrutiny. In the Alert Digest No. 7 of 2003, the scrutiny of bills committee drew senators’ attention to the provision, arguing that it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee’s terms of reference.

In responding to the committee’s concerns the government has raised three issues. The government has argued that subjecting a determination under new subsection 38B(27) to possible disallowance would create considerable uncertainty for the industry and the regulator. In their response, the committee noted:

... the potential for uncertainty applies to all disallowable instruments, and is in fact the price of the administrative convenience implicit in the making of delegated legislation. The Committee has consistently taken the view that this, in itself, does not provide sufficient reason for the Parliament to abrogate its responsibility to properly scrutinise delegated legislation.

We would also argue that the government could avoid uncertainty by stipulating that the date applies once the determination has passed the Senate. The government further argued:

... such a determination is a minor procedural measure which does not affect the ABA’s existing powers in a substantial way.

In responding to the government’s point, the committee found it difficult to reconcile the government’s claim that the measure is a
‘minor procedural matter’ with the concern that the potential for disallowance would cause considerable uncertainty.

The third point the government made was that determination under the subsection affects not the substance of the law, but its application. They said that ‘a determination of a designated time for a particular licence area commences the application’ of the scheme for allocating additional licences. The committee argued that this is the very point that concerns them—that the responsibility for determining the time for the commencement of the law is delegated without provision for parliamentary scrutiny. The Democrats agree with the scrutiny of bills committee’s comments and will be moving an amendment to make 38B subject to a disallowable instrument.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (9.58 a.m.)—I move the amendment circulated under the name of Senator Cherry on sheet 3096:

(1) Schedule 1, item 10, page 5 (after line 24),
at the end of the item, add:

(29) A determination made for the purposes of subsection (27) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

As I said in my speech in the second reading debate, this is about making a determination for the purposes of subsection (27) a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act.

Senator MARK BISHOP (Western Australia) (9.58 a.m.)—Labor will not be supporting the Democrat amendment to make determinations under subsection (27) a disallowable instrument. While Labor are always cognisant of the need to ensure that legislative powers are not unduly handed over to the executive, we feel that the powers under subsection (27) do not warrant becoming disallowable by parliament. We support the government’s view that the imposition of parliamentary scrutiny of section 38B could undermine the intent of that schedule, which is to create new services for television consumers in small regional markets. Applying parliamentary disallowance to this subsection would add a degree of uncertainty into this process. While we sympathise with the Democrats’ motives and understand their concerns, in this instance we will not be supporting their amendment. This is due to the highly technical nature of the subsection concerned and our desire to see this bill passed forthwith to ensure that regional Australians have more choice in their television services as soon as possible. Labor therefore opposes this amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.59 a.m.)—The government opposes this amendment. The minister wrote to the committee chair explaining why the ABA’s election date determination is not a disallowable instrument. The government recognises that the Senate Standing Committee for the Scrutiny of Bills has reported that it considers that the exercise of the proposed power for the ABA to independently determine section 38B election dates for overlapping regional licence areas should be subject to parliamentary scrutiny. However, the government remains of the view that the determination should not be disallowable. The amendments do not substantially change the nature of the ABA’s powers to determine a designated date for remote areas.

Secondly, the BSA currently provides, in section 38B(26)(b), that the ABA has discretion in determining the date from which re-
mote broadcasters can elect to provide a third service. There is at present no parliamentary scrutiny of the ABA’s determination under that provision of the BSA. A disallowance process could also introduce considerable uncertainty into licence allocation. Under section 38B the relevant licensees must elect to apply for an additional licence within 90 days of the date designated by the ABA. However, given the sometimes long gaps between parliamentary sitting periods, if the ABA’s power to designate a date were made subject to parliamentary disallowance it is possible that those 90 days could expire well before the end of the 30 sitting day period during which the ABA’s nomination could be disallowed. This uncertainty could inhibit broadcasters’ interest in utilising section 38B and hence undermine the intended public interest outcome, which of course is the creation of new services for viewers in small markets. So whilst the government does appreciate the Democrats’ perspective, I welcome the opposition stance in relation to this matter and place on record the government’s reasons for opposing the amendment.

Question negatived.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.02 a.m.)—I move:
That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.03 a.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 5 (Petroleum (Submerged Lands) Amendment Bill 2003 and a related bill).

Question agreed to.

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2003

OFFSHORE PETROLEUM (SAFETY LEVIES) BILL 2003

Second Reading

Debate resumed from 14 October, on motion by Senator Ellison:

That these bills be now read a second time.

(Quorum formed)

Senator BROWN (Tasmania) (10.05 a.m.)—I might rescue the Senate for a moment, with this bill, the Petroleum (Submerged Lands) Amendment Bill 2003, coming on so suddenly to the debating agenda. This bill is to do with, amongst other things, occupational health and safety. I am at this moment drafting an amendment to—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Brown, let me interrupt you for a moment. Would senators on my right either resume their seats or leave the chamber.

Senator BROWN—You will know, Mr Acting Deputy President Lightfoot, that just yesterday this bill was introduced; the necessary checks and balances to give time for reference to the community were swept aside and here we have the bill today suddenly. I have just issued drafting instructions for an amendment to the principal bill which would disallow seismic testing for petroleum off Australian shores. This is an urgent and critical matter that is confronting people in Victoria and South Australia at the moment. There is widespread distress at the prospect of seismic testing and the impact that will have on fisheries. It is known to disrupt fish hatcheries and it affects the whole food chain.
from microorganisms right through to the great whales.

Recently, there was some sound testing by Spanish naval vessels off the Canary Islands. As that testing occurred, some whales washed up and died on the beaches of the Canary Islands. For the first time, it was established that there was damage to their hearing apparatus. In fact, immediate autopsies demonstrated haemorrhaging and death of parts of the whales’ brains and a clear connection between underwater sound activities, including explosions, and the death of these whales.

The same sorts of sonic booms are currently authorised by the Victorian government and, I think, by the South Australian government—up to 200 decibels—to penetrate the bedrock of the ocean to allow explorers to find the fossil fuel deposits beneath the ocean. If you are going to let off a sound like that, you can expect that there is going to be major disruption to the living marine ecosystems as a result, and it turns out that that is the case. Early evidence is that there is disruption, if not death, throughout the food chain—right from the smallest organisms to the greatest—and we should be more prudent than to allow that to happen.

The amendment that I will be moving, if given time, would require those who are using seismic testing to establish before they can proceed that it would not have a negative impact on the marine ecosystem. At the moment, it is anything goes. We know it is damaging, but there are no environmental assessments—in fact, there is no adequate assessment at all—and this is giving rise to increasing alarm in the fishing industry of Australia as well as amongst environmentalists.

We are way past the time when we just carry on until we see damage occurring before we stop and think about it. There is an urgent need for seismic testing—and, indeed, underwater activities by navies and commercial shipping—to halt until we understand the ramifications it is having on marine ecosystems. It is not a trite matter. A very major assault is occurring on those ecosystems off the Otways, in the western Bass Strait region of Australia and along the South Australian coast. I have spoken to South Australian Premier Rann about it. My office has communicated our concern about this to the Victorian Minister for Environment and Water. I am not aware of a response—there may have been one—but the opportunity to amend this legislation at national level by simply using the precautionary principle of not proceeding until you can show there is not an adverse environmental impact from massive noise explosions for petroleum exploration has to be implemented. It is reasonable, it is sensible and the Senate can take that action at this stage. We have had a truncated morning in getting to this piece of legislation. I am asking that the opportunity for my amendment to be considered be taken into account.

Senator O’BRIEN (Tasmania) (10.11 a.m.)—I was very surprised to see this piece of legislation come before the Senate so quickly this morning, given its place in the order of business today. I apologise if my inability to get to the chamber at the appointed time inconvenienced the Senate, but that was caused by the fact that there was no notice of this piece of legislation coming on almost until the ringing of the bells for a quorum.

The Petroleum (Submerged Lands) Amendment Bill 2003 amends the Petroleum (Submerged Lands) Act 1967, and its primary purpose is to create a nationally consistent occupational health and safety regime for the offshore petroleum industry by the establishment of the National Offshore Petroleum Safety Authority. Provision is also made for the National Offshore Petroleum...
Safety Authority to have jurisdiction over onshore petroleum industry sites should the relevant state or territory agree. Schedule 2 of the bill corrects a minor anomaly relating to the GST component of certain fees levied on the industry, whilst schedule 3 establishes new industry data management practices.

The offshore petroleum industry is strategically and economically important to Australia, and any serious disruption to supply due to an accident would have major economic consequences. The authority, to be established by Commonwealth legislation, will deliver a uniform, national safety regulatory regime for Australia’s offshore petroleum industry and will reduce the regulatory burden faced by industry participants. We understand that it is to be an independent agency, accountable to Commonwealth, state and Northern Territory ministers, and that it will be established via an amendment to the Petroleum (Submerged Lands) Act 1967, as mentioned earlier.

The bill also contains amendments to the occupational health and safety provisions of the act. These amendments will improve safety administration and outcomes for offshore petroleum facilities and pipelines and will also, importantly, reduce risks to the environment. Amendments in the bill, when mirrored by state and Northern Territory legislation, will also provide a consistent safety regulatory regime across all Commonwealth waters and state and Northern Territory coastal waters.

There are two further sets of amendments in the bill. Schedule 2 seeks to amend section 129 of the act to rectify an anomaly whereby the full amount of fees paid by the offshore petroleum industry need to be redirected back to the states and the Northern Territory, yet the goods and services tax legislation requires GST deductions from some of these fees. Schedule 3 seeks to amend the data and management provisions in the act. These provisions cover the submission of data by petroleum owners to the regulator and the later releases of some of that data to the public. The amendments will enable the machinery provisions covering both submission and release of these data to be placed in new objective based data management regulations under the act.

Since 1967 the act has provided for the regulation of all aspects of offshore petroleum and mining, including titles, exploration, production, pipelines and safety regulation. Following a High Court decision in 1975 that confirmed Commonwealth jurisdiction offshore—that is, below the low-water mark—in June 1979 the Commonwealth and the states agreed to a division of offshore powers and responsibilities, known collectively as the offshore constitutional settlement. The purpose of the settlement was to generally maintain the states’ role in the management of offshore areas.

In relation to offshore petroleum arrangements post OCS, the states and the Northern Territory have been granted by the Commonwealth title to all waters, including seabed and landward of the three nautical mile limit, and have the same powers to legislate over those coastal waters as they do over their land territory. Another significant outcome of the OCS was an amendment to confine the application of the Commonwealth act to waters outside the three nautical mile limit, with the states and the Northern Territory enacting mirror legislation applying in waters landward of that boundary.

Beyond the coastal waters, cooperative governance of the Commonwealth’s legislation vests executive powers in a joint authority—which is the Commonwealth minister and the relevant state or Northern Territory minister in respect of each adjacent area—on all major decisions affecting petroleum ex-
exploration and development, with the Commonwealth minister’s view to prevail in the event of disagreement. Day-to-day administrative duties and regulatory functions have been exercised by the designated authority, who is the relevant state or Northern Territory minister.

Until the safety authority commences operations on 1 January 2005, safety regulation will continue to be administered under the existing legislation and arrangement. A particular feature of the act in its present form—prior to 1 January 2005—is that the occupational health and safety requirements in schedule 7 of the act do not apply to Commonwealth waters adjacent to a state or the Northern Territory if the law of that state or the Territory provides, to any extent, for matters relating to the occupational health and safety of persons employed in the area. In that case, the occupational health and safety laws of the state or the Territory apply. As a result, each jurisdiction except Western Australia has applied its own state or, in the case of the Northern Territory, Territory occupational health and safety law in its own coastal waters, and that law was applied by the Commonwealth act in Commonwealth waters. Western Australia has relied on the application of schedule 7 of the act. Each of these laws is different. Consequently, companies with offshore facilities in more than one state or in the Northern Territory adjacent area have had to meet the requirements of these different laws. Furthermore, those companies operating mobile facilities, such as drilling rigs, have had to comply with different requirements as their rigs move from job to job around Australia.

In response to the 1988 Piper Alpha disaster in the North Sea, the act was amended in 1992 to include schedule 7 and in 1995 to provide for implementation by regulations of a safety case regime. The term ‘safety case’ is used to describe a sophisticated, comprehensive and integrated risk management system. This is characterised by an acceptance that the ongoing management of safety on individual facilities is the direct responsibility of the operators and not the regulator, whose key function is to provide guidance as to the safety objectives to be achieved and an assessment of performance against those objectives.

The operators can achieve those objectives by developing systems and procedures that best suit their needs and agreeing these with the regulator. This safety case then forms the rules by which the operation of the facility is governed. The safety case also forms the basis for ongoing audits by the regulator of the facility and its operation throughout its life. The safety case regime has been fully operational since 1996, when detailed safety case regulations under the act, underpinned by guidelines for their preparation and submission, came into effect. The safety case regime remains as it is and is not altered by this bill. It is proposed, however, to revise the regulations to clarify the operation of the regulations.

In August 2001, the Commonwealth government report on offshore safety, entitled Future arrangements for the regulation of offshore petroleum safety, was delivered to the former Minister for Industry, Science and Resources. The primary conclusion of the review was:

...the Australian legal and administrative framework, and the day to day application of this framework, for regulation of health, safety and environment in the offshore petroleum industry is complicated and insufficient to ensure appropriate, effective and cost efficient regulation of the offshore petroleum industry. Much would require improvement for the regime to deliver world-class safety practice.

In particular, an independent review that formed part of the above report recommended that a national petroleum regulatory
authority be developed to oversee the regulation of safety in Commonwealth offshore waters. The Commonwealth view, strongly supported by industry and employees, and the ACTU in particular, was that it would be more efficient and effective—and it would reduce the regulatory burden—to have a single national agency covering both Commonwealth waters and state and Northern Territory coastal waters, a view subsequently shared by states and the Northern Territory.

The Ministerial Council on Mineral and Petroleum Resources subsequently endorsed a set of principles for regulation of safety of petroleum activities in Commonwealth waters and state and Northern Territory coastal waters in Australia and agreed that the council’s standing committee of officials would examine how best to improve offshore safety outcomes, primarily through a single joint national safety agency. This work led to the agreement upon which this bill is based.

The safety authority will function as a regulator of occupational health and safety in relation to offshore petroleum facilities and offshore petroleum diving operations in Commonwealth and designated coastal waters. Individual states or the Northern Territory may also confer powers on the safety authority under the onshore legislation of the state or Territory in respect of particular petroleum operations. Where this occurs, this bill authorises the authority to exercise those powers. In acting under state or Northern Territory ‘onshore’ legislation, the authority will be entirely subject to the governance arrangements established by that legislation.

Labor support this bill, which we note enjoys the support of all industry players and the support of the ACTU. With regard to Senator Brown’s comments about an amendment which is in the process of being drafted, I personally knew nothing of that proposition before it was announced today. We would be reluctant to deny Senator Brown the opportunity to move his amendment, and we suggest to the government that, before we proceed to the committee stage of this bill, we ascertain the status of that drafting so that, if it is intended to proceed to the committee stage, we do not do so in a way that would prejudice any senator’s opportunity to put an amendment to the Senate for consideration.

Senator ALLISON (Victoria) (10.22 a.m.)—I indicate Democrat support for the legislation. The Petroleum (Submerged Lands) Amendment Bill 2003 will make long overdue changes to the way in which occupational health and safety issues are managed and regulated on offshore petroleum facilities. At present the states and the Northern Territory regulate occupational health and safety issues associated with offshore petroleum operations in their coastal waters. With respect to Commonwealth waters, the Petroleum (Submerged Lands) Act 1967 allows the states and the Northern Territory to extend their OH&S laws to offshore petroleum activities in adjacent Commonwealth waters. I understand that all jurisdictions except Western Australia have exercised this option. As a result, operators of offshore petroleum facilities are subject to a range of different OH&S laws in relation to offshore petroleum operations in Australian waters. This creates a confusing situation for workers and employees and imposes unnecessary costs on operators.

I also indicate that the Democrats would like to see this bill go into committee, even though we do not ourselves have an amendment. There are some practices which I would like the minister to clarify with regard to what is being proposed on occupational health and safety issues relating to the removal of naturally occurring radioactive material, otherwise known as scale, on pipes and so forth.
This bill will enable the establishment of uniform occupational health and safety laws for offshore petroleum operations throughout Australian waters. It will also establish a single OH&S regulator for these activities, namely the National Offshore Petroleum Safety Authority. This will be facilitated by the enactment of mirror state and Northern Territory legislation after this bill has been passed. The creation of the National Offshore Petroleum Safety Authority and the establishment of uniform OH&S laws in Australian waters is a very important initiative which the Commonwealth and the states should be applauded for, as should the ACTU and the industry groups that have been involved in these changes. Workers on offshore petroleum facilities face many dangers. If administered appropriately, this new regime should allow for the improvement of safety conditions associated with these activities.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.25 a.m.)—It is very good to be here to close the debate on the Petroleum (Submerged Lands) Amendment Bill 2003 and on the Offshore Petroleum (Safety Levies) Bill 2003, which is an associated bill. Mr Acting Deputy President, when you looked around the Senate for speakers on this bill and looked my way I was engaged in conversation with the Manager of Opposition Business in this place, Senator Joseph Ludwig, and we were discussing the last-minute changes to the program this morning. I take this opportunity to put on record my apologies, as Manager of Opposition Business, for the changes to the program—which does change quite regularly—but this change was at very late notice to the government. Clearly it is hard for all parties to have to change speakers at the last moment when you come into the place expecting to do one bill and are told, ‘We are going to do another.’ Having said that, I am very pleased that the Senate has been able to make good use of the first hour this morning in dealing with some important measures. Of course, none is more important than the Petroleum (Submerged Lands) Amendment Bill 2003 and associated bill.

Senator Crossin—Keep going. You’ve got 18 minutes left—talk it out. Unless you tell us what’s happening, we don’t know what’s going on.

Senator IAN CAMPBELL—That is not what I am here to do; I am here to close the debate. I was making a very frank apology to the Manager of Opposition Business, taking the opportunity do so in summing up on this bill. I thank those senators who have contributed to the debate on these measures—measures that will establish the National Offshore Petroleum Safety Authority. This will increase certainty for a very important Australian industry. It will ensure that there is a consistent safety regulatory regime across all Commonwealth waters and state and Northern Territory coastal waters.

The establishment of the authority represents a major achievement by the government in responding to the wishes and needs of the offshore petroleum industry, and of the work force in this unique and important in-
dustry, in relation to safety regulation. As you would recall, Mr Acting Deputy President, it was an election promise made prior to the last election in 2001—a commitment to Australia’s offshore petroleum industry and all of those outstanding Australians who work in that industry—to deliver this uniform national safety regulatory regime to improve safety outcomes and reduce the regulatory burden faced by industry. It is in essence a win-win measure. It means a safer environment for an important industry and will at the same time lighten the regulatory burden.

I think all Australians, particularly those who are driving around in their vehicles on the roads of Australia listening to the parliamentary news network this morning—who are in fact burning the fuel that is often brought to the shore from the petroleum industry—can drive happily in the knowledge that the fuel that they rely on, and quite often take for granted, is, as a result of these measures being discussed in the national parliament today, going to get there in a better way. Those who are involved in the important business of extracting the petroleum products on offshore rigs through the offshore petroleum industry can do so under a much safer environment. Again, I do repeat my thanks to senators for their contributions to this debate. I wish the bill a speedy passage and reiterate my apologies to opposition and other senators for the late rearrangement of the program earlier this morning.

Question agreed to.
Bill read a second time.

In Committee

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2003

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (10.31 a.m.)—In the second reading debate, I did foreshadow an amendment, which is coming very rapidly, to the Petroleum (Submerged Lands) Amendment Bill 2003 to accompany the amendments that we have before us. That amendment is to ensure that seismic testing or other use of sound in the search for petroleum and other minerals under the ocean floor is not proceeded with until it is shown that it is not injurious to the marine ecosystem. I pointed to the concern that there is amongst environmentalists and fisheries about the current go-ahead for seismic testing in the Otway Basin off western Victoria and southern South Australia.

It is no small matter. The massive explosions set off on the sea floor would be enough to burst the eardrums of any of us sitting here. That is because they are aimed to penetrate the sea floor and many hundreds of metres underneath to discover if there are fossil fuels in the submarine earth. The problem is that these explosions are rapidly being recognised as creating havoc for the marine ecosystem, from the micro-organisms and the spawning fish in the hatcheries—it causes damage to the hatcheries—right through to any mature fish and, of course, whales which are in the region of these explosions.

I just repeat that in the Canary Islands recently there was a big breakthrough pointing to the death of whales. There was underwater testing by the Spanish navy of very loud sounds. Immediately, a number of whales washed up on the shore. An autopsy was held and it was found that they had haemorrhaging of their brain, particularly their auditory systems, which had left them unable to function. They died as a direct result of the massive sound explosions or sound technologies which were being used by the Spanish navy. I do not know the exact quantity of noise used there but I suspect that it was much less than that being used by the seismic testers of the two companies currently operating in the
Otway Basin. Yet there has been no environmental impact assessment.

I wrote to the Victorian Minister for the Environment, Mr Thwaites, last week and asked him to put an immediate halt to this seismic testing. As far as we know, it is very destructive of the marine ecosystem. We are now in the year 2003, where there is worldwide concern about the collapse of fisheries and indeed about the status of the great whales. Remember that this region hosts a number of whale species, including in this breeding system the greatest living creature ever on the face of planet—much bigger than any of the dinosaurs—the great blue whale. I think that it is just derelict of us as a nation not to apply the precautionary principle here. Even if people are not concerned about the environment, the economic ramifications are considerable.

The amendment I am putting forward reads:

(1) Schedule 1, page 3 (before line 7), before item 1, insert:

1A After subsection 33(1)

Insert:

(1A) It is a specific condition of a permit that seismic testing or other activities using sound to determine offshore petroleum or other mineral deposits are not permitted unless demonstrated to the Commonwealth Minister to not have a negative impact on ecosystems or living species.

That is self-explanatory. It is eminent commonsense, and it is just pure reason that we pass such an amendment. I commend it very strongly to the Senate and I would be very pleased to hear from the government the concerns that they have about this deleterious impact that there is on the environment.

Finally, I will just read to the Senate the letter that I wrote on 1 October to Mr Thwaites, the Victorian minister for the environment. I remind senators that I spoke to South Australian Premier Rann about this matter late last year, if not earlier this year. I wrote to Mr Thwaites and said:

I am very concerned by news that seismic testing is being contemplated along Victoria’s western coastline. There is rapidly growing evidence that such testing is dangerous to the marine ecosystem, from the smallest creatures to the great whales. I hope you will not license the tests unless and until the proponents have shown it to be harmless.

It is that sentiment that is incorporated into this amendment.

Senator O’Brien pointed out that the bill effectively gives the states control out to the three-mile limit and the Commonwealth control beyond that. This is the absolutely appropriate opportunity for us to bring in an extremely urgent environmental constraint on the unlimited use of seismic testing in our marine ecosystems until the proponents can show that it is not having the damaging effects that are demonstrated worldwide in the use of these harmful technologies. I move the amendment standing in my name on sheet 3133:

(1) Schedule 1, page 3 (before line 7), before item 1, insert:

1A After subsection 33(1)

Insert:

(1A) It is a specific condition of a permit that seismic testing or other activities using sound to determine offshore petroleum or other mineral deposits are not permitted unless demonstrated to the Commonwealth Minister to not have a negative impact on ecosystems or living species.

Senator ALLISON (Victoria) (10.37 a.m.)—The Democrats are likewise very concerned about the impact of seismic testing on the marine environment, particularly on marine mammals. We know that there is a growing body of evidence that seismic testing has very adverse impacts on many ma-
rine species, including a number of threatened species such as the blue southern right and humpback whales. In the light of this evidence, the government should take immediate steps to minimise the environmental impacts of seismic testing. So we will be pleased to support Senator Brown’s amendment.

We are not entirely sure that the Petroleum (Submerged Lands) Amendment Bill 2003 is the most appropriate place for this issue to be dealt with. The Petroleum (Submerged Lands) Act is administered by the Minister for Industry, Tourism and Resources and it is intended to ensure that Australia’s petroleum resources are developed in an efficient manner. A more appropriate place for environmental measures is, of course, the Environment Protection and Biodiversity Conservation Act and a strategic assessment is, I understand, currently being undertaken on seismic testing under that act. This is indeed long overdue. At the completion of this assessment, we ought to be in a better position to develop appropriate management measures which can be incorporated into the act or the regulations. However, given the government’s failure to institute appropriate measures in a timely manner under the act, we will support this amendment.

Before allowing this to go to a vote there are some other matters that I want to raise for which I do not have amendments. One aspect of the bill that we have concerns about is schedule 3, which will change the arrangements for the management and public disclosure of information associated with titles granted under the act. The introduction of a system for the preparation of data management plans is positive and it should allow for an improvement in the way in which data is collected, stored and presented. However, schedule 3 of this bill contains provisions that concern the public disclosure of information associated with applications for titles and sample data that is given to designated authorities. Broadly, part IIIA of the PSL act currently provides that the minister and designated authorities—in other words, relevant state ministers—cannot disclose this information until after the application has been determined, the prescribed period of time has expired, the applicant has made the information publicly known or the applicant has given written consent to the disclosure of the information.

There is an objection and review procedure for applicants who do not want the information to be disclosed after the relevant nondisclosure period has expired and it includes avenues for appeal to be made to the Administrative Appeals Tribunal. Schedule 3 of this bill will alter these disclosure requirements by prohibiting the public disclosure of all information unless it is done in accordance with the regulation. In other words, it removes the public disclosure power from the act and provides for disclosure requirements to be prescribed in the regulations. This is a less than ideal situation. Public disclosure procedures should, as a matter of principle, be included in the primary legislation.

Furthermore, the Democrats are highly supportive of the notion of ensuring that information held by the government is made available to the public. We recognise that, in this instance, there is a need to balance the need for an incentive to undertake petroleum exploration against the need for public disclosure. In addition, a considerable amount of data on petroleum exploration and development is available on the public registers that are maintained by the designated authorities and the Commonwealth. The Democrats have discussed this issue with the minister’s office and we thank the minister for his cooperation in this respect. We have been provided with a copy of the draft regulations that relate to data disclosure and they
largely mirror the existing provisions of the act. At this point, I ask whether the minister could confirm that the regulations will be made in substantially the same form as those that were drafted.

I would also ask that the minister confirm an issue that I raised earlier in the debate, which was that of what I understand to be inconsistent regulations with regard to occupational health and safety for the removal of radioactive material from equipment on petroleum facilities. This is naturally occurring radioactive material, which accumulates on that equipment, otherwise known as scale. It is my understanding that there are quite stringent protection measures in place for workers at some rigs, but at others it is quite different. Some workers are fully fitted out in protective gear and in other places this is not the case. Minister, will this legislation address that? Will we see not the lowest common denominator being applied here to those standards but worker protection consistent and consistently high across the board? It would be useful to know if this is the Commonwealth’s intention.

**Senator O’BRIEN (Tasmania) (10.43 a.m.)—**The opposition has now seen Senator Brown’s amendment to the Petroleum (Submerged Lands) Amendment Bill 2003. I have taken the opportunity of speaking with Mr Fitzgibbon, the Labor shadow minister in this area, with a view to ascertaining the degree of consultation that has taken place and to obtaining some advice on the opposition’s approach to this matter as, clearly, we were not aware that this amendment was to be moved. In terms of its late appearance in the chamber, I suppose Senator Brown can be forgiven given the accelerated place in the list of legislation that this bill has received because of the government’s inability to deal with the matters ahead of it in the queue earlier today. I do not imagine I can apportion blame to Senator Brown in that respect for not having given us a copy of the amendment beforehand, although it is noteworthy that the bill was on the red for today and we had not seen or heard of the amendment before Senator Brown spoke this morning.

In the circumstances, we have been keen to look at the context of the amendment, to understand what it means and, in the light of the comments of Senator Brown this morning, to look very carefully at the words. Frankly, we take these words as an effective ban on seismic testing. The amendment says:

"... seismic testing or other activities using sound—

whatever they may be—

... are not permitted unless demonstrated to the Commonwealth Minister to not have a negative impact on ecosystems or living species."

They are very broad terms. The interpretation of the term ‘negative impact’ allows, I think, a very broad interpretation, which would suggest that any impact which could be seen to have any deleterious effect whatsoever, however small, would require the minister to say that it had not been demonstrated that the seismic or other sound activities did not have a negative impact on a living species. We are making those comments having only seen the amendment today, but this is a very significant proposal and it would have a significant impact on the exploration industry. Perhaps had it been considered more fully, other words might have been chosen. Certainly we were not expecting this sort of amendment to this particular piece of legislation, given that it is ostensibly about occupational health and safety—in fact, quite a different area of legislative responsibility, albeit one contained in the Petroleum (Submerged Lands) Act.

So the opposition cannot support the amendment as proposed by Senator Brown. We would encourage Senator Brown and the Greens to consult with us about any mean-
meaningful proposition that they have with regard to this area. We are not insensitive to dealing with these sorts of issues in a way that takes into account all factors. The question of any possible deleterious effects on ecosystems and on living species—and, of course, the degree of those effects—would also have to be taken into account, one would expect. The impact on the industries that rely on these methods of exploration would also have to be taken into account.

Whilst I would not want to be seen to be saying that the opposition ruled out consideration of matters such as this, we certainly could not support the amendment in the form in which it appears before the committee today. We would certainly prefer to be dealing with it in the context of legislation that is more germane to the subject matter of the amendment and we would certainly prefer the opportunity to fully explore this matter before we are forced to make a decision. We will not make a decision on the run, as it were, to impose conditions such as this on the exploration industry, which we are certain would have a very significant effect on the prospects for the exploration industry for the future, without necessarily fully understanding the ramifications. It is, as I said earlier, effectively a ban on seismic or other sound based activities in the exploration industry and the offshore petroleum area. I suppose that raises the question: does this limit the proposed ban only to exploration for petroleum? Would it, therefore, allow the use of seismic testing to explore for other items in the so-called submerged lands area? Those are issues which ought be considered. We will not be supporting the amendment. We understand where Senator Brown and the Greens are coming from, but this amendment goes too far in the circumstances.

Senator BROWN (Tasmania) (10.50 a.m.)—I thank Senator O’Brien for that contribution. I will be very brief, because I know the government wants to make a contribution. I would flag—and I thank Senator Allison for this—that I am happy to put the word ‘significant’ before the word ‘negative’ to mirror the Environment Protection and Biodiversity Conservation Act. This will get around the problem that Senator O’Brien just had of stopping seismic testing if there is minimal environmental impact.

Let me again point out the circumstances we are in. This bill was brought in yesterday. The normal forms of the Senate, which would have it not being debated for a good many weeks, were put aside. I am not responsible for that. It was my intention to amend this bill, and I have done so within, effectively, 24 hours. The opposition agreed with the government in allowing that process to occur, so I do not accept any flak on that. The other thing is that, as far as the seismic testing is concerned, it is happening now. So the Labor contention that we put this off until we are dealing with some other appropriate bill misses the point—and it is a Labor government in Victoria which is giving the go-ahead there.

This is the time for us to be acting if we are serious about protecting the marine ecosystem. Moreover, it is not one industry that is at stake here—there are at least three of them. Remember that the Benaris Energy application to use seismic explosions to look for underwater petroleum or gas deposits covers the Twelve Apostles Marine National Park in Victoria. They may say they are not going into the national park but one would ask why they have exploration licences over it. Anyway, ecosystems do not observe national park boundaries. So a very heartfelt request—which has gone to all parties concerned, including the Labor Party and the Greens—has come from the Port Campbell Professional Fishermen’s Association. It lays out the concern that the fisheries, including
the current rock lobster and abalone fisheries, have about this seismic testing.

I put it to the Labor Party that action is required now. It is not anything other than prudent for significant damage to the ecosystem—and therefore to fisheries—to be ruled out before this seismic testing occurs. I have just explained to the chamber that there is evidence coming in that these sound explosions—and remember they are 200 decibels; they would split our eardrums; we would have blood coming from our ears if they were let off in this chamber—kill fish within five metres. I think even the seismic testers agree on that. These are massive explosions because they have to penetrate rock and sand and go down hundreds of metres to suit the mineral exploration by Benaris Energy and Woodside Petroleum, the two companies with the exploration licences.

There are only two ways you can have it: (1) you do the right thing and you ensure it is safe before you proceed; or (2) you become party to this process. We know, and they know, it damages the marine ecosystem. And even if you are not concerned about the marine ecosystem you ought to be concerned about the fishing and tourism industries which depend on that ecosystem. You cannot just dismiss it and say, ‘Let’s do it some other day.’ We are parliamentarians who have to assess what is going on now. Sure, if you can get a moratorium on these seismic explosions—and we are talking about hundreds or thousands of them—then let us consider the matter before that moratorium lapses; but what Labor and, I have no doubt, the government, are saying is, ‘We will turn a blind eye to that. The Greens and the Democrats have an amendment but that is not going to ruffle our feathers; we will just turn a blind eye to it and let that petroleum exploration go ahead.’ That is in the worst tradition of last century irresponsibility as far as the environment is concerned.

This is a major issue in Victoria and South Australia. This does affect the whole marine ecosystem, from the micro-organisms so small we cannot see them to the greatest living creatures that ever moved on the face of the planet. And we know it will damage them if they come within range. So we have to act on this—and the time to act is now. I cannot, as a Green—and Senator Allison cannot, as a Democrat—expect to bring in here a bill to put prudent regulation into seismic testing because we know it will not even get on the agenda between now and the end of the year. But this testing is occurring now. So I will add, if I may, the word ‘significant’ before the word ‘negative’. It overcomes Senator O’Brien’s problem but it shows this parliament has the ability to act on an issue that cannot wait. I seek leave to amend my amendment in those terms.

Leave granted.

**Senator BROWN**—I move:

Before “negative”, insert “significant”.

I would like to quote from a recent article in the Age by journalist Melissa Fyfe. She says:

Energy companies use seismic surveys instead of more expensive drilling—it is a matter of dollars, you see—to map what resource may be trapped under the seabed. This is done from a boat with airguns trailing behind.

This is happening now. She goes on:

The energy from these guns—which make frequent intense noise of more than 200 decibels—penetrates the seabed.

How does marine life cope with the noise? The only thing environmentalists and the industry agree on is that many organisms can die if they are within five metres of the sound source. Other than that, experts admit we don’t really know the effect on underwater life, and no studies have been done on the impact of seismic surveys in shallow water.
Ms Fyfe said in that article that being underwater can sometimes mean being out of mind.

Can you imagine 200 decibel explosions going on, if not in this chamber, in any area in Australia and being accepted by this big mammal called homo sapiens? Of course we could not imagine that. It would be massively disrupting to what we were doing. Yet creatures under the ocean use sound even more than we do for navigation as well as for communication. And we are bombing their ecosystem with explosions of noise, which all parties agree within close proximity is so explosive that it leads to death. That requires action. And I say to the opposition, as well as to the government: here is the opportunity to take that action. If you do not, you become part of the problem.

Senator O’BRIEN (Tasmania) (11.02 a.m.)—It is entirely unsatisfactory for these amendments to be rolled out as this debate goes on. I will need to consult more widely than I am able to, as I am now in the chamber. It would be my suggestion that we report progress and bring this matter back on later today, perhaps on the understanding that we will get a clear position of what the final Greens position is and what the Democrat amendment is and have a chance to contemplate them. I am not comfortable with stating the opposition’s position on these matters without the opportunity to consult more fully. It is regrettable that, if that occurs, we cannot fully deal with this legislation now, but I think that is the best course of action.

Senator ALLISON (Victoria) (11.03 a.m.)—by leave—I move my amendment to Senator Brown’s amendment, as circulated:

After “deposits” insert “that have, or are likely to have, a significant impact on ecosystems or living organisms”.

Then we want to remove the next sentence in Senator Brown’s amendment, starting with ‘demonstrated to the minister’, and insert:

... there are no prudent and feasible alternatives to the testing or other activities; and

(b) all reasonable measures have been taken to minimise the impacts of testing or other activities on ecosystems and living organisms.
pational health and safety can be dealt with. I
would implore the Labor Party to acknowl-
dge what this bill is actually all about and
not be deterred or delayed by what we have
from the Greens and the Democrats. That is
the first point.

The amendments being proposed do not
have anything to do with the bill before us
and are another matter entirely. They relate
to the question of seismic testing. This is an
abominable way to deal with one of Austral-

environment. I would also point out—and I
am not sure if this is general knowledge—
that the two departments of the government
involved, the Department of Industry, Tour-
ism and Resources and the Department of the
Environment and Heritage, are indeed right
now conducting a strategic impact assess-
ment to look at all impacts of exploration
activities, including seismic testing on the
environment, and intend to have a draft re-
port for public comment by the end of the
year.

We do have an understanding of the inter-
est in this issue. We are not saying that you
should utterly and entirely dismiss the issue.
We say that there are already environmental
regulations in place governing this activity. I
report to you that there is a major strategic
impact assessment being done now, which
will be available for public comment, and we
invite all parties in the Senate to respond to
that. This is delaying and obfuscating a very
important amendment in relation to occupa-
tional health and safety. The health and
safety of Australians who work in this indus-
try, which we think is paramount, should be
dealt with today and dealt with promptly.
Those who are concerned about the impact
of seismic testing on the marine environment
will have their opportunity, through the proc-
ess of this strategic impact assessment, to
make any points they wish and to argue for
strengthening of the current regulations gov-
erning that activity.

In relation to Senator Allison’s question
about the removal of radioactive materials
that occur naturally in relation to this activ-
ity, I am advised that the bill itself does not
prescribe specific regulatory requirements
regarding particular risks. The specific safety
measures will be dealt with in relation to
each offshore facility under the safety case
for the facility, which is established under
the Petroleum (Submerged Lands) (Man-
agement of Safety on Offshore Facilities)
Regulations. The safety case must be assessed and accepted by the safety authority before it comes into effect. The measures to deal with naturally occurring radioactive materials will be established under the safety case for each individual facility, having regard to the particular risk environment of that facility. That is the purpose of establishing a safety authority—so that uniformly high standards of occupational health and safety will apply on all facilities in offshore waters. In relation to the first query from Senator Allison, the advisers were not quite sure what she was asking regarding the regulations. I wonder if Senator Allison would take the opportunity to repeat her question.

Senator ALLISON (Victoria) (11.08 a.m.)—The Democrats were provided with a copy of the draft regulations that relate to data disclosure. The question is about data disclosure. We are looking for an assurance that the regulations as drafted will be the final regulations, insofar as disclosure as it was shown to us is concerned.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.09 a.m.)—I am advised that, in relation to the release provisions, the government’s position is that the details governing them should not continue to figure in the act because this presents an excessive impediment to their amendment in response to technological changes. It is considered administratively more efficient to be able to revise these rules by amending regulations than by amending the act. At this stage, however, the proposed regulations will contain similar release provision details to those currently in the act. If you know what that means, you are a better man than I am, Gunga Din. I hope that satisfies your query.

Senator ALLISON (Victoria) (11.09 a.m.)—It does not, actually. I was not asking for them to be put in the act; I was simply asking whether the draft regulations that were provided to us are going to be the final regulations, or very close to them, with regard to the disclosure provisions.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.10 a.m.)—My advisers assure me that their understanding is that they are the same, but that is the best advice I can give you at this stage. It appears that the mood in the chamber is to report progress, as I understand it, so we may be able to get you a more definitive answer in the meantime.

Senator BROWN (Tasmania) (11.10 a.m.)—I think it is a good idea that we report progress to allow some time to consider these matters. Senator Minchin, for the government, has not made any reference to the fishing industry and its concerns about seismic testing, but I hope he can come back better acquainted with the concern that the fishing industry has. I do not accept the trite dismissal that amateur fishing—catching a fish on the weekend—is the same as seismic testing. I ask the minister: what environmental impact assessment is being done on the seismic testing?

I also ask the minister: what is the sense in proceeding with seismic testing and then doing an assessment with public input? An assessment is the prudent thing to do when we know the testing is damaging. I ask him to deny it, if his information is that it is not damaging to marine ecosystems; to first evaluate the extent of that damage, which we know extends to whales if they are in the vicinity; and to tell us what precautions the government has insisted go into place to protect whales, dolphins and other cetaceans, the great migratory fish and, of course, the fish living in the region which are not inclined to move because, for example, they seek protection in the reefs if they are threat-
ened and are therefore subject to any explosion that occurs in the vicinity.

It is outrageous that we have a minister in 2003 who says, effectively, notwithstanding the information coming in and accepted by the industry itself that seismic testing causes death to creatures within five metres, death to whales that come within the vicinity and death to spawning fish and cellular organisms in the region: ‘We will do nothing about this current bout of testing and we will wait for public input further down the line.’ That is irresponsible. The right time to do something about this is now. If the minister has an alternative then let us see it. The problem is that there has been a failure of governance here. There should have been legislation to deal with seismic testing but the government failed to bring it in. That is a failure of the Howard government. We are in the difficult situation where the minister brought in the bill yesterday, the Greens are amending it today, the Democrats have come with consequent amendments, and the minister is saying, ‘This is not the place to deal with it.’ It is.

There has to be a mature approach to this to deal with the information that all parties have at hand. There ought to at least be a moratorium on seismic testing, until that process of public input that the minister has flagged is completed. That is commonsense, when we know it is damaging our Australian marine ecosystems and is of great concern to the fishing industry as well as to environmentalists. I would expect that when we come back the minister will have a commonsense order to put to the chamber in terms of progress to ensure that the threat to marine ecosystems by this seismic testing is removed. There are alternatives. Drilling is an alternative, but it is more expensive. This is just cutting expense corners for the big oil exploration companies with whom the minister happens to be friendly. But that is not good enough. We want to see the government come up with a definitive and prudent plan which says, ‘We will proceed when we know what is happening as far as seismic testing is concerned.’ That is the way it has to be.

Senator O’BRIEN (Tasmania) (11.15 a.m.)—I reiterate, we think that the committee should report progress. I indicate we will not be supporting any proposition which bans seismic testing in the current circumstances but we are prepared to look at the amendments to see what sense we can make of them in the circumstances. We are anxious for this bill to proceed today and we will facilitate that.

Progress reported.

Senator Brown—On a procedural point, I would appreciate it if the government would let me know when the resumption is scheduled.

BUSINESS

Rearrangement

Senator MINCHIN (South Australia—Deputy Leader of the Government in the Senate) (11.16 a.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 6 (Trade Practices Amendment (Personal Injuries and Death) Bill 2003).

Question agreed to.

TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH) BILL 2003

Second Reading

Debate resumed from 25 June, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator CONROY (Victoria) (11.17 a.m.)—I rise to speak on the Trade Practices Amendment (Personal Injuries and Death) Bill 2003. The bill is one of several pieces of
legislation introduced over the past 18 months in an attempt to stem the rapid increase in public liability and professional indemnity insurance premiums. Last year insurance ministers from all jurisdictions received evidence that a significant factor contributing to the increase in premiums has been the growth in number and cost of claims for negligence.

In response, all states and territories have introduced tort law reforms to bring claims costs under control. The reforms introduced have included caps on damages, thresholds to prevent the commencement of actions in relation to minor injuries and measures to allow the voluntary assumption of risk. For some time the insurance industry and others have expressed concern that the effect of the tort reforms could be undermined if plaintiffs sought to use Commonwealth law in the form of the Trade Practices Act as the basis of their claim rather than negligence. This forum shopping or cause of action shopping is possible because in theory the same conduct may form the basis of action in tort for negligence as well under provisions of the TPA.

This bill seeks to remove this potential overlap. Its intention is to prevent the recovery of damages where conduct in breach of part V, division 1, of the TPA results in personal injury or death. These provisions of the Trade Practices Act deal with unfair practices. Without doubt, the most important consumer protection provisions in the part is section 52, which prohibits corporations from engaging in misleading and deceptive conduct. If this bill is enacted in its present form, a company that misleading a consumer in a way that causes injury or death will not be liable to pay any compensation under the Trade Practices Act. Nor will the ACCC be able to bring an action to recover damages on behalf of people who suffer such an injury. These amendments arise from recommendations of the review of the law of negligence that was chaired by Justice Ipp last year. They are said to be necessary to support the tort law reform instituted by the states and territories.

Labor has consistently stressed the need for Commonwealth action to support the efforts of the state and territory governments to reduce public liability premiums. We have supported amendments to taxation laws to facilitate structured settlements which reduce costs to insurers. We have also backed the principle that the TPA needed to be amended to allow people who engage in high-risk recreational activities to be able to waive their rights to sue. In addition, Labor endorsed legislation to remove the personal liability of volunteers performing work for the Commonwealth. As far back as last May, in response to concerns about forum shopping, Labor called for appropriate amendments to the Trade Practices Act to ensure that public liability claims costs did not blow out on another front following tort law reform.

We have always emphasised, however, that any reforms must reflect the need to ensure that consumers are adequately protected and that the legislative response is proportionate to the size of the problem. In order to ensure that this bill achieved these aims, we sought to refer this bill for inquiry by the Senate Economics Legislation Committee. That committee reported in August. In their minority report Labor senators made it clear that the evidence received by the committee did not justify the enactment of the bill in its current form. All submissions agreed that at present the TPA is rarely used as the basis for a claim for personal injury. The Law Council could identify only nine reported cases between 1989 and 2002 where the courts had dealt with such claims. It should be noted that in several of these cases plaintiffs were not successful in recovering damages. In terms of representative actions, the ACCC
stated that it had run only one representative action seeking to recover damages on behalf of consumers who had suffered personal injury as a result of a breach of part 5, division 1. These figures mean that the TPA can in no way be blamed for any blow-out in costs from personal injury litigation.

Notwithstanding this fact, the government has argued that the toughening of negligence laws by the states will encourage plaintiffs to explore using the Trade Practices Act. Despite this claim, no evidence was submitted to the committee indicating that the number of personal injury claims being instituted under the TPA has increased since the state reforms were enacted. Given that some of these reforms, such as the Civil Liability Act in New South Wales, have now been in operation since June 2002—that is, over a year now—any trend towards the increased use of the TPA should have become evident by now. The case for removing the right to claim for personal injury under part V, division 1 is largely premised on the fact that provisions such as section 52 are strict liability—that is, it is not necessary to show that a company intended to mislead and deceive for liability to arise.

The government and the insurance industry argue that it is easier to bring an action under the TPA, since there is no requirement to prove fault, unlike in negligence cases. The glaring weakness of this argument is that section 52 has been a strict liability provision since 1974, when the TPA was introduced for the first time. If it were significantly easier to bring claims under the TPA than in negligence, surely we would have seen more use of it as the basis for personal injury claims. It is true that the elements of negligence are different from those required to establish misleading and deceptive conduct, but it does not follow that the TPA provides an easier way to make claims.

Some may ask why it is necessary for the TPA to cover personal injury, and why compensation cannot simply be left to the law of negligence. There are a number of reasons. Firstly, the committee heard evidence of several plausible scenarios where the removal of the right to bring an action under part V, division 1 could result in consumers being left without a remedy. Examples included cases involving defective products, where defendants had destroyed crucial evidence. The Trade Practices Act serves as a vital safety net in these rare cases. More generally, witnesses, such as the ACCC, the Consumers Association and even the Law Council, emphasised the contribution made by the Trade Practices Act in creating a culture of care in the Australian business community.

The Law Council noted the positive effects of the TPA on consumer safety in its evidence to the committee. The Secretary-General of the Law Council, Mr Lavarch, stated:

One of the consequences of that legislation, I think, has been that it has significantly improved the standards of behaviour that we have seen across the whole corporate world ...

... in terms of product safety and the actions of corporations in terms of their potential to cause physical harm to individuals, there has been this strong benchmarked potential liability imposed upon them. On the whole, I would say that it has led to general improvements and one should be loath to go down a path of in a wholesale way taking out whole areas of action.

We do not accept the government’s claims that concerns about the effect of this bill on consumer safety are misplaced, because the ACCC will retain the ability to bring a criminal action or seek an injunction to restrain conduct in breach of the act. The fact is that there is no criminal provision equivalent to section 52 of this act. In addition, the threat of an injunction is highly unlikely to be a substantial deterrent to misleading and
deceptive conduct. While cases brought under the act for personal injury may be rare, the fact that the TPA imposes strict liability has encouraged companies to put an emphasis on consumer safety. In Labor’s view, the complete removal of this incentive as proposed in the bill runs the risk of undermining the high standard of behaviour that consumers have come to expect.

The ACCC’s opposition to the bill was based largely on what is referred to as the ‘economics of accidents’. In essence, this work suggests that liability for the cost of accidents should be assigned to the party that could most easily and cheaply take the actions needed to minimise the risk of the accident. The commission noted that limiting the scope of part V is economically inefficient, in that it forces consumers to incur greater search costs to determine which suppliers are reliable. In addition, the commission pointed out that the removal of liability for personal injury and death would also undermine the competitive process by allowing firms that engage in misleading and deceptive practices to win customers at the expense of those that do not.

The Ipp review acknowledged the force of the arguments made by the ACCC but said that they needed to be balanced against ‘the inherent value of personal autonomy and the desirability of persons taking responsibility for their own actions and safety’. In Labor’s view these concepts are of doubtful relevance in a context where a company misleads a consumer. Fundamentally, we do not believe that there is any reason to completely excuse companies who engage in misleading and deceptive conduct that causes personal injury or death from the consequences of their actions. Having said that, we do recognise that there is a theoretical possibility that claims that would otherwise be brought in negligence may be brought under the TPA as a result of the state reforms. However, in our view this bill is not a proportionate response to the size of that problem. This bill is very different from state reforms to law of negligence. Where those reforms instituted thresholds and caps, this bill abolishes an entire cause of action.

In Labor’s view, the key problem is not that it is easier to bring an action under the TPA than in negligence; rather, it is that personal injury damages are capped under state and territory law but not under the TPA. If forum shopping is to emerge at some future stage, this will be the key driver. In our view the danger can be addressed by pursuing an option first suggested by the ACCC in its submission to the Ipp review. The ACCC proposed that damages for personal injury as a result of a breach of part V, division 1 should be aligned with those available under the relevant state or territory civil liability laws. I am pleased to say that Labor has been able to agree with the Democrats on a set of amendments that will achieve this outcome. These amendments have the benefit of reducing the motivation for plaintiffs to seek to evade restrictions under state and territory law while still providing consumers with a measure of protection under the TPA and maintaining incentives for companies to minimise risks.

I am aware that the minister has accused Labor of supporting amendments that will undermine the reforms of state and territory Labor governments. This of course is not the case. Our colleagues understand that these measured amendments will deal with the incentive for forum shopping in a balanced way. Labor has consulted widely on these amendments.

While the Insurance Council would prefer the bill in its present form, they have, as I am sure the minister is aware, indicated that they are comfortable that our amendments will deal with their key concerns about the impact
of the TPA on the effectiveness of the tort law reforms. Given this fact, I would hope that the government would be able to support these amendments so that this legislation can be dealt with expeditiously.

The amendments that we will move represent a proportionate response to what, at this stage, is just a theoretical problem. It is important to note that the amendments are also in keeping with the Ipp review recommendations for dealing with other provisions of the TPA that may found an action for personal injury such as those relating to unconscionable conduct.

Labor is firmly of the view that there is no case for completely removing the right of consumers to bring an action for personal injury and death under the TPA. Part V, division 1 of the TPA has played an important role in promoting consumer safety, and the complete removal of the ability of consumers and the ACCC to recover personal injury damages for breach of these provisions has the potential to expose consumers to increased risk.

Before I conclude, I would like to take this opportunity to point out once again that consumers will only benefit from state and territory tort reforms if there is a mechanism to ensure that savings generated by the reforms result in lower insurance premiums. ACCC data shows that on average public liability premiums have increased by 88 per cent since 1999. Tort law reform was presented to the community on the basis that it would lead to reductions in premiums. So far this has not taken place and there is no indication that the passage of the bill will alter that situation.

Together, three of the major players in the public liability market, QBE, IAG and Promina, recently reported profits in excess of half a billion dollars. This year QBE’s share price has increased by over 20 per cent, IAG is up by around 35 per cent and Promina has soared by over 50 per cent since listing in May. This is not an industry that is struggling any more. While premiums are forecast to continue to rise, there is evidence that tort reforms are lowering public liability claims costs. Market commentators have pointed to the favourable claims environment being experienced by the industry as one factor driving these results.

In NSW, the Attorney-General’s Department has estimated that the number of public risk actions, including personal injury matters, in the District Court has fallen by 25 per cent in the last 12 months. Regrettably, the ACCC’s August report on public liability insurance pricing indicates reluctance on the part of the industry to pass on the benefit of reductions in claims. Companies surveyed by the ACCC forecast that premiums would rise by a further 20 per cent this year and that at best tort reform will only moderate the increase by three per cent. Talk about having your cake and eating it too.

Last September, Labor introduced the Trade Practices Amendment (Public Liability Insurance) Bill 2002, which proposed to grant the ACCC the necessary powers to ensure that savings resulting from tort law reform are passed on to consumers—the intended beneficiaries. Labor repeats its call for the government to give the ACCC these powers to ensure that premiums are reduced. Tort law reform was not introduced simply to prop up the profits of the insurance industry. Labor looks to the insurance industry to play its part in ensuring that premiums are affordable so we can redress some of the problems that are still out there in the community because they are paying too much for insurance premiums.

Senator RIDGEWAY (New South Wales) (11.34 a.m.)—I also rise to speak on the Trade Practices Amendment (Personal Inju-
ries and Death) Bill 2003. The purpose of the bill, which was the focus of a recent inquiry, is to amend the Trade Practices Act to prevent individuals and, more importantly, the ACCC being able to take action and recover damages for personal injury and death where there has been a contravention of part V, division I of the TPA. Part V, division 1 of the TPA contains key consumer protection measures, the most commonly used being those that deal with misleading and deceptive conduct under section 52 and false and misleading representations under section 53. Currently, where there are provisions in part V, division 1 of the act that are breached, a person may recover damages from any loss they have suffered as a result of a contravention of the provision and the ACCC may also bring representative actions on behalf of the person who has suffered loss where any of the provisions in part V, division 1 are breached. The amendments that are contained in this bill will prevent actions for damages to part V, division 1 where the damage is or results in personal injury and death and will prevent the ACCC from being able to bring representative actions under this part of the act.

It is important to keep in mind that the bill is part of the government’s solution to the insurance crisis and implements recommendations 19 and 20 of the Ipp review of the law of negligence. By far the most widely held belief is that the rising number and cost of claims is the primary driver behind the cost of insurance. However, rather than implementing solutions that limit the number of claims, the central theme of all of the solutions has been to limit the amount that can be claimed in the first instance. Consumer advocates as well as the Australian Democrats have challenged this approach and the Australian Democrats still await preventative solutions from the government that concentrate on restoring some balance to the current reforms—balance being the element that is absent in this particular bill.

The Australian Democrats understand that in the past and since the collapse of HIH the insurance industry has sustained losses in both the public liability and professional indemnity classes of insurance. However, we are not convinced that there exists conclusive evidence that claims costs are out of control, given that HIH was the largest underwriter of public liability policies and HIH’s exit from the market removed a great deal of supply.

The inquiry into the bill highlighted the fact that the Australian Consumers Association and the Australian Plaintiff Lawyers Association, among others, did not support the bill and viewed it as unnecessary. However, in line with the ACCC’s submission in 2002, they suggested that a more palatable approach would be to ensure that taking actions under the TPA was not a more attractive alternative than taking actions under state tort law. The Australian Democrats are somewhat supportive of this view and believe the need to prevent forum shopping is the most important part of the Ipp review’s recommendations. However, at present there is no forum shopping to speak of, which brings into question why the government believes there is an urgency to abolish consumer rights in such an extreme way.

Given the comments of the insurance industry during the inquiry, I do not think that, if the bill were passed, we could expect automatic premiums savings for the community. In fact, the Trade Practices Act has had no impact on premium pricing in the past, and we are only debating this bill today because of assumptions about the future. During the inquiry, my colleague Senator Andrew Murray raised concerns that there is a potential that devolving damages caps to the states could also be problematic. As was highlighted in the inquiry, there is the danger
that individuals themselves might be disadvantaged, depending on the particular state that applies to their action.

While noting these concerns, the more critical concern is that, if this bill proceeds as is, an entire right of action will be abolished, leaving no options for consumers at all, regardless of state and territory differences. Whilst state and federal governments have convened numerous meetings to try to address the affordability and the availability of insurance, with a view to coming up with a nationally consistent approach, the government has been unable to ensure that the end products were consistent. As a result, there is a patchwork quilt of reforms across the entire country, which further justifies the claims of the insurance industry that more needs to be done before the community can expect savings in insurance premiums.

Contrary to the win-win situation that the Commonwealth and state governments have been promising, these inconsistencies—in my mind, at least—create a lose-lose situation for the community and make the task of preventing any forum shopping more difficult. But, as I will discuss later, the Australian Democrats believe this can be achieved without resorting to abolishing consumer rights altogether.

I want to talk very briefly about another bill that we dealt with last year. Another consideration that the Democrats have had in mind is the effect that this bill will have in light of the reforms made to the Trade Practices Act in 2002, when we dealt with liability for recreational services. That was about providing that recreational service providers were able to rely upon waivers accepted by consumers. The Australian Democrats supported the principle that individuals do take responsibility for their own actions. However, we could see the harm to consumers of a blanket acceptance of waivers if there were no corresponding assurances regarding safety standards employed by recreational service providers, which was why we proposed amendments at that time.

The outcome of reforms in 2002 makes it all the more important that we do not do away with consumer rights completely, which is what this bill intends to do. The tenor of the current legislation goes even further than other reforms that have been enacted so far. I believe that by doing away with rights of action completely we are tipping the balance too far and jeopardising consumer rights unnecessarily. This is especially so given that the government have not been able to secure any guarantees from the insurance industry that the community will in fact receive savings in insurance premiums as a result of the sacrifices they have had to make so far.

In their submission to the inquiry and in the media more recently, the Australian Plaintiff Lawyers Association highlight a number of scenarios where the passage of this bill, coupled with changes to the Trade Practices Act last year regarding waivers, could potentially have dire consequences for consumers because the incentives to ensure safe environments have largely been compromised.

An example highlighted in the inquiry was the scenario where a company sets up a bungy jump and promotes itself as the ‘safest bungy in Australia’. A backpacker, goaded on by her friends, agrees to participate. Taking advantage of the new legislation, the jumper signs a waiver to prevent her from taking any action for negligence and voluntarily assumes all of the risks associated with the jump. The bungy cord is due to be replaced at 500 jumps, but the operator forgot the cord that morning and planned to get it at lunch time. As the cord had been used for only 470 jumps and the morning’s jumps
averaged 20, he was not concerned. However, the backpacker group took the number of jumpers to 36 for the morning, beyond the safely limit, causing her to strike her head on the ground and resulting in serious injuries. As this scenario highlights, allowing a company to rely on waivers as well as be free of personal injury and death claims for misleading and deceptive conduct does allow companies to relinquish their responsibility for consumer safety.

Another consideration which must be taken into account in the passage of this bill is the fact that the TPA and the law of negligence have existed side by side for a number of years. Individuals have always had the opportunity to use the TPA for personal injury claims, but evidence shows that this has not been the case. And the fact that some state tort reforms have already been in force for the last 12 months has not resulted in any bypassing of existing laws. The Ipp report, which has been used as the report that has guided all of the changes regarding the insurance crisis, has highlighted that the relevant sections of the TPA are rarely used in order to claim damages for personal injuries and death. Therefore, it seems to me that abolishing rights and closing the door on consumers completely would be premature, extreme and unjustified.

The reason that the current reforms have been implemented or proposed is to provide greater certainty and to encourage insurers to re-enter the market, acknowledging that in recent years the public liability and professional indemnity classes of insurance have been unprofitable at times. The recent ACCC monitoring report, released in July of this year, provides an insight into the performance of the industry during the last year and suggests that insurers have returned to profitability in both classes of insurance.

While the Australian Democrats do not believe there has been sufficient justification for the large-scale limitations that have been placed on individuals’ ability to take legal action, we understand the goal of this reform is to prevent forum shopping. But I think we have to look at the bill in the bright light of day. It is yet another erosion of consumer rights and, given there is no evidence that part V, division 1 has been used to bypass tort law, actions under the TPA for personal injury and death should not be abolished, in my view. Were the bill to proceed as it currently stands, there would be the danger that the high standards and accountability that the TPA currently commands would be undermined and consumers would be further and unnecessarily disadvantaged. For this reason, the Australian Democrats will be moving an amendment to the bill.

As Senator Conroy has already mentioned, the amendment that the Australian Democrats and the ALP will be proposing is essentially designed to alleviate insurance industry concerns that state tort law reforms will promote forum shopping. But it will also leave the door open for personal injury victims who may not be able to recover damages under negligence law and where it is more appropriate to use the Trade Practices Act. As some of the inquiry submissions highlighted, there may be situations identifiable in the future where the failure to access provisions of the Trade Practices Act for personal injury and death may amount to a terrible injustice.

We will also be seeking amendment to ensure that the ACCC can continue to fulfil its current role and be able to take representative actions, because it seems to me that the ability of the ACCC to bring actions is important for the maintenance of high standards of conduct and is an important proactive tool to avoid future conduct that contravenes the act. In my view, the ACCC could hardly be
accused of bringing unmeritorious claims to the attention of the court and, as the inquiry has highlighted, the decision to take representative actions is not taken lightly. Consideration has to be given to available remedies, the public interest aspects of the case and the consequences of the particular conduct.

Given that division 1, part V of the TPA is not readily used to pursue damages for personal injury, I am certain that abolishing the right altogether is unnecessary, and I believe that this amendment is a vast improvement to the current bill. I also believe that, if the assumption about the future, held by the Ipp review and insurance industry, proves incorrect, and forum shopping does not increase, the effects of this bill on consumers will be minimal. At the same time, we believe that these amendments should deliver the certainty that the insurance industry is seeking and has been calling for. Given the limitations that have been made to consumer rights over the absence of affordable and available insurance, the government must, as a first priority, ensure that the insurance industry plays its part in delivering on its end of the bargain.

Senator NETTLE (New South Wales) (11.47 a.m.)—The Trade Practices Amendment (Personal Injuries and Death) Bill 2003 is the latest instalment in the government’s program to curtail the rights of citizens who suffer as a result of another person’s negligent behaviour. We have seen one attempt after another to protect the interests of insurance companies ahead of protecting the rights of injured people. In this case, the government is seeking to amend division 1 of part V of the Trade Practices Act 1974 to remove the right of a person to take legal action for damages for personal injuries and death as a result of misleading or deceptive conduct. The bill also prevents the Australian Competition and Consumer Commission, the ACCC, from taking action on behalf of a person who has suffered loss as a result of breaches of part V of the act.

The government has relied upon a sense of panic in the community, generated by the collapse of insurance company HIH and medical indemnity provider UMP and a misconception about damages awards in a handful of cases, to drive its program. It has been aided and abetted by the states and territories, which have signed on to the so-called reform agenda—that is, the curtailment of rights under tort law. Governments have been far less diligent in pursuing some sort of long-term care program for people who are injured. In the absence of such a program, it is unacceptable to be restricting and, in this case, removing rights to seek funds to assist a person to provide the care that they need.

The government claims that the measures in the bill are aimed at limiting public liability claims costs in order to remove pressure on insurance premiums and assist in delivering affordable liability insurance. There is in fact no justification for this legislation. It is based on the view, lacking any evidentiary support, that, because the states and territories have restricted the right to sue for damages, people will rush to use this provision under the Trade Practices Act.

As the Australian Plaintiff Lawyers Association has noted, the TPA is not frequently used to recover compensation for personal injury or death. In evidence to the Senate Economics Legislation Committee inquiry into this bill, the association’s National President, John Gordon, said that this part of the act has always been limited in its utility. For example, to establish liability under section 52, it must be shown that a corporation acting in trade or commerce is guilty of misleading or deceptive conduct.
Even if we accept the government’s contention that the raft of measures by state, federal and territory governments will reduce insurance premiums, governments have done nothing to ensure that insurance companies pass on any cost savings to policy holders in the form of lower premiums. The insurance companies must be laughing loudly behind closed doors. Business journalist Mark Westfield, writing in the *Australian* on 29 August, noted the profit reports of QBE, the profits of which had more than doubled again for just six months; Suncorp, which had a net profit of $384 million for the year to 30 June; Promina, which had a net profit of $135 million for the six months to 30 June; and IAG, which had a profit of $153 million in the year to 30 June. We agree with Mr Westfield’s observation that:

It is breathtaking that politicians keep giving the industry concessions but don’t seek offsetting undertakings to reduce premiums to stop the gouge.

The government’s arguments in support of this bill are confusing and contradictory. The government claims that removing this right to seek damages under the Trade Practices Act will not leave people without a legal remedy, because they can take action under common law. Of course, that common law now contains new hurdles: time limits on commencing actions and caps on damages. However, if people have access to the common law, why does the government assume that they would take action under the Trade Practices Act in the first place? There are particular tests to meet in proving a claim under the Trade Practices Act, for misleading and deceptive conduct, and this provision is used occasionally, not regularly.

The government does, though, acknowledge that some claims for personal injuries or death as a result of conduct prohibited under this section of the Trade Practices Act will not succeed at common law—that is, people will be worse off. This is further acknowledged in the explanatory memorandum to the bill, where the government states:

These amendments may lead to some increase in social security, Medicare and related expenditure. This is because there may be circumstances where a person is unable to pursue a claim under tort or contract law but who might have succeeded in a claim for damages under the TPA for personal injuries or death as a result of conduct in contravention of Division 1 of Part V.

This bill will have financial implications, although the government has not been particularly forthcoming about the extent of them. Treasury officials failed to clarify the matter when appearing before the Senate inquiry into this bill. In answers to questions taken on notice they simply referred back to the explanatory memorandum, adding:

While there is expected to be no significant financial impact on the Commonwealth from the passage of this bill, it is not possible to provide a more detailed assessment of that financial impact because of a lack of relevant data.

In other words, the government has no idea of the financial impact on the public purse, let alone the burden individuals will carry as a result of these amendments.

The Australian Plaintiff Lawyers Association has made some particularly important points about the context and implications of this bill, which are worth mentioning in this debate. Association president Rob Davis, writing in the *University of New South Wales Law Journal* earlier this year, observed that many of the legal rights that governments have legislated away in response to the Ipp review of the law of negligence were abolished ‘to fund the market driven mistakes and excesses of insurers’. He went on:

The local campaign follows the blueprint for industry driven attacks on citizens’ rights refined in the US over two decades ... The goal of the campaign is to confuse the Australian public about the true causes of the current crisis in the insurance...
industry and, in the process, convince them to surrender valuable legal rights.

Mr Davis pointed out that, according to the Productivity Commission, the amount of civil litigation has declined gradually over the past seven years. The rate of claims against insurance policies has declined since the mid-1990s. Australian general insurers have not suddenly experienced a negative underwriting result; claim costs have exceeded premium income for 20 years. Rather, what changed recently were the investment returns of insurance funds, the source of their profits for two decades. This has forced insurance companies to increase premiums. Mr Davis cited a 1999 United States study on the effects of tort law changes in that country covering 25 years that showed no relationship between tort law reforms and premiums. He concluded that, as the current crisis in insurance has nothing to do with litigation or an increase in Australians’ propensity to blame others for injury, restricting civil litigation rights will not resolve the crisis.

Denying an injured person the right to take action against these provisions troubles the Greens, but we are also concerned about the conclusions business and the community will draw from the removal of this right whilst retaining the right of a person or corporation to sue for monetary loss. The Australian Labor Party and the Australian Democrats are proposing amendments to pick up concerns raised in the committee inquiry. These deal with giving courts the capacity to consider contributory negligence—a concept that applies in the case of tort law but which the High Court has found cannot be considered in cases under the Trade Practices Act—and putting limits on payouts which accord with relevant state tort law.

There may be some unintended consequences in the case of the contributory negligence amendment, and I will be seeking clarification of that from Labor during the committee stage of the debate. Whilst the Greens disagree with the caps and restrictions that the states and territories have imposed on civil liability litigation—and have voted against these measures in state legislatures—we will be supporting the second amendment, as it improves the bill by retaining the capacity to take action under the Trade Practices Act, circumscribed though it may be. The Australian Greens acknowledge that there are problems with the current arrangements for seeking redress for personal injury and death. I mentioned them in speaking on the government’s medical indemnity insurance bills last year.

The adversarial system does nothing to reduce the incidence of adverse events or to address systemic causes of problems. It does the opposite, because the threat of legal action works against a culture of openness—a necessary prerequisite for reducing the incidence of adverse medical events. Nor is the current system fair. Two people who suffer a similar adverse outcome or medical misadventure may have the same requirements of care and income replacement but under the existing system may be treated very differently, based on chance. One may be able to make a successful legal claim by proving negligence and the other may not.

Our focus needs to be on prevention, on ensuring adequate treatment and care and, as far as possible, on rehabilitation. We are a long way from meeting these goals, although this kind of approach is not new. Justice Owen Woodhouse conducted a royal commission into workers compensation in 1967 and recommended a no-fault approach to compensation for personal injury. A parliamentary inquiry followed the royal commission, reporting in 1974, but no scheme emerged. More recently there was the Neave report, commissioned by the Commonwealth, state and territory health ministers
and released in September last year. Professor Marcia Neave’s report proposed an integrated package designed to reduce the number of adverse medical events and minimise litigation by improving patient safety; reduce the need to litigate and encourage early finalisation of disputes; provide fair compensation to people who suffer loss as a result of medical negligence; and ensure affordable and sustainable insurance premiums.

Some people argue that we cannot afford a no-fault scheme, but the Greens say that we cannot afford not to investigate this option. The Commonwealth government needs to move quickly to investigate a system of long-term care for people who are injured that will achieve the objectives identified in the Neave report instead of continuing to tighten access to the existing arrangements, which do nothing to ensure fair and just outcomes or address the causes of injury and death.

On this point, we agree with the Australian Medical Association that the government’s measures to address the medical indemnity crisis are unsustainable, though we note the current problems were caused by the medical indemnity insurer and the Commonwealth was warned years ago. The announcement by the Minister for Health and Ageing, Tony Abbott, of a review to address this matter and to report by the end of this year is just another quick fix and is completely inadequate. This is an issue that affects every single Australian. The government needs to instigate a public inquiry into a national, public, no-fault compensation scheme along the lines of the New Zealand accident compensation scheme.

Whilst we recognise the shortcomings of the existing approach to negligence and personal injuries, the Greens will not support restricting the rights of people to seek damages that are used to help them meet the costs of ongoing medical care needed as a result of negligent or deceptive behaviour by somebody else. The Trade Practices Act provisions that the government wants to abolish are important to individuals and, in the case of groundbreaking litigation, are important in changing poor and even dangerous corporate practices. This bill sends entirely the wrong signal on the matter of responsibility. It removes an important right without justification and it will leave some people worse off without just cause. For these reasons, the Australian Greens will be opposing the bill.

Senator BUCKLAND (South Australia) (12.01 p.m.)—The Trade Practices Amendment (Personal Injuries and Death) Bill 2003 will remove the ability of consumers and the ACCC to recover damages for personal injury and death sustained by consumers as a result of conduct that breaches the Trade Practices Act. The key provisions of the act are part V, division I, section 52, which prohibits corporations from engaging in misleading and deceptive conduct; and section 53, which prohibits false representations that goods or services are of a particular standard, quality or grade.

It is said that the reforms before us are necessary to support state and territory tort law reform and have been introduced in response to the rapid increase in public liability insurance premiums over the last few years. Particularly notable here is the case of HIH. More specifically, the intention of the bill is to address concerns about forum shopping. It is my view that what we are being asked to support here through this bill will in fact make forum shopping easier and less beneficial to those who have been injured. The intention of the bill is to address concerns about forum shopping. This would mean that plaintiffs faced with tougher negligence laws would seek to manipulate their action to bring it within the Trade Practices Act.
The Labor Party support moves that would prevent forum shopping, but we also say that any proposed changes should aim to limit rather than remove the right to sue for personal injury damages under part V, division 1 of the act. This goes further than what the government is proposing. The government argues that the removal of the right to seek damages under the Trade Practices Act will not adversely affect consumers because these consumers still have the ability to seek damages under state law. In my state of South Australia, there can be no assurance that an affected consumer will have the protection suggested in the government’s proposal. In fact, the South Australian government is waiting for the Commonwealth to pass this bill before proceeding with its own amendments, so there can be no assurance or feeling of comfort for potential applicants. In my view, what the South Australian government is doing is wise, given some of the uncertainties of the federal government’s proposals.

One of the things that seems to be unclear from a policy perspective is whether the bill will define standards for different forms of loss under the Trade Practices Act. I am thinking here of loss of personal injury or death versus economic loss. From my reading of it, the bill has the potential to remove the culture of care that has developed in Australia since the Trade Practices Act was first enacted. As a consequence of this, I have a fear that consumers will be exposed to greater risk of injury, hence they will face greater real loss. While it can be said that few cases of personal injury have been brought under part V, division 1, the potential for liability under the act has encouraged companies to put a real emphasis on safety and protecting themselves from potential litigation for unsafe acts or products.

It is interesting to note what the Law Council of Australia saw as the positive effect of the Trade Practices Act in its evidence to the Senate Economics Legislation Committee. I will just quote one piece from that from a witness, Mr Lavarch, who said:

One of the consequences of that legislation, I think, has been that it has significantly improved the standards of behaviour that we have seen across the whole corporate world, in terms of ... product safety and the actions of corporations in terms of their potential to cause physical harm to individuals, there has been this strong benchmarked potential liability imposed upon them. On the whole, I would say that it has led to general improvements and one should be loath to go down a path of in a wholesale way taking out whole areas of action.

This seems to me to be a very commonsense observation but it does not sit all that well with the government’s argument that removal of the right to seek damages under the Trade Practices Act will not adversely affect consumers because they will still be able to seek damages for negligence under state law. The Law Council of Australia has, in its remarks, taken into account the lack of protection inherent in some states’ laws.

The ACCC, in its submission to the government-initiated Ipp review, which produced the report titled Review of the law of negligence, was rightfully strong in its opposition to the removal of liability for personal injury. Based on the literature known as the economics of accidents, where it is suggested that the cost of accidents should be assigned to the party that could most easily and cheaply take the actions needed to minimise the risk of accident, the ACCC made a number of good points in their submission and I think it is worth reflecting on these for a moment.

Firstly, the ACCC pointed out that section 52 of the Trade Practices Act provides an important incentive for business to behave fairly and have regard for consumers’ safety. Without this important remedy, the standard
of behaviour that consumers are entitled to expect may break down. It seems to me that consumer protection has to be first and foremost in relation to this act and any change to the act that alters or shifts the onus for consumer protection largely renders the act impotent. Unless changes are as near as practically aligned to those state and territory civil liability laws as they can be, that is exactly what we will be left with—an impotent piece of legislation.

The second thing the ACCC pointed out was the limiting of the scope of part V of the act. They said this would make the bill inefficient in that it would force consumers to incur greater search costs to determine which suppliers were reliable. Based on that, it is my view that we could be confronted with a grossly unfair act which, rather than protecting consumers, would, in fact, expose them to a lack of protection from unethical companies. They would be exposed to greater costs and confusion and it would not provide the remedial actions that could be taken to address their concerns. In addition to that, you would have this problem of shopping around to find the best jurisdiction to seek redress.

The final point I wanted to refer to from the ACCC’s submission is their view that such a limitation also undermines the competitive process by allowing firms to engage in misleading and deceptive practices to win customers at the expense of those who do not. It would be a case of gain for the unethical and the cheats and loss for the fair and the honest within the industrial community. That simply would not be tolerable.

It is interesting to note that the Ipp review accepted these propositions put forward by the ACCC and felt they were valid considerations but argued that the review had to balance the submission against the inherent value of personal autonomy and the desirability of persons taking responsibility for their actions and safety. I am always concerned when individuals are given the responsibility to care for their own actions when it could have devastating effects on others. You need a strong regulatory forum and you need a strong and effective method for redressing the irresponsible within the community.

The views contained in the Ipp review show a lack of courage on the part of that review, particularly as its terms of reference required that it proposed reforms that would meet the objective of limiting liability and the quantum of damages arising from personal injury and death. The arguments by the review panel lack substance because there can be no reason to excuse companies that engage in misleading and deceptive conduct, particularly conduct which causes personal injury or death as a consequence of their actions.

The terms of reference gave the review panel a chance to grasp the nettle. They chose rather to weaken that part of the act that is there to protect consumers. Part V, division 1 of the Trade Practices Act has, over the years, played an important role in promoting consumer safety. The complete removal of the ability of consumers and the ACCC to recover personal injury damages for breach of these provisions has the potential to expose consumers to increased risk. At the end of the day, legislation should be in place to guard against exposing consumers to risk.

An example of how a person could be affected would be a drug company which markets a drug, claiming that the drug will ease the effects of morning sickness suffered by women during pregnancy but knowing that tests have shown that the drug can result in horrendous birth defects in a substantial number of cases. So while the drug is fine
for easing morning sickness, a side-effect is that you could have defects in the child when it is born. To protect itself, the drug company destroys its tests. A litigant would have all the difficulty in the world to pursue it to the end. That is negligence. It is a hypothetical case, and I guess drug companies at the moment are easy to pick on. There are many good drug companies producing drugs of great benefit to society, but there have also been difficulties with drug companies. It is one example of where a litigant would have all sorts of difficulties, because there would be no evidence tracing fault back to the company. Where does the litigant turn to? The best protection that can be offered would be through the act as it exists now.

It is our responsibility to do all those things necessary to guard against such cases and to offer an avenue of genuine redress. That avenue of redress could be substantially reduced by what the government is seeking to do in this bill and be at greater cost to consumers. It could also lead, as my friend Senator Conroy spoke of, to forum shopping, and that is something that should be guarded against. Evidence presented to the Senate committee showed that litigation under part V, division 1 of the Trade Practices Act had the potential not to strengthen but to undermine state and territory tort law reforms, while the arguments put forward by those supportive of the government’s proposed legislation were weak and unconvincing. The amendments in this bill implement recommendation 19 of the Ipp report, preventing individuals from recovering damages for personal injury and death brought about by a breach of part V, division 1 of the act. Arguably, these amendments reduce consumer rights to redress under the Trade Practices Act. For these reasons it is my view that the proposal being put forward by the government to alter the strength of that act should be opposed and should be defeated.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.20 p.m.)—I rise to speak on the Trade Practices Amendment (Personal Injuries and Death) Bill 2003. I should point out that I am not closing the debate on the bill; I am rising as one of the many interested senators who are concerned about the impact that insurance premium rises are having on the wider community, particularly in the area in which I hold ministerial responsibility—sport and the arts.

I was a bit shocked to hear the closing comments of Senator Buckland opposing this bill. My understanding is that all six Labor states support this bill. Six Labor governments around Australia support this bill and we have just heard that the Labor Party in this chamber opposes the bill. There is a bit of a debate on Senate obstruction these days and whether the debates in this chamber are of a constructive nature or simply of a blocking nature. Those who may be listening to this debate and who listened to Senator Buckland and the comments that he made should understand that Senator Buckland’s views are not supported by any Labor government of which I am aware around Australia. The next Labor senator to speak in this debate can correct me if I am wrong, but I understand that to be the case.

The public liability and professional indemnity insurance crisis has had a significant impact on the Australian community and despite its limited jurisdiction in this area—and senators will know that the main constitutional responsibility in relation to insurance issues rests with the state governments; perhaps that was not clear from what was said by some of the Labor speakers—the Australian government has taken a lead in trying to progress an appropriate reform agenda. This has involved commissioning the Review of the Law of Negligence—the so-called Ipp review—and chairing ministerial meetings involving all states and territories. At this
stage I would like to congratulate the Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, on the lead role she has taken in this area in trying to progress reforms with the six Labor states and the two Labor territories. I know Senator Coonan understands that these are key issues, not only in relation to the wider community but particularly in relation to the arts and sports communities. I thank her for the interest and support that she has given.

Senator Kate Lundy recently put out a press release—and I shall touch on the facts of this a little later in my remarks—looking at the rises in insurance premiums that are being faced by some of the surf lifesaving clubs. I made the point then, and I make it today in this chamber, that this is an issue on which I think Senator Lundy, in attempting to score cheap political points, makes a serious mistake. This is a case where we have to work together to bring about legal changes so that the downward pressure on premiums can be increased. We all understand that there are balancing issues involved and we understand that these are often complex issues but I again put on the public record that Senator Lundy can play a constructive role.

One of the big issues that have been brought to my attention is the inconsistencies between the state laws relating to public liability insurance matters. The state governments are Labor governments and Senator Lundy is a Labor shadow minister. Those Labor governments have the key constitutional responsibilities in this area and I will be looking very closely to see what constructive action Senator Lundy proposes to take in this area because I believe that she can have an influence. Rather than attempting to score weak political points with press releases, Senator Lundy can get down to doing some hard work and consulting with her Labor colleagues. And she can bring to the attention of her Labor colleagues in the states the problems that inconsistency in legislation is causing. I put Senator Lundy on notice that this is an issue that I will continue to press with her.

At the meeting of state treasury ministers in November 2002, treasury ministers agreed to a package of reforms implementing key recommendations of the Ipp review. Ministers agreed to implement these key recommendations, which go to establishing liability on a nationally consistent basis, and each jurisdiction agreed to introduce the necessary legislation as a matter of priority. The Australian government is working to support nationally consistent reform of the law of negligence, and amendments proposed to the Trade Practices Act will ensure that it cannot be used to undermine state and territory civil liability reforms in relation to claims for damages and personal injuries or death. States and territories—and I make this point, Mr Acting Deputy President Marshall, because I know that you are a man of considerable influence in your own state—have demonstrated their strong support for this bill. The Labor government in Victoria have demonstrated their strong support for this bill and therefore I think it is beholden on you to represent the views of that government and not to attempt to undermine, by any votes or amendments, the general thrust of this bill. I will be monitoring your performance on this in particular because I know that you always seek—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Thank you, Senator Kemp. You are not trying to engage me in debate, are you?

Senator KEMP—No, I have noted that you sometimes seek to play a constructive role, so I draw to your attention exactly what your Labor colleagues in state governments are saying. I am aware that New South Wales and Tasmania have passed amendments to
make the equivalent changes to their own fair trading acts, and other jurisdictions are expected to make similar amendments. So, as I said, I think it is beholden on this chamber to act in a constructive and responsible fashion.

The Insurance Council of Australia has indicated that enactment of this bill will ensure that cost savings resulting from state and territory liability reforms will be available to be passed on to consumers with confidence and that these savings will not be eroded by claims costs arising from alternative causes of action dealt with in this bill. However, the level of cost savings and the ultimate impact on premiums will therefore depend on the nature and extent of liability reforms in each of the states and territories. I am concerned about the availability and affordability of public liability insurance. It continues to be a major issue of concern to so many not-for-profit arts and sports organisations. And I am particularly concerned about the impact on the not-for-profit arts and sport organisations that fall within my portfolio responsibilities and I continue to work closely with Senator Coonan on their behalf to ensure that their interests are fully considered in the response to the insurance crisis.

Some of these actions in relation to the concerns that have been brought to the attention of Senator Coonan I think have been very productive. Arts and sports organisations have been able to say that they have had at least some of their concerns addressed. In particular, for example, the definition of ‘recreational services’ in the Commonwealth Trade Practices Amendment (Liability for Recreational Services) Act 2002 includes a sporting activity or similar leisure time pursuit. This act amends the Trade Practices Act to allow people to sign waivers and to assume the risk of participating in inherently risky recreational activities. The specific inclusion of sport in the definition of recreational services was retained despite a suggestion from the Ipp review that would have resulted in it being removed.

While this particular instance represents a good outcome for the sporting sector, it is disappointing that definitional issues and legislation dealing with waivers have not been consistent across the states. I raised this issue at the most recent Sport and Recreation Ministers Council meeting. Ministers agreed to examine the impact of current public liability insurance reforms on sport organisations and, where appropriate, raise issues with their treasury counterparts. Legislative inconsistencies and high premiums continue to be issues of concern for many organisations. I know that within my portfolio legislative inconsistencies across jurisdictions have made the implementation of national policies a challenging task. The Australian government continues to receive representations from organisations expressing frustration that the pace and extent of reform has differed from jurisdiction to jurisdiction, specifically in terms of providing exemptions to accredited rescue organisations from liability when acting in good faith and in emergency and rescue situations. The Prime Minister, Senator Coonan and I have been working to improve the position of these organisations.

Senator Coonan has raised the position of emergency rescue organisations with treasury state ministers on a number of occasions, to ensure that the work of organisations like Surf Life Saving Australia is not compromised. At their most recent meeting, on 6 August, ministers agreed to clarify the extent to which current legislative provisions operate to give adequate protection for the organisations responsible for emergency rescues, and to report findings at their next meeting. Surf Life Saving Australia is one example of an organisation that is suffering
as a result of inconsistent legislative reform. Surf Life Saving Australia only very recently secured public liability insurance for the coming year, with premiums increasing by 152 per cent. There are other examples that one can quote. Time prevents me from going through those in some detail. The general principle remains that the inconsistencies of response, the definitional issues, are causing problems to these organisations. I congratulate Senator Coonan in her efforts to work towards achieving consistency across the states, and I hope that this work will ultimately prove to be very fruitful.

At the second meeting of treasury ministers on 30 May 2002, the Australian government indicated it was prepared to take a leadership role to deal with risk management where required—and it has demonstrated its commitment in a number of ways. Certainly within the arts and sport portfolio there is a range of work being undertaken around risk management. Research undertaken by the Australian Sports Commission showed that sports organisations were generally not well informed as to their insurances, levels of cover, exclusions and claims history. This indicates that legislative change alone will not solve the current insurance crisis for sporting organisations.

The Australian Sports Commission, I am pleased to report, has taken a proactive and hands-on role in supporting national sporting organisations with their insurance challenges. The commission is providing specific risk management education programs to national sporting organisations and is currently working with the legal fraternity, insurance and sports industries to develop sport-focused risk management tools and insurance awareness programs. It has also introduced minimum risk management requirements with respect to funding agreements with national sporting organisations. There have been, I am pleased to report, a number of success stories resulting from action that organisations have taken to improve and strengthen their risk management practices. Let me just instance one case. I understand that Cycling Australia have demonstrated their diligence in risk management to their insurers, and this has resulted in reduced premiums.

Let me conclude by saying that the Australian government has worked, and continues to work, hard to maintain the momentum of reform. It is important that the proposed amendments to the Trade Practices Act be passed, to prevent the act from undermining state and territory reforms, to support the benefits of state and territory civil liability reforms being achieved, and to assist in delivering affordable public liability insurance by reducing some of the pressure on insurance premiums.

Senator HARRIS (Queensland) (12.35 p.m.)—I commence my contribution to the debate on the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 by placing on the record that One Nation is very concerned about the direction and the cost of insurance in Australia and in our economy. We have moved from being a very low-litigant society, even in relatively recent history, to being one in which at the drop of a hat somebody will turn around and sue somebody else for an incident which in the past we would have accepted partial responsibility for. Our society has moved away from accepting responsibility for the decisions that we make when we participate in certain activities, and that may be from driving a car down the street, to going out to a community hall, to participating in a function, or to participating in a physical activity like motocross, horse riding or skiing—there are numerous examples that we can use.

Now, rather than accepting the responsibility for making the decision to participate,
we have moved into this area of practice where we tend not to accept that responsibility. We lay the blame on somebody else—when we are injured by diving into the ocean, we sue the local council, or when we fall off the side of a private swimming pool on a person’s property that we had not even been invited to, we have the temerity to turn around and sue the owner. As a society, we have to come back to a situation where we are prepared to accept some of the responsibility for participating in the activities that we set out to participate in.

The issue of insurance is even impacting on academic people who largely work in universities and provide services. It could impact on a statistician crunching numbers for somebody or it could impact on a company that is largely giving environmental advice. This is not an aspect of personal injury, but we are having so many problems now with personal injury and death because of the other pressures that are being placed upon our insurance industry. One Nation does support the government in their attempts to rein in this ever escalating cost of insurance.

One Nation is also using this opportunity, while the bill amending the Trade Practices Act is in the committee stage, to move amendments to the bill which will amend section 46 of the act. The reason, again, that we will be moving these amendments is that the pressures on the decisions that are being made in this country in relation to market competition are also having adverse effects on our society and the way in which we conduct our business. Section 46 of the Trade Practices Act states that a firm with a substantial degree of market power must not take advantage of that power for an anticompetitive purpose. Many small businesses have expressed frustration with this provision of the act and, more importantly, with how it is actually being administered. Typically, the problem for plaintiffs has been establishing that a defendant with substantial market power has acted for an improper purpose. The issue came to a head in 2002 and 2003 in the context of the Boral case decision by the High Court. The case is widely seen as strengthening the position of big business in fighting off allegations of misuse of market power by small business.

The reason I am raising this issue in the context of this bill is to move an amendment that will bring into the act a provision that will clearly set out what the objects of the act are. My comments are in context because they go directly to the Trade Practices Act. The objects clause—and I indicate to the chamber that I will move this amendment in the committee stage—would insert at the beginning of the Trade Practices Act a set of objects. Those objects would be: to enhance the welfare of Australians through promoting competition and fair-trading and the provision of consumer protection; to encourage the expeditious settling of marketplace disputes by mandatory dispute resolution mechanisms including mediation; and to minimise legal technicalities in the litigation of marketplace disputes that should be settled in a reasonably simple manner. Because of the court’s decision in the Boral case the legal arguments around the issue are becoming such an intense cost to industry that they reflect what is happening in the insurance industry as well. There is a comparison between the issue that I am raising and the insurance side of the bill that we are debating.

The objects clause would also ensure that, when disputes in relation to competition and fair trading arise, the act is used to arrive at a resolution which is focused on averting the anticompetitiveness or unfair trade practice which is the subject of the dispute. The amendments in relation to section 46, if they are successful and accepted by the chamber, will take the focus away from the technical
arguments that are currently being used and put the focus on the uncompetitive sections that are currently being overlooked.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

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

Australian Broadcasting Corporation

Senator SANTORO (Queensland) (12.45 p.m.)—As I have stated in this place previously, the ABC is a vital element in our nation’s broadcasting. Its standing ensures that it wields great influence and plays an indisputable role in shaping debate within Australia, as well as in influencing the way in which we are perceived internationally. Much of this it owes to its position as a taxpayer funded organisation with the resources needed to provide a first-class broadcasting service. That taxpayer status imposes on the ABC a duty to be independent. But it imposes another duty, part of the first but arguably even more important: it must be balanced, non-partisan and accountable. It is proper—actually it is essential—that the ABC be rigorously held to this duty and not only honour it fully but also be seen to honour it fully. When it fails to do so, that is a matter of the greatest importance and should be and must be a cause of deep concern.

There is here an issue that I have raised before and will raise again until it is fully resolved. In my view it is completely unacceptable that a policy remains in place under which ABC news and current affairs staff are prohibited from referring to Australia’s service men and women as ‘our troops’. In my view Australians are rightly and unashamedly proud of Australia’s service men and women, who accept the dangers of going in harm’s way for the sake of defending our country and our values. I believe that is the view of the vast majority of Australians too. Our troops are our sons and daughters, our brothers and sisters, our husbands and wives. It is fit and proper that our national broadcaster should refer to them as ‘our troops’ because we are proud of them and grateful for what they do.

The ABC refuses to accept this. It explicitly prohibits Australian service men and women from being described in the national broadcaster’s news and current affairs programs as ‘our troops’. This is an insult to the Australian Defence Force and all those who serve in the three armed services. But the greatest damage it does is to the ABC, for it highlights a narrow-mindedness, a lack of generosity of spirit, a detachment from the perceptions and understanding of ordinary Australians that can only undermine the ABC and impede it from achieving its mission. I have called several times for this policy that prevents Australian service men and women from being referred to as ‘our troops’ to be revoked. I now call for it again. And let me say this: for as long as that policy remains in place, I will continue to call for its revocation.

Resolving that matter is, however, merely a first step. It is also essential that the ABC take seriously the issues of bias that I have raised before and that remain pressing. I am deeply disappointed by the dismissive way in which the ABC’s managing director responded to the findings of the ABC’s Independent Complaints Review Panel review of the complaints brought by Senator Alston. I believe there are many flaws in the panel’s review. It plainly sought to set the bar so high that only the most blatant instances of prejudice would be counted as amounting to impropriety.

But the facts are clear—even that panel found 12 instances of serious bias. Additionally and separately, in 16 instances it criticised the behaviour of the journalists in-
volved generally for failings which seem inconsistent with the standards the community expects from the taxpayer funded ABC. In August I wrote to Mr Balding following the ABC’s written responses to questions placed on notice at the estimates hearing in May. Mr Balding wrote back to me last month and several things he said in that correspondence were interesting. But there was one area in particular where I felt he demonstrated the clear fact that, unless change is forced upon it, the ABC will remain a virtual law unto itself in matters of bias and lack of balance.

Responding to my question about why it should be that leftist—or ‘politically acceptable’ organisations—were not identified as promoting that particular class of political view when being used as talent by the ABC when right-wing think tanks were thus identified, he said this:

Your comments … appear to suggest that the ABC should label organisations when reporting their comments. The ABC’s role is to offer a broad range of views without itself making value judgments about the political or other perspective that a group represents.

Of course, if only the ABC would do that—just that—without the subliminal subtext, then everything would be fine. Mr Balding went on to say:

While I appreciate the point you are making, I believe that if the ABC were to ‘label’ groups as you have suggested, we could rightly be accused of over-simplification and stereotyping.

Dealing with a rash of complaints in that area, of course, would present a wholly new and entirely novel challenge for the ABC’s in-house complaints review process. It would give them all a nice change of air—a sea change perhaps, something of real value. There is nothing like a real challenge to get the circulation going. Mr Balding concluded:

We prefer to present a range of views in accordance with our published editorial policies and leave it to the audience to make up their own minds about the merits of these different perspectives.

That is how the system is supposed to work, of course. The problem is that it is not working that way. The problem is that the ABC still does not see that there is a problem. Let us be clear about what is at issue in these cases.

What is at issue is the use by individuals of a taxpayer funded service as a platform for expressing their own prejudices under the pretence of reporting on current affairs. This is an abuse of public moneys. It is completely at odds with the purpose for which these individuals were hired and it is inconsistent with the responsibilities they have been given. It ought to be completely unacceptable, first and foremost, to the management of the ABC. I find it incomprehensible that those individuals who have been found to so abuse their office should simply be allowed to continue as if nothing had happened. It is completely unacceptable that the presenter of AM, Linda Mottram, who has displayed what even the panel describes as ‘serious bias’, should escape censure. It does nothing to convince the community—the community that funds the ABC—that the national broadcaster is serious about balance, accountability and professionalism.

There are other individuals who also, in my view, deserve censure. One of them is John Shovelan, whom the independent complaints panel found had basically indulged his personal penchant for bad-mouthing the American President from his post in Washington. Another is the head of news and current affairs, Max Uechtritz, who is still stoutly defended by managing director Russell Balding over his highly questionable judgment in conference remarks overseas.

But it is not only the corporation’s failure to act in this respect that is a matter of grave
concern. The panel’s report, defensive of the ABC as it is, surely made one thing clear. The ABC’s much-vaunted complaints review executive is a sham. Even the panel notes that the complaints review executive, when it upheld a complaint, only did so in a grudging way. Obviously there were many faults that the panel found which the complaints review executive had chosen to ignore. This is obvious. It is incontestable. Yet the corporation treats it as if it had not occurred. Rather than admit there is a problem that needs to be addressed, Mr Balding merely notes the panel’s ‘taking a different view to the Complaints Review Executive on some issues’.

I believe that the ABC must make it a priority to review and improve its processes for dealing with complaints. The fact of the matter is that the ABC’s internal complaints-handling processes are far from meeting reasonable expectations. They buy the ABC time, they help put off all but the most determined and they create a pretence of objectivity, but they are merely ways of shielding those who would abuse their positions and keep the community’s resources from genuine and effective accountability. A complete overhaul of those complaints procedures is therefore needed.

Since I first raised these issues in this chamber, I have received correspondence from an organisation that calls itself the Friends of the ABC, and I want to read that correspondence to the Senate. The president, Mr Gary Cook, wrote to me and said:

You were reported in the Sydney Morning Herald of 17 September, 2003 as having written to ABC Managing Director, Russell Balding, describing yourself as a “true friend” of the ABC.

Please desist from describing yourself as such. To do so is an insult to thousands of members of Friends of the ABC throughout Australia who are passionate devotees of the ABC with no vested interest but to defend the ABC from unwarranted attacks on its editorial independence.

You and your colleague Senator Alston should be held accountable to the Australian taxpayer for wasting countless hours of ABC staff time in answering your baseless allegations.

That was from the Friends of the ABC. I wrote back to them and said:

Dear Mr Cook

I have received your letter of 19 September 2003. Allow me to confirm to you that the Sydney Morning Herald accurately reported me as a true friend of the ABC.

It is always pleasing to be accurately reported and to have one’s views correctly interpreted. Let me also confirm to you my unshakable belief that there are many more (true) friends of the ABC than those who are to be found within the incorporated NSW entity of which you are the president.

These self-proclaimed defenders of the ABC seem to believe that they have the ABC’s best interests at heart. They are passionately convinced that all those who question how the ABC conducts its affairs are, by definition, the corporation’s enemies. I have no reason to doubt these people’s sincerity, but I do believe that, with friends like these, the ABC hardly needs enemies for, like all mere flatterers, they are fake friends who actually cause more harm than good.

If the ABC is to fulfil its charter and rise to its responsibilities, thereby protecting and preserving the standing it has inherited from the past, what it most desperately needs are friends who are willing to speak the truth. It needs friends who will identify those areas where things are not as they should be and insist on the need to meet community expectations to ensure performance to the highest standards. It is in this way, and in this way only, that the corporation’s future can be assured. Those in the community who are the ABC’s real friends—and I again stress in this place that I count myself among them—therefore should not and cannot shy away from the task of careful monitoring and on-
going review. Doing this is the key to securing an ABC that can match the best in the world in the professionalism and objectivity of its reporting.

In saying this, I am mindful of a deplorable trend in the ABC’s coverage of news and current affairs towards a reliance on exaggeration and sensationalism that is more commonly associated with the worst excesses of British tabloid journalism. I have had the opportunity to read a forthcoming Institute of Public Affairs report, written by journalists Tim Blair and James Morrow, that focuses on what might be termed the ‘tabloidification’ of a once revered Australian institution. All the examples cited in that report relate to the coverage of the recent war in Iraq. I stress that none are from AM, the program examined for bias following Senator Alston’s complaint. Suffice it to say that the examples Blair and Morrow cite verge on the lurid. Had they appeared in the daily papers, they would have been held up for scorn by the politically correct as examples of how low the Australian press had sunk. But, because they were on the ABC, they have been allowed to pass without the censure they call for and richly deserve.

To so debase the quality of journalism is not merely at odds with what Australian taxpayers can rightly expect from the broadcaster they fund; it also leads the ABC’s journalists to act in ways that are increasingly unacceptable. It is surely this climate of sensationalism that induced an ABC journalist to knowingly place children’s lives at risk for the sake of having a good story. I refer to the incident in which an ABC reporter encouraged some Iraqi children to pose near an unexploded bomb so as to make her account of the situation more compelling. It is true that the ABC has stated that such behaviour is inappropriate, and I recognise and applaud it for that, but it has done nothing to address its root causes. ABC management did nothing, at least publicly, until its own watchdog program, Media Watch, got onto them. It is also true that the person concerned has now resigned. But this does not excuse the ABC’s original lack of judgment in allowing the screening of vision obviously staged in incredibly dangerous and quite unnecessary circumstances.

Nor is the ABC’s problem confined to questions of whether it is, at all times and in all circumstances, perfectly balanced and profoundly unbiased. There are significant management issues that remain unresolved. The decision to cut schools programming and end the production of the veteran current affairs program for students Behind the News is, at face value, a matter for ABC management and its board. The decision to end the cadet journalist program is similarly something that, in an independent national broadcaster, is properly a matter for management and the board. But they are both bad decisions. Let me repeat that. They are both bad decisions. They demonstrate that the ABC is more interested in making political statements of its own—and, in relation to the cadet program, cutting off its nose to spite its face—than in controlling cost centres that really are secondary to its core business.

There is no real need to send Mr Uechtritz swanning around the world to make bar room quips at international conferences. There is no need to be quite so generous with the designer clobber they gift to their on-air people. They could probably make some pretty substantial savings in the car fleet, too, if they really tried. I have detailed all these costs in earlier speeches, and I will not go through them again but they are on the record and should be noted. The ABC repeatedly says that it is committed to accountability but it repeatedly provides fresh evidence that it is not. Regrettably, that is the reason that I need to stand up in this place time after time to report on it. If it genuinely thinks it is
accountable then now is the time it must show that it is serious about tackling the issues and problems I have been outlining. Until the ABC backs words with deeds, all those who are genuinely committed to the national broadcaster should and will continue to press for the ABC to uphold its charter and meet the demands the community rightly places upon it.

Rural and Regional Australia: Unemployment

Senator HUTCHINS (New South Wales) (12.59 p.m.)—I want to speak this afternoon about unemployment. As you would be well aware, Mr Acting Deputy President, unemployment remains an issue that affects large numbers of people throughout Australia, particularly in regional and rural Australia. The Senate Community Affairs References Committee, of which I am the chair, has recently conducted an inquiry into poverty and financial hardship. From speaking to people in urban and regional locations throughout Australia, we heard that unemployment remains a major cause of poverty in Australia and that not having a job not only affects an individual financially but affects their esteem and social wellbeing. It deprives people of the basic dignity to manage their own affairs.

The current figure for unemployment in Australia is 5.8 per cent. This is an issue that the current government prides itself on. Indeed, the Deputy Prime Minister, John Anderson, the member for Gwydir, recently commented in an interview:

The participation rate has gone up strongly and I am greatly encouraged by that. We all might like to see that figure slip below 6 percent, so it has a 5 in front of it. But it’s still a very good result, with total employment now running at historically the highest level ever, in the context of an Australian economy that is doing very well.

This is an economy that has been growing since 1993, not just since 1996. Yet in the Deputy Prime Minister’s own seat of Gwydir, unemployment remains a huge problem. There are 4,778 unemployed people in the Deputy Prime Minister’s electorate. That is 8.5 per cent of the electorate—2.7 per cent higher than the national rate of 5.8 per cent.

What I would like to bring to the Senate’s attention today is the meanness with which the federal government is treating people who have lost their jobs in the Deputy Prime Minister’s electorate. In doing so, I want to give two examples. The first is the cuts to the Centrelink staff in the town of Moree, and the second is the federal government’s failure to guarantee entitlements to the 254 employees made redundant following the closure of the Mudgee Regional Abattoir.

The town of Moree in north-western New South Wales has a population of around 10,500. The unemployment rate in Moree is 11.6 per cent. That is more than double the national average. A large number of people living in Moree rely on payments from Centrelink to get by—that is, nearly 5,500 people in Moree received a payment or benefit from Centrelink of some kind. As a result, many of these people rely on the hardworking staff at Centrelink in Moree to help them get by. A constituent of mine living in Moree recently contacted my office. The young lady in question is an employee at Centrelink in Moree and has been given a termination notice by her manager. In the notice, her manager told her the following:

... the termination of your services does not relate to any adverse performance or conduct issue ...

Instead, he told her:

Termination is on the basis that funding within the Area has been substantially reduced no longer enabling the performance of additional tasks or functions by non-ongoing staff.

In other words, the government has cut or reduced funding so that Centrelink is being forced to shed staff in Moree. This will not only add to the already big unemployment
problem in Moree but make things harder for the 5,500 people in that town who rely on Centrelink staff to assist them. Here we have an opportunity for the federal government to act, if they seek to do so. But what they are doing in a town like Moree, with an unemployment rate of 11.6 per cent, is cutting jobs back further. Where they have control over it, they are doing nothing about it.

In a town like Mudgee, which is also in the seat of Gwydir, the unemployment rate is eight per cent—that is, 302 people are registered as unemployed. Recently, however, the local council run Mudgee Regional Abattoir closed its doors and the 254 employees lost their jobs. As you would be aware, Mr Acting Deputy President, in areas like that, one of those jobs probably employs two, three or four other people on the outside. As has occurred numerous times in recent years with companies throughout Australia, the abattoir closed with debts far in excess of its assets. In these situations in the past, the federal government’s General Employee Entitlements and Redundancy Scheme, GEERS, is supposed to guarantee the entitlements of redundant workers like those at the Mudgee Regional Abattoir. However, as so often has been the case in relation to workers’ entitlements, the federal government is playing politics with this issue and doing its utmost to renegade on its responsibility to ensure these workers get the entitlements owed to them.

In September the Deputy Prime Minister announced that, because the abattoir was run by a local council, the New South Wales government should guarantee these workers’ entitlements. This is in spite of the fact that the Howard government has acknowledged that employee entitlements in cases of insolvency is a federal issue. This is why GEERS was established in the first place. Whilst it is true that the abattoir, due to its unique nature, is set up and operated under New South Wales legislation rather than under the federal Corporations Act, there is nothing in the GEERS operational agreement arrangements that excludes employees of county councils. In fact, the New South Wales government has already come to the party. The government is one of the many creditors at the abattoir. Under the legislation governing the abattoir, the New South Wales government enjoys priority as a creditor, ahead of employees. However, the New South Wales government has agreed not to claim debts owed to it to ensure that GEERS, the federal scheme, can come into operation. But the federal government still refuses to pay out these workers’ entitlements.

In the far west of New South Wales, where we have an uncaring local member, the Deputy Prime Minister, where we have in pockets double the national average of unemployment, where people are asking the federal government to do something about unemployment and to give them an opportunity to restore basic dignity to their lives, what is he doing? He is doing bugger all. He is doing nothing about the Centrelink situation, where he could intervene to make sure that those jobs are maintained and that the people who rely on Centrelink do not have to queue outside the door to gain access to whatever they are entitled to. He could intervene and make sure these jobs are maintained. However, there is no evidence that the local member is going to do that.

In fact, in the Mudgee abattoirs, where the federal government set up a scheme to look after situations like this and where the New South Wales government has walked away to allow free run for the federal government to operate, they are doing nothing again. Two hundred and fifty-four employees of Mudgee Regional Abattoir have lost their jobs, have received no entitlements and have received no sympathy or assistance from their local federal member. One wonders why people out in the west of New South Wales would
even consider returning someone like John Anderson as the federal member. I note that the National Party has changed its name again, to the Nationals. I suggest to the people of Gwydir that they change their member, just as the Nationals changed their name.

Senator McGauran—I raise a point of order, Mr Acting Deputy President. As a general point, the previous speaker used a particular word, which I am sure you heard and which I am reluctant to repeat, although I will if you wish. I did not pull him up on it but I have dwelled on it. It is an Australian colloquialism; he may well have been using it in that sense but, properly defined, I would think it would be an unparliamentary term, so I bring it to your attention.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator McGauran, he clearly was not using it in the properly defined sense and you accept that, so I do not think there is a point of order.

Senator McGauran—I am not asking him to withdraw but, for the understanding of the Senate, I bring that word to your attention and seek a general ruling on the word.

The ACTING DEPUTY PRESIDENT—I will take advice on that and I will report any advice I receive back to you, Senator McGauran.

Immigration: Visas

Senator STOTT DESPOJA (South Australia) (1.09 p.m.)—I rise today to draw the Senate's attention to an ongoing and heart-breaking matter that involves the Sammaki children. This is an issue that has been drawn to the attention of the Senate previously by Democrats and others but should receive renewed attention today. I have just been made aware of a photograph that was taken four days ago in Bali, featuring our Prime Minister and the Geckos football club. They presented a cheque for the proceeds of their goodwill fundraising footy game, I understand, to the Bali widows’ group. In that photograph is our Prime Minister, as indeed he should be, with a number of football players including, if I am correct, Jason McCartney. The Prime Minister is holding the hand of a young child, four-year-old Sara Sammaki. In fact, both Sammaki children are in the photograph. Next to Sara and the Prime Minister is Sara’s brother, Sabda Sammaki, who I think would be eight years old now. Of course, these two children have lost their mother. Their mother was killed in the bombing in Bali and their father, Mr Ibrahim Sammaki, is detained in the Baxter detention centre in South Australia. I am not sure, having seen this photograph, whether my heart leaps with maybe the prospect of a swift and compassionate resolution to this case in sight or whether it sinks at the fact that the Prime Minister was in a photograph displaying his compassion towards these children, but I wonder if he knew exactly of their predicament.

On Sunday, like many other honourable senators, I was involved in memorial and commemorative ceremonies. In particular, I was involved in the one in my home state of South Australia. A private ceremony was held in Adelaide in the botanic gardens. It was a very moving, emotional tribute, as you would expect, to the victims of the Bali tragedy and an opportunity for survivors and their families to meet and deal with a number of the issues arising from the tragedy. At that memorial in the botanic gardens at Adelaide was Mr Ibrahim Sammaki. He was allowed to leave Baxter detention centre for a number of hours on that day so that he could mourn the loss of his wife, Endang, who died in the bombings. He was flanked, as you would probably not be surprised to hear, by three ACM guards, so that there was no prospect of him escaping. I certainly did not get the impression that he was going to escape anywhere. In fact, when I met Mr Ibrahim
Sammaki, I met a grief-stricken, saddened man who is locked up in detention in our country while his two children are grieving the loss of their mother.

Mr Sammaki is in Baxter following his application for asylum some two years ago. His two children, Sara and Sabda, have been cared for in Indonesia since their mother’s death. Ibrahim was given permission to travel, as I said, to take part in that ceremony in South Australia on the weekend. He had the opportunity to meet with a number of members of parliament. The Premier, Mr Mike Rann, and of course Her Excellency the Governor of South Australia were there, and all expressed their sorrow and condolences to this man on his loss. Ibrahim’s and Endang’s children, Sara and Sabda, are currently being cared for by an Indonesian woman, Asriana Kebon, who went to school in Adelaide, South Australia.

There are many compelling parts to the case involving these children, which have been documented widely, including by the Leader of the Australian Democrats, me and Kate Reynolds, who is an Australian Democrat member of the Legislative Council in South Australia. These kids have not seen their father for more than two years. Their mother is now dead, so they are virtually orphaned. They are not from Bali. Their mother travelled to Bali to get legal assistance to help her husband to be released from Baxter Detention Centre. Like others, tragically, and ironically, she was killed in the blast in Kuta. All alone apparently, these children were sold into servitude in the red-light district in Bali. They are now safe, not through any good deeds of our government, unfortunately, but through the kindness of a young Indonesian-Australian woman who rescued them and cares for them, although she is finding it increasingly difficult to support two extra children in a community that is still reeling from the effects of the bombing. Understandably, that is difficult.

There are a number of us who not only are concerned about this case but have taken steps to see what we can do. Magistrate Brian Deegan, as senators would be aware, lost his son Josh in the Bali bombing. Brian Deegan, Kate Reynolds MLC and I have applied to sponsor both children to come to Australia—you can only sponsor one child at a time through the regulations. I should explain that our request for visas has been denied, and we are currently in the process of appealing that. We are asking that these practically orphaned children, who are reeling from their mother’s incredible and unfortunate death a year ago, come for two weeks—just two weeks—so they can see their grief-stricken father and know that he is alive. We have made it clear that we guarantee to meet financial, character or any other conditions suggested by the department, because we are so confident that this man, Mr Ibrahim Sammaki will not flee and will not abuse the visa conditions. The children should have the right to see their father, particularly under these conditions. I hope that our Prime Minister has softened to that idea, because it makes me upset to see him in this photograph holding one of the children’s hands and yet they cannot come to Australia for two weeks.

People may say that those are the rules, and we all acknowledge we have to live by the rules, but something that the Democrats have repeatedly described as almost a visa lottery confounds me. There are two contrasting cases that we have all been made aware of recently. As we know, a businessman who was wanted in connection with a major fraud case in the Philippines was able to obtain a visa and Australian citizenship, but two children whose mother was killed in Bali and whose father is detained in Baxter cannot get a visa for two weeks to see their
father. The Democrats, and I am sure many others, have received emails, faxes, phone calls—you name it. You only have to look at the letters to the editor sections of the press, particularly after the memorial services on the weekend, to see that people want this case resolved. They want to see a basic expression of compassion and decency from our government. I hope that the Prime Minister, having met Sara and Sabda on the weekend, will renew his approach to this case, and hopefully the new Minister for Immigration and Multicultural and Indigenous Affairs will be compelled to act on this issue.

The children are missing their father desperately, as you would expect. Reports are that when they are around people with whom they feel comfortable they are quite outgoing. They have been in front of cameras, as some of you may have seen. Certainly the Compass program this week featured footage of the children with Magistrate Deegan. They are no strangers to a degree of publicity, as attention has been drawn to their plight repeatedly over the past year. But I want us as a Senate to consider their case. I want to put on record that there are some of us—and many others, I presume—who are prepared to act as guarantors for these children so they can come here for two weeks to see their father. Our best wishes are with Mr Ibrahim Sammaki. I look forward to a swift resolution of this case. As I indicated, we are appealing the recent decision through the Migration Review Tribunal. I urge fellow senators, if you do have an opportunity, to have a look at this photograph. I urge the Prime Minister to act on the feelings of compassion and concern that he displayed over the weekend on this particular case. I believe it was pointed out by one letter writer to the letters page of a newspaper—I cannot recall which one—that it is one thing for our leaders to express their concerns over the weekend for the deaths and the tragedy of Bali, and I think they did legitimately, but here is something we can do to make a difference. I urge the new minister to make a difference, because this is a truly heartbreaking case.

Defence: Expenditure

Senator JOHNSTON (Western Australia) (1.21 p.m.)—I rise to speak on the issue of defence expenditure. In my 18 months as a senator, my membership of joint and Senate committees relevant to defence matters has provided me with a somewhat unique opportunity to gain a valuable insight into the processes associated with defence materiel purchases. There is no denying that defence materiel purchasing and procurement is indeed a very complex and difficult business. When I first started working in this area, it was generally accepted that at any one time there were up to $25 billion worth of defence contracts for the acquisition of some form of defence capability in existence in any year. More recently, the figure of $50 billion has been suggested as the current estimate.

Many of these contracts and projects have been ongoing for a considerable length of time, having had their genesis during the life of the previous Hawke-Keating administrations. I was therefore somewhat surprised and a little bemused when I heard the opposition’s Treasury spokesman, the member for Werriwa, on Monday, 13 October, professing to be an instant expert on all matters pertaining to defence expenditure. A wise man once said, ‘Sometimes it is better to say nothing rather than to speak for the sake of speaking.’ This is advice the opposition Treasury spokesperson should perhaps heed, rather than expounding his exaggerated pretences and holding himself out as the supreme authority on all matters and things. His outburst earlier this week about defence expenditure discloses a concerning lack of knowledge and understanding about this complex and difficult area, and perhaps before he speaks
again on the topic he should do his homework a little more thoroughly, or at least a little more competently.

Defence spending, and the checks and balances on that expenditure, has been a problem for both sides of government over the last 20 years. It is not a new phenomenon, as the Labor Party would have us believe. The government is, and continues to be, concerned about defence contracts and projects that do not deliver specified capability or equipment on time and on budget. This was recognised by the government, in the first instance, with the establishment three years ago of the Defence Materiel Organisation as an agency to focus solely on the purchase of defence equipment and related services.

To further refine the process related to defence acquisitions, the Minister for Defence announced on 18 September this year that he had implemented a range of reforms to further improve defence purchasing arrangements. The reforms were based on recommendations of the Kinnaird review. Malcolm Kinnaird, Len Early and Bill Schofield were appointed in December last year to review a range of issues associated with major defence acquisitions. The review team worked closely with the DMO and with the Department of Finance and Administration to examine the key challenges associated with the development of Australian Defence Force capability and the acquisition and support of defence equipment.

As a result of this review, the government has decided to implement a range of measures to ensure that taxpayers’ money is spent wisely and, above all, to maintain public confidence in the defence procurement process. This has included a major restructuring of the DMO to make it a world-class, best practice organisation, including giving the new chief executive officer of the DMO an expanded range of powers to make improvements to the delivery of defence projects and to the management of the DMO, including empowering the CEO to revise DMO staffing and remuneration policies in order that the CEO is able to attract and retain high-quality project managers from the military, industry or public service on the basis of merit and for extended tenures.

The review and reform proposal includes a recommendation to cut the existing total number of people working within the DMO from 7,000 down to 500. To effect this massive organisational and cultural change and to bring about cost-effective efficiencies, it will be necessary to attract a high-quality candidate to be the new CEO of the agency. To this end, there is a need for a worldwide search to select a CEO with the specialist expertise to lead the DMO into the future. The CEO would be expected to work closely with the Secretary to the Department of Defence to implement the recommendations of the Kinnaird review.

In my view, it will be necessary to pay any such high-calibre specialist appropriately, remembering that we are talking about an organisation that currently has up to $50 billion worth of contracts at some stage of development. If this means that this person is the highest paid person on the government’s payroll, then so be it. It is critical that we secure someone with world-class expertise and skills to manage the complex and difficult process associated with defence materiel acquisition. If we are fortunate enough to secure someone with the required skills, it does not take too much imagination to work out that only a marginal improvement in efficiency will result in savings of not just millions of dollars but possibly hundreds of millions of dollars. Of course, it goes without saying that, just as with each of the chiefs of each of the senior services, the position carries with it a unique and heavy burden of
Responsibility, with life and death consequences in the event of poor performance. Notwithstanding the opportunistic and shallow political point scoring of the member for Werriwa I would suggest that, whatever the successful applicant is paid, if he is a success it will be money well spent.

I remind people on the other side of the chamber that their 13 years in government were affected not just by problem years for defence materiel acquisitions; they were 13 years of unmitigated disasters in virtually every aspect of defence spending and policy. In 1986 the Public Accounts Committee examined defence expenditure procedures and processes. They found that most problems arose from ineffective defence project management, including poor assessment of financial and technical risks—this was in 1986—cost and time underestimates; inadequate project planning; insufficient attention to management information and control arrangements; inadequate technical specifications in contracts; a lack of comprehensive tender evaluations et cetera.

In 1992 the inshore minehunter proceeded to development, a project that was inaugurated in 1976. For various technical reasons, a vessel with three key characteristics was required. First, the hulls and equipment had to be, as far as possible, absolutely non-magnetic. Second, a sonar capable of reliably detecting mines in shallow and disturbed water was required. Third, the hull had to be sufficiently stable to allow the craft to operate in inclement weather, up to a defined sea state. A prototype construction and evaluation contract was let for $112 million in 1990 by the then Labor government, after a 1988 project definition study. Unfortunately, two of the three necessary characteristics were never achieved by this prototype. While the catamaran type hull of glass-reinforced plastic was indeed non-magnetic, it transpired that its stability in inclement conditions was less than desired. Worse still, the Krupp Atlas minehunting sonar failed to perform to any specification.

It is hard to state exactly the amount of money expended on this project by the then government. However, the defence department’s program performance statements for 1992-93 show that, to 30 June 1992, not less than $102 million had been spent. In addition, a further $13 million was authorised to be spent in 1992-93. All of this was to no avail. At the conclusion of the contract, the two minehunter vessels were constructed but, as a consequence of the design deficiencies I have mentioned, they were confined to Sydney Harbour and used for minehunter warfare training. They were eventually decommissioned in 2001, having been laid up in reserve for many years before that.

Let us turn now to the FA18 procurement program. Australia signed a contract in October 1981 for the provision of 75 FA18 aircraft, of which 18 were to be two-seater versions. The first two aircraft were manufactured in the United States, with the remainder being assembled in Australia. Delivery took place between February 1985 and May 1990. The Industry Commission records that, for the FA18 fighter acquisition, the department’s estimate of what it would cost to undertake local construction was ‘significantly in error’. The error was so large that the difference between the estimated premium and that actually paid would have bought an extra 14 aircraft. In general, the Industry Commission said that, based on the evidence available to it, ‘the Commission concludes that only in very few major capital equipment projects have the nature and extent of premiums been adequately and rigorously assessed.’

Of course, in looking at the record of the opposition when in government, we must turn to the Collins class submarine. As early
as 1992, the Australian National Audit Office raised a number of concerns about the Collins submarine project. The audit found:

Substantial profits were made by the contractor (the Australian Submarine Corporation—ASC) well before the first boat was launched (August 1993), and the Federal Government appears to have funded seventy five per cent of ASC’s assets as distinct from only two per cent funded by the ASC shareholders (the balance being eighteen per cent ‘third parties’ and four per cent from the South Australian Government).

The shareholders nevertheless achieved substantial profits which, no matter what may occur in the future, are apparently irrecoverable by the Commonwealth by virtue of a specific clause in the contract. Over 60 per cent of the total contract price had already been paid to the Australian Submarine Corporation by late 1992, before the first boat was even in the water, and the corporation apparently achieved significant returns for itself by the simple expedient of investing funds not immediately required.

A serious and significant Audit observation concerned the performance of the RAN Submarine Project Office. It said:

Despite the Contractor’s often strong tactics the Project Office continues to view the Contractor as almost an extension of itself ... At times it has appeared to the ANAO that the Project Office has a perspective that its role is to act as an agent of the Contractor in its dealings with the Commonwealth rather than as an arm of the Commonwealth monitoring and controlling the Contractor.

Given the importance of the functions of a Defence project office for a construction effort on the scale of the Collins class submarine project, this is one of the most significant and critical comments ever to come from an independent observer, the Australian National Audit Office. There was a second ANAO report on Collins in 1998. This was followed by hearings before the Joint Committee on Public Accounts and Audit in 1999 and, of course, the McIntosh-Prescott report in June 1999 that exposed the full extent of the failings of administration by the previous Labor government.

Let me turn to the 1994-95 acquisition of the two US landing ships. In brief, the former Labor government decided to acquire two ex-US Navy landing ships at a claimed bargain basement price of $61 million. This was an example of the post Cold War defence equipment fire sale phenomenon, where equipment surplus to the superpower—and, indeed, to others—came onto the market at such reduced prices that middle-ranking countries such as Australia could not resist them. However, it was subsequently found that both ex-US vessels were severely affected by rust. This rust was in places apparently inaccessible before the main boilers were removed in Australia, thus the Navy team that examined the ships did not see it. The upshot of this rust problem was that the original $61 million acquisition blew out to a staggering $340 million—close on $300 million up in smoke. The ships eventually were refitted at substantial cost and entered service as HMAS Manoora and HMAS Kanimbla.

Lastly, I would like to talk about the JORN over-the-horizon radar. JORN is a long-range radar project designed to give broad area surveillance of the northern approaches to Australia. The prime contractor was Telstra, working for the Department of Defence through a Defence JORN project office. The contract was a fixed price type. The Australian National Audit Office identified in detail the systematic failure in the acquisition of this capability. The final cost in the losses associated with the JORN project will probably never be known. However, it was finally revealed that $600 million had to be written off the presale value of Telstra in order to cover the losses incurred on the JORN contract.
I will not go into the absolute detail of this monumental defence acquisition disaster. Suffice it to say that it occurred under the watch of the opposition. However, the whole JORN saga absolutely highlights the disastrous period of defence acquisition mismanagement that occurred during the previous Labor government. By my most conservative estimate, it would appear that at least $2 billion of taxpayers’ money was frittered away during Labor’s term in office on defence materiel acquisitions that simply went wrong and failed to be surveyed properly, adequately or efficiently.

What has to be recognised is that the coalition government confronted this massive problem head on and never once shirked at the enormity of the reform process associated with the Defence Materiel Organisation. In the first instance Ministers McLachlan, Moore and Reith instigated cultural change within Defence to ensure that the job would be done with a significant increase in the level of efficiency in achieving viable and positive outcomes for the taxpayer.

The current Minister for Defence, my colleague Senator Hill, has followed in his predecessor’s footsteps and tackled this difficult and complex task with extraordinary zeal and enthusiasm. Above all, he has achieved significant results in making the DMO totally accountable for their actions at every step of the procurement process. It has not necessarily made him popular with government officials, as he has had to make some onerous and difficult decisions to ensure that the Australian taxpayer gets value for money with defence acquisitions. By all means, the opposition and the member for Werriwa should bring us to account. However, the opportunistic comments the member for Werriwa has made in so doing are at best grandstanding in the hope of cheap political point scoring and not at all helpful in progressing the development of a cost efficient and effective system of defence materiel acquisition.

Veterans’ Affairs Portfolio

Senator MARK BISHOP (Western Australia) (1.34 p.m.)—I rise on this matter of public interest to speak about the recent ministerial reshuffle announced by the Prime Minister on 28 September, and in particular the implications for the Veterans’ Affairs portfolio. At a time when many Australians give little credence to much of the Prime Minister’s assertions of fact, there can be no doubt about the merit principle as has been applied to ministerial appointments. Certainly, in the case of the Veterans’ Affairs portfolio, merit has been the missing hallmark, and the Minister for Veterans’ Affairs has now had her responsibilities dramatically reduced.

Clearly, the role of Minister Assisting the Minister for Defence has been too much, with the Defence portfolio in chaos. I do not wish to address all the Defence shortcomings today, nor the minister’s obvious role in that mess, but rather to concentrate on the failings in the Veterans’ Affairs portfolio to which the minister has now been confined. By way of background, the combination of the portfolio of Veterans’ Affairs with the Minister Assisting the Minister for Defence has always been an obvious one, simply because in this modern day we are dealing with ADF personnel in service and post service.

It was only ever the sheer size of the administrative task after World War I, and again after World War II, which necessitated a separate, dedicated bureaucracy to care for the large number of servicemen and servicewomen repatriated from abroad. Many of them were in poor physical shape, and most of them needed assistance re-entering a postwar society which had changed radically during their few short years of absence. The remnants of this remain, with the Repatria-
tion Commission still intact after more than 80 years with its extraordinary powers and open-ended appropriations. Also at the core of this independent body, which has always remained separate from the Defence portfolio, was the fact that the bulk of its clients were volunteers whose care would always have been a distraction for Defence.

This has, however, proved a messy arrangement with unclear division of responsibility for a whole range of personnel matters, such as compensation for service related injury, health care and family support. As well, there is a whole range of personnel entitlements which flow from the Veterans’ Entitlements Act, the Defence Act and a number of compensation schemes covering the military going back as far as 1930. To an outsider, and to many serving and ex-service people, this is a nightmare begging reform. And so it was that the Veterans’ Affairs portfolio was brought into the ambit of Defence under the Minister for Defence, with the Minister for Veterans’ Affairs also charged with the responsibility for Defence personnel and a range of other matters, including materiel procurement.

There was also some sense in this move from a Defence point of view in that within the portfolio there was now an organisation, despite its arcane power and institutional structure, with a history of service delivery specialising in ex-Defence personnel, albeit only some of them. As many ex-service people are happy to tell you, one of the matters Defence does badly is the care of ex-service people, especially when they have been disabled in some way through their service. The concentration of this service in an organisation specialising in the delivery of health care and the payment of income support and compensation, as well as discharge and post-discharge services, seemed logical. Now, however, it has proved too much as the dual ministerial role has been shattered.

In the recent reshuffle we have seen the return of two ministers, one now restricted to Veterans’ Affairs and the other to specialise, we are told, in cleaning up Defence procurement but including, we presume, personnel responsibilities. This is a great pity, because the bringing together of the veterans’ task into Defence was eminently sensible. It certainly put paid to veterans’ fears that they would be transferred to Centrelink. But it also breaks the potential for the continuity of personnel services, regardless of the type of service given, which is so essential. Thanks only to the inability of the minister to pursue this task, we see several years of effort wasted.

There is, however, more to the story of the ministerial reshuffle as it affects Veterans’ Affairs. Put simply, Veterans’ Affairs policy is in complete disarray. Single-handedly, this minister has substituted public relations for policy formulation and service delivery. As veterans often say, and rightly so, the minister has concentrated exclusively, or near exclusively, on building monuments for which she can cut the opening ribbon. Her travel around the globe is now legend and, in itself, is an explanation for her failure to do her job. So not only was the Prime Minister right in discharging her from her ministerial responsibilities but also he could perhaps have gone further. No-one questions the need to commemorate the deeds and commitment of Australia’s personnel and veterans, but it has become an obsession costing tens of millions of dollars which could be better used caring for those veterans and war widows in need.

This particular minister is clearly oblivious to needs, so it might be worth reminding her of what they are as she now contemplates the added time she has available. First, she needs to examine those younger veterans who are struggling to make ends meet with family responsibilities and who are trapped on TPI pensions which not only are inade-
quate in some respects but effectively discourage rehabilitation because of the limited capacity to work.

But, as we know, the minister holds the TPI community in contempt. She refused to address their rally outside Parliament House last June and she persists with her allegations that they are all well paid, earning more than $1,900 per fortnight. Such generalisations prove the ineptitude. It is no wonder that the Western Australian branch of the TPI Federation has passed a no-confidence motion, which has now been joined by another from the RSL in South Australia. These are unprecedented actions from a normally conservative veteran community.

Second, she needs to look carefully at those war widows who struggle to make ends meet in the private rental market in full knowledge that they have no entitlement to rent assistance. She might also examine the needs of those widows of younger veterans denied access to welfare benefits, including the income support supplement. The minister might also pay some attention to the 109 recommendations of the review of veterans’ entitlements by Justice Clarke, which has been in her pigeonhole for over six months now.

Given that the minister has had her responsibility for the development of the new military compensation scheme removed from her, she should also heed the views of the veteran community who are outraged at her proposal to offset the TPI special rate pension. As Minister for Veterans’ Affairs, however, the minister must continue to represent the interests of veterans in the new Military Compensation Scheme. The minister must also act immediately to stop the rot on the gold card, whereby we are seeing increasing numbers of medical specialists leaving the system.

Perhaps if the minister read her correspondence—and we know she cannot answer it—she would know this is a burning problem which is continuing to fester and get worse. The Minister for Veterans’ Affairs has an onerous responsibility for veterans which is in default. Let us all hope, in the interests of veterans, that there is some immediate improvement.

Fisheries: Southern Bluefin Tuna

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.43 p.m.)—Yesterday in question time I had the opportunity to mention, too briefly, the very significant work that Australia has done in relation to the Central and Western Pacific Fisheries Commission, the commission that is related to highly migratory species, and also the work that has been done by Australia in leading the discussions at the Commission for the Conservation of Southern Bluefin Tuna. Not many Australians would be aware of the very significant part that fish play in our exports and in jobs and opportunities around the coast of Australia. Australia has a small but very high-quality high-seas fishing fleet. As well, it has a very good export trade in high-quality, clean and green imaged seafood, particularly to Asia and North America. As a government, in conjunction with the fishing industry, we do put a lot of effort into the management of our fisheries, not only domestic fisheries. The states handle a lot of the fisheries very close to the shore. The Commonwealth handles fisheries more distant within our exclusive economic zone. We also play a very significant part in the management of those highly migratory species, fish stocks that we share with other countries in our region.

The commission for highly migratory species in the central and western Pacific met a couple of weeks ago in the Cook Islands.
Whilst the commission is not yet fully formed and fully legal, a number of preparatory conferences have been held. What we hope was the last preparatory conference was held in the Cook Islands a couple of weeks ago. All the negotiations now seem to have been just about completed, and that commission will become the regional fisheries management organisation charged with the management of all the highly migratory fish stocks in the western and central Pacific. This will include all of the major tuna and billfish species.

This particular fishery is the world’s last great fishery and one that is incredibly important to the future health and wellbeing of our Pacific island neighbours. The new commission provides around 100 million metric tonnes of fish annually, with a value of some $US2.2 billion each year. The fishery also provides between 20,000 and 30,000 jobs in the Pacific region, and that is about eight per cent of all employment in the Pacific Islands. The commission has been in the process of formation since the year 2000, and there have been five preparatory conferences that have been building the rules for the commission to operate under. Ten ratifications have now been received, and Niue and Tonga have advised that their ratification processes are ready to be sent. With New Zealand in the final stages, we will have the 13 ratifications necessary to bring the Western and Central Pacific Fisheries Commission into being. There will be one further preparatory conference to tie up the loose ends, and that will coincide with the first commission meeting, which we hope will be held around the middle of next year.

Australia has played a very strong role throughout the preparatory conference processes, initially by holding the text of the convention together to make sure that countries did not water down the best convention texts in modern fisheries. We have chaired the scientific committee, under Dr John Kalish from the Bureau of Rural Sciences, and that committee has successfully resolved the scientific support process for the new commission. We have very actively engaged the forum fisheries countries—that is, most of the island nations that are involved in fishing—to help protect their interests in the fishery. That is easy to say; it is not always easy to do when there are some very powerful and large distant water nations who are always trying to get in on the act. We have also worked in the background for the chair to progress difficult issues, such as resolving the dispute on what was being proposed as a separate regime for the northern committee—the northern committee being the Japanese and North Americans. By resolving that dispute, we have now cleared the way for Japan to engage in the whole fishery.

We will continue to work actively with the island nations to make sure that those island nations are in the best possible position to advise and lead the commission into this new regime of fisheries management. We have provided some $200,000 to the organisational fund to help the interim secretariat and chair organise the meetings, to undertake intercessional work and to move the Prepcon process forward. This process has helped the Pacific island countries, as it has brought a new sense of unity and regional stability to fisheries issues. With the European Union now at the table, the Pacific island countries have an opportunity to sell their access and harvesting rights to another country—another high-seas distant water country—to get the best possible access deals. The Pacific island countries realise the importance of fish, and the new commission will provide them with a forum where they have an equal voice at the table and where they can demand proper management of these important resources. The importance of the meeting last week was that it worked to progress al-
most all outstanding issues. It also laid the framework for the success at the Commission for the Conservation of Southern Bluefin Tuna meeting, which followed a week later in Auckland, as both meetings importantly saw Australia and Japan working together to resolve a number of outstanding issues.

I have to emphasise that the importance of fish to these Pacific island countries cannot be understated. They provide income from access arrangements, they provide food and health, and they provide employment and the opportunity for business development. Without fish, the high-seas nations would not be interested in fishing this area. As such, they would not be interested in investing their income for infrastructure development, and those developments would largely dry up in those islands that do not have tourism. This happens all too often. It would then be up to the United States, Australia and New Zealand to make up any shortfall in the standard of living or income that these nations might expect.

I mentioned that the Commission for the Conservation of Southern Bluefin Tuna meeting was held in Auckland just last week. That commission has had a very turbulent history that concluded some years ago with Australia and New Zealand taking Japan to the International Tribunal for the Law of the Sea. Both countries also cancelled the port access for the Japanese long-line fleet. Fortunately, Australia resolved those disputes with Japan some time ago, and the Australian government agreed to lift the bans in place on Japanese fishing boats visiting Australian ports. This unfortunate history is now well and truly in the past, with the commission—the CCSBT—developing into a real cooperative regional fisheries management organisation.

The meeting held just last week determined that the global management regime for the southern bluefin tuna would be strengthened by the commission agreeing to a total allowable catch for the species and particular national allocations for the first time since 1997. The scientific committee has reconfirmed its advice that the 2000 catch level of 15,500 tonnes of southern bluefin tuna is around the current sustainable yield. Members agreed to a total allowable catch of some 14,030 tonnes, of which Australia is allocated 5,625 tonnes. A new stock assessment is currently being undertaken to determine if any changes in this catch level are warranted. A management procedure is being developed, and that will underpin the future total allowable catch settings. That work is progressing well and is on schedule for completion next year.

I am delighted to report that the Philippines and South Africa are seeking to join the Commission for the Conservation of Southern Bluefin Tuna and have been offered the status of cooperating non-members. The commission at its meeting last week actually set aside 900 tonnes of catch for these countries, with 800 tonnes being allocated to Indonesia—which has also joined the commission as a cooperating non-member at Australia’s suggestion and with our cooperation and support. Indonesia will get a TAC of 800 tonnes, and 100 tonnes is being held by the commission for catches by the Philippines and South Africa. Indonesia’s involvement is very important because it is in Indonesian waters that the hatchery of the southern bluefin tuna is located. At that meeting also there was a resolution on illegal, unreported and unregulated fishing. That was agreed to by all parties and will include the operational aspect of countries developing a list of fishing vessels that are authorised to fish for the southern bluefin tuna.
In again congratulating the Australian officials involved in the two very significant commissions, can I highlight the work done by my department—and particularly by Mr Glen Hurry, who led the delegations—with support from the Australian Fisheries Management Authority, and by members of the industry who have played a very significant role. The work being done has again added to Australia’s reputation in the central and western Pacific and, indeed, in our region. It is a great credit to those involved that the work that they have done will help build relationships for Australia and will show that we really do have the interests of the Asia-Pacific region at heart and, more importantly, that we are prepared to actually do something about that.

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

QUESTIONS WITHOUT NOTICE
Corporate Law Economic Reform Program

Senator WONG (2.00 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Can the minister confirm that the government’s draft CLERP 9 bill continues to protect the ‘old school tie’ network given that, first, directors when standing for election will still not have to disclose their relationships with the company or with other directors of the company; second, non-executive directors will still be entitled to retirement benefits, options and bonus payments; and, finally, directors will still be able to chair multiple companies? Minister, why is the government continuing to protect the ‘old school tie’ network instead of acting in shareholders’ interests and requiring directors to disclose their relationships with the board and with other directors?

Honourable senators interjecting—

The PRESIDENT—Order! When senators have stopped having discussions across the chamber, we will proceed with question time.

Senator COONAN—The old school tie is a bit like the old chestnut that the Labor Party keeps dredging up in its new found interest in transparency and the conduct of corporations, having fitfully slept through all the CLERP reforms up until about CLERP 6. Senator Wong is incorrect when she suggests that the government’s response to CLERP 9 is part of any ‘old school tie’ network. In fact, what CLERP 9 is all about is increased transparency and a proper response to the need to look at some corporate excesses and to make reforms that will strike a proper balance between allowing a business to operate and reining in some of the excesses. That is really what CLERP 9 is all about. The disclosure framework for CLERP 9 is substantially improved.

Senator Conroy interjecting—

Senator Ferguson interjecting—

The PRESIDENT—Senator Conroy and Senator Ferguson, order! I remind you that it is question time, not shouting time.

Senator COONAN—CLERP 9 substantially improves the disclosure framework. The bill builds on the current Corporations Act disclosure requirements in three ways in respect of executives and in respect of executive remuneration, if I can start with that, by extending the disclosure requirements to the top five senior management people within corporate groups and by allowing shareholders to vote upon a resolution at a company general meeting to adopt the remuneration disclosures made in the annual report. Directors will also have to give shareholders an opportunity to comment upon and ask questions about the disclosures at the general meeting.
The UK enacted a similar proposal in August 2002, allowing shareholders to make a non-binding resolution on remuneration. Of course, that had a very significant effect in the UK with the GlaxoSmithKline case, which rejected a proposal for the remuneration of the chief executive officer, who was also a board member, to include a £22 million, or $55 million, golden parachute in the event of his early dismissal. All of these matters in relation to both remuneration and disclosure of relationships build substantially on the exposure draft and substantially on what the ALP’s position was on disclosures.

It is very interesting that CLERP 9 goes further than the ALP proposal by expanding section 300A under the Corporations Act and the requirement for corporate groups. Under CLERP 9, listed companies must disclose up to 10 of the most highly remunerated senior managers within the entire corporate group. The proposal that Senator Conroy has been hawking around town appears to apply only to senior managers employed within the listed company. The other proposals that the Labor Party have put forward on disclosure do little to advance the real case for transparency. It is interesting that most of the reports in relation to CLERP 9 seem to be overwhelmingly supportive of the balance that the government has struck in relation to disclosure.

Senator WONG—Mr President, I ask a supplementary question. I note the minister failed to answer why the government does not think directors standing for election ought to have to disclose their relationship with a company or other directors of the company. When will the minister recognise that the Howard government’s self-regulatory approach gives a green light to corporate greed and that legislation is required to protect shareholders’ interests?

Senator COONAN—There is no doubt that what the Labor Party are all about with CLERP 9 is regulatory overkill. There is also no doubt about what commentators have said. Here is an interesting quote from Stephen Bartholomeusz:

It is unclear just what Labor, the Australian Shareholders Association and others hope to achieve with their push for prescriptive black-letter law to, in the words of Labor’s Stephen Conroy, “crack down on corporate greed”.

Black-letter law will not solve this problem and the government has got the balance right.

Roads: Scoresby Freeway

Senator TCHEN (2.07 p.m.)—My question is to the Minister for Local Government, Territories and Roads, Senator Ian Campbell. I am delighted to have the opportunity to ask this outstanding minister this question, which is so vital to the interests of Victoria. Will the minister please update the Senate on the Australian government’s commitment to the construction of the Scoresby Freeway?

Senator IAN CAMPBELL—I thank Senator Tchen for his excellent question. As a Victorian senator, he has taken a very close interest in transport issues in his home state, that great state of Victoria, and the debacle that is unwinding about the Scoresby Freeway. Those who read the papers this morning will be aware that the Premier of Victoria, Steve Bracks, over recent days has sent something like, by his own admission, 200,000 letters to people living in the south-eastern corridor, the eastern suburbs of Melbourne. Quite clearly, he has heeded the words of a senior federal Labor politician that he is in serious trouble on this issue in Victoria and has spent $100,000 sending out these letters.

The trouble for the people who have received these letters is that Mr Bracks has deceived the people and misled them in a
number of serious ways. Most honourable senators, and particularly Victorian senators, will recall that the Commonwealth committed—and I must get this absolutely accurate; otherwise Senator McLucas will respond tomorrow—$445 million to ensure that the Scoresby Freeway would be built by 2008 and that it would be built in a way that would allow the people to travel along that freeway free of charge, not tolled.

Senator Faulkner—That’s why it’s called a freeway, I suppose.

Senator IAN CAMPBELL—In fact that is why it is called a freeway, Senator Faulkner, but Mr Bracks wants to change it to a tollway. Mr Bracks has written to 200,000 people and told them that he wants to put a toll on it. He has also said that that is the only way you could build this road by the year 2020—12 years later than the Commonwealth committed to and 12 years later than what Mr Bracks and his government committed to only 11 months ago. The Commonwealth have committed the money—in fact, we have already spent $25 million of it—and the money remains not only on the table but also in the budget. In paragraph 6 of his letter, Mr Bracks says:

The Liberal Party has not explained how or even if they will fund the Scoresby Freeway.

The federal government have not only explained that we will fund it but also signed a MOU that his government signed. That MOU, signed by Mr Bracks’s government and signed by this government, states:

Victoria undertakes to ensure that users of the Scoresby Freeway will not be required to pay a direct toll.

Mr Bracks’s government has signed that MOU and this government has signed it and is committed to it. But, quite contrary to what he said in his letter to the voters in the eastern suburbs of Melbourne, Mr Bracks has set out to mislead them by saying that we have not said how we will fund it. We have put it into the budget and we have put it into the forward estimates. The money is sitting there waiting to be spent on behalf of the Commonwealth. The question that remains is: what is federal Labor’s policy on this issue? They have been incredibly silent on the Scoresby Freeway issue. In the period after question time when senators are allowed to take note, I ask the senior Victorian senator, Senator Stephen Conroy, to get up and to commit a Labor government to the building of this freeway and to put pressure on his good friend Stephen Bracks to actually commit to the building of this freeway on time and on budget in cooperation with the federal government. (Time expired)

Corporate Law Economic Reform Program

Senator CONROY (2.11 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware that the government’s draft CLERP 9 bill fails to prohibit company loans to directors? Minister, why should shareholders’ funds be used to give directors loans? Why can’t they go to the bank like everybody else?

Senator COONAN—Senator Conroy betrays the fact that he has obviously no business experience at all. He has absolutely no idea about how a corporation runs, absolutely no idea about how a company needs to capitalise and absolutely no idea about the relationship of directors with companies where loans may be required. What is important under the circumstances is that there is proper disclosure and proper transparency in the way in which corporations are run. There is no doubt that CLERP 9 has struck the right balance between a knee-jerk and black-letter approach to law, a prescriptive approach to law that is just going to simply tie up com-
panies and tie business up so that it is unable to do anything—tie them up in regulations—

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy, you asked a question; listen to the answer.

Senator COONAN—and allowing a company, within the proper guidelines, to run its affairs in an appropriate way, with proper reference to shareholders and proper regard for regulation and good corporate governance. There is not much point in Labor’s approach that they seem to be urging on us this afternoon in the Senate. Labor’s prescriptive approach to regulation is not going to actually achieve what Labor contends—and that, of course, has been the response from business.

I would have thought that under the circumstances Labor would have seen that big business—so belittled and so decried by Labor, who continue to bash big business in this place—thought that the CLERP 9 position went too far. But, on balance, the response to CLERP 9 has been overwhelmingly positive, because the government has got that balance right. It understands the fact that there needs to be transparency but it also understands that corporations have to operate in an appropriate and responsible way not only in the community but also by allowing their shareholders to accrue wealth and so that shareholders do have some say in remuneration for directors and in how directors behave and manage the company.

The great achievement of CLERP 9, apart from all of the great advances on disclosure, is what it has done in relation to auditors and in relation to ensuring better arms-length arrangements between auditors, which actually give a much better opportunity for shareholders to be confident that a corporation is run in accordance with their expectations. I utterly reject the suggestion from the Labor Party that CLERP 9 has not addressed in an appropriate way all the matters that were raised in the exposure draft and all the matters that have been consulted on extensively, and then got the balance right.

Senator CONROY—Mr President, I ask a supplementary question. I ask, again: why does the Howard government allow preferential treatment of directors of listed companies by allowing them to use shareholders’ money for a loan? Why is there one rule for the top end of town and another for the rest of us? Why don’t you join Labor in helping drag the corporate snouts out of the trough?

Senator COONAN—I must say that I endorse the statement that was made by Steve Bartholomeusz when he said that it is very difficult to see what Senator Conroy is on about when he is talking about cracking down on corporate greed. He was referring to Labor’s prescriptive approach running counter to corporate best practice. Here we are with respected commentators talking about the Labor Party’s regulatory overkill and how it is simply going to tie companies up in red tape, instead of really addressing the problem, which is to ensure transparency in corporate governance. This government is interested in ensuring a regulatory approach that will deliver substance over form and will deliver a principle based response over prescription.

Australian Quarantine and Inspection Service

Senator HEFFERNAN (2.16 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister inform the Senate of the role that quarantine plays in protecting and securing Australia’s primary industries and natural environment? Is the minister aware of any alternative policies?

Senator IAN MACDONALD—Senator Heffernan raises a question that I know is
very much of interest to all Australians, and I know that Senator Heffernan, coming from rural New South Wales, has a very real interest in it himself and on behalf of the people he serves. Senator Heffernan would be well aware that Australia has one of the most stringent, if not the most stringent, quarantine systems in the world. In 2001 the coalition government committed some $596 million to further strengthen Australia’s border protection over four years with the increased quarantine intervention program. The government continues to take Australia’s quarantine system very seriously, and we will not compromise its integrity.

Since 2001 quarantine border intervention rates have increased to more than 90 per cent at international airports and to 100 per cent at other border entry points. Thanks to additional funding by the Howard government, AQIS now has 64 X-ray machines: 43 employed at Australia’s international airports, 11 at international mail centres, four at air cargo depots and six mobile X-ray units for use at seaports and to support the fixed units as necessary. There are 75 detector dog teams: 46 passive dog teams at airports and 29 active dog teams at international mail and air courier depots. AQIS officers and detector dog teams seize an average of 33,000 quarantine items a month at international airports and, of these, 27 per cent are undeclared.

AQIS screened more than 8.1 million air passengers over the past 12 months, close to 92 per cent of all arrivals. I am delighted to point out to the Senate that AQIS has recruited more than 1,200 additional part- and full-time staff since the 2001 quarantine upgrade was announced. Increased fines for perpetrators have included on-the-spot fines and prosecutions through the courts that can now result in fines of up to $66,000 and 10 years in jail, and a penalty of up to $1.1 million has been introduced for commercial smuggling. In contrast to when Labor were in office, 100 per cent of all international mail entering Australia is now scanned. Under Labor, five per cent of cargo containers were inspected; under the coalition, it is 100 per cent. Under Labor, 70 per cent of vessels arriving from overseas were inspected; now it is 100 per cent.

It is important to note the rundown that Labor oversaw in quarantine services. Under Labor, AQIS had its funding slashed—down almost seven per cent in 1994-95. In 1995-96, in its last year of government, Labor spent $177 million on quarantine. Now $277 million is spent. Under Labor, AQIS had 400 full-time staff in border protection; now there are some 2,000 staff. It is a disgrace that opposition spokesmen get up in this chamber and attack the integrity of the quarantine services. (Time expired)

**Immigration: Visas**

Senator CROSSIN (2.21 p.m.)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. In the House of Representatives, the Prime Minister was asked by the Leader of the Opposition about two children aged four and eight who were photographed with him during his recent trip to Bali. Is the minister aware that the mother of these children was killed in the Bali bombings and that their father is currently detained in Australia’s Baxter detention centre? The Prime Minister told Mr Crean that he would seek the minister’s advice on whether these children could come to Australia and visit their father at the Baxter detention centre. Can the minister tell the Senate when she will let these children visit their father?

Senator VANSTONE—I thank Senator Crossin for the question. Yes, I am aware of the very sad circumstances of a man currently in Baxter whose wife died as a result of the bombings in Bali. I have asked my
department to pursue with vigour the man’s reunion with his children in Iran. However, this will be dependent on his cooperation. It is true that the children of the man have been denied visas to enter Australia in the past. I am aware that there have been three applications for visitor visas by the man’s children that have been refused. My advice is that the decision to refuse was made in accordance with the law because the decision maker was not satisfied that the children intended a genuine visit and that they would leave Australia on the expiry of their visitor visas. I am aware that applications for review have now been lodged. Consequently, it is not appropriate for me to discuss that any further.

Senator CROSSIN—Mr President, I ask a supplementary question. Given that the children have been rejected before, can’t the minister now make a humane and compassionate decision and provide them with visas to visit their father?

Senator VANSTONE—Senator Crossin, I refer you to the answer I have just given you.

Defence: Property

Senator ALLISON (2.23 p.m.)—My question is to the Minister for Defence. Could the minister confirm that the Department of Defence has received legal advice that shows that, if Commonwealth land at Point Nepean is leased, the use and development of that land will be subject to Victorian planning and environment laws? Has the minister passed this advice on to the Victorian state government?

Senator HILL—I do not recall that advice. As Senator Allison knows, the matter is being handled by my parliamentary secretary, Mrs Bailey. My responsibility will be limited to the ultimate decision making role. In relation to dealings with the Victorian government, Mrs Bailey has been carrying out that task. I am obviously not aware of the details of what she has told the Victorian government but I will follow it up and see if I can get some further information for Senator Allison’s benefit.

Senator ALLISON—Mr President, I ask a supplementary question. I thank the minister for offering to follow that up and I wonder if he would also answer this question. Has the fact that the lessee’s use of the land could be prohibited or restricted by Victorian planning and environment laws been disclosed to the persons who have submitted tenders to the government? If not, why not?

Senator HILL—The potential lessees have presumably made bids taking into account their own legal advice in relation to planning restraints or state taxation consequences. From our point of view there would be no secret. We would be happy to discuss with them any advice that we might have on those matters, but those who make bids for property primarily take their own advice.

Business: Executive Remuneration

Senator CONROY (2.26 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Does the minister agree with these comments, reported on Friday, by the new Parliamentary Secretary to the Treasurer, Mr Cameron:

“I don’t want to create an environment in which shareholders think their principal task is to pick over the bones of every executive’s emoluments. There is an unseemly and demeaning aspect of human nature, which is this tendency to obsess about what somebody else has that I don’t have.”

Senator Abetz—That’s you, Stephen! If the hat fits, wear it.

Senator CONROY—Does the minister accept and endorse these comments made by the government’s new CLERP 9 spokesman?

Senator COONAN—What I support is this government’s approach to CLERP 9, which very clearly distinguishes between the
proper conduct of a company and the proper disclosure in a company’s records and operations of remuneration for directors and non-executive directors.

Senator Faulkner—But what about Mr Cameron’s comments?

Senator COONAN—What Mr Cameron said, as I understand it, is that he did not oppose directors who create shareholders wealth and run a company well getting properly remunerated. I think that is an unassailable proposition. Why would anybody object to directors properly carrying out their duties and running a company well being properly remunerated for doing exactly what they are there to do—that is, to create wealth for shareholders? What the government has done is to acknowledge that there have been corporate excesses in the past—that when a company is heading south and directors’ remuneration is heading north it is an inappropriate balance. What Mr Cameron was saying was that, if directors are creating wealth and their remuneration is properly set, that is an appropriate way for a corporation to be run by directors. Underpinning all of that is the fact that the CLERP 9 proposals provide a measured and balanced response that was necessary to address the issue of—

Senator Conroy—Mr President, I rise on a point of order going to relevance. The question I asked was: did the minister endorse Mr Cameron’s views? It was a simple question. I ask you to draw her to the question.

The PRESIDENT—as you know, and as I have said repeatedly here, I cannot instruct the minister how to answer a question. The minister has over two minutes to go yet, and I am sure that she will do the best she can.

Senator COONAN—What I do not endorse is the Labor Party’s approach—the prescriptive response to CLERP 9 that has been panned pretty much universally by the commentators, who have said that Labor’s prescriptive approach to the whole CLERP 9 problem will not lead to good corporate governance but will lead to quite the opposite. If you have a prescriptive approach and try to tie up the whole issue of executive remuneration in such a way that you cannot attract anybody skilled to lead a company, goodness me—you might end up with somebody from the Labor Party leaving the Senate and trying to become a director of a public company. What corporations need is good governance. They certainly need directors who are going to run the company in a way that creates shareholders wealth, and that is precisely the point of Mr Cameron’s comment.

Senator CONROY—I rise on a supplementary question and I want to acknowledge Senator Abetz’s interjection—if the cap fits. Is the minister aware that, in relation to the $30 million payment to the former CEO of BHP Billiton, Mr Brian Gilbertson, the Prime Minister said in May this year: I don’t think companies should be that generous, and I think shareholders should get onto directors who are that generous.

Minister, do you believe that the Prime Minister is picking over the bones of executive salaries and that his comments are unseemly and demeaning, or has Mr Cameron simply got it wrong on his first day in the job?

Senator COONAN—I think Senator Conroy has got it dead wrong. What I have just said in my previous answer is that, for the purposes of CLERP 9—if you actually look at the provisions—it is important to understand that the whole issue of executive remuneration has in fact been addressed. I think that in my first answer today I outlined in some detail three additional ways in which executive remuneration is now subject to disclosure and subject to some shareholder overview, with an ability to have a resolution and a say on the way in which executives are
paid. That is precisely what the Prime Minister had in mind. It is certainly not inconsistent with Ross Cameron, who has quite correctly said that, if people run companies well, they are entitled to be properly remunerated.

**Environment: Alternative Energy**

**Senator LEES (2.31 p.m.)—**My question is to Senator Hill, the Minister representing the Prime Minister. I understand that the government has received the Mandatory Renewable Energy Target, or MRET, review report. I ask the minister: when will this report be publicly released and when will the government’s response to the report be available publicly? In other words, when will we know if the government has decided to increase the target for the volume of electricity generated from renewable sources and by how much?

**Senator HILL—**That is not really a matter within the portfolio responsibilities of the Prime Minister. I think that the best thing I can do is refer the question to the minister responsible for the review and ask if and when it is to be made public.

**Senator LEES—**I ask a supplementary question. The reason for asking the question of Senator Hill, the Minister representing the Prime Minister, is that I understand that this final decision is very much likely to occur in the Prime Minister’s office and, indeed, that is where the report is. If this is not the case, I am more than happy to redirect the question to an appropriate minister. But, as Senator Hill is also the minister representing the environment minister, I ask him a follow-up question—and perhaps he may want to refer this on as well. Minister, are you aware that there is an enormous amount of investment on hold across Australia, particularly in Whyalla in South Australia, where there is a solar oasis plant on hold, and in Tasmania, where there is a potential plant that would manufacture wind blades on hold. When will the government be making this decision public, as it is a matter of urgency?

**Senator HILL—**It is true that the Prime Minister takes an interest in all important areas of policy. He has an interest in all portfolios. In relation to the supplementary question, I will refer that to the environment minister and get his response.

**Trade: Live Animal Exports**

**Senator MARSHALL (2.33 p.m.)—**My question is to Senator Hill, the Minister representing the Minister for Trade. Can the minister advise the Senate of what the government has communicated to Australia’s beef and lamb export markets, including Japan, the European Union and the United States, with regard to the MV *Cormo Express* debacle? In the interests of the 57,000 Australians employed in the processed meat and live export industries, what advice has the minister provided to export markets on the quarantine risks associated with the return of the sheep? If the minister has not provided such advice to our trading partners, why not?

**Senator HILL—**It is an odd question because Australia, and this government in particular, treasures its quarantine regime, which is a national asset. We would not take any action that would prejudice that national asset. Therefore, the return of the sheep will be consistent with Australian quarantine needs. Our export partners have every reason to be confident in that because to do otherwise would simply be foolish. I am not aware of whether there has been specific communication with them on that issue; I will have to refer that to Mr Truss. But they can be confident that we will maintain that quarantine regime in the interests of all Australians.

**Senator MARSHALL—**Mr President, I ask a supplementary question. I thank the minister for that answer, and I would appre-
ciate information as to whether that advice has been communicated. Could you also establish whether or not our trading partners have been given details of the secret import risk analysis?

Senator HILL—I regret that the Labor Party seem to be so determined to undermine our quarantine regime—they are so determined to undermine an important national asset. I guess it simply comes with an opposition who have been in opposition for a long time and know little more than how to carp and whinge. This is a difficult issue, being handled responsibly by the minister, who has—as all this government has—a vested interest in protecting our quarantine regime. We will resolve the issue, difficult though it may be, and we will protect Australian quarantine laws.

Economy: Performance

Senator WATSON (2.36 p.m.)—My question is directed to Senator Coonan, the Minister for Revenue and the Assistant Treasurer. Will the minister kindly advise the Senate the reasons behind the very strong performance of the Australian economy and how that strong performance is going to translate in terms of benefiting Australian families? Is the minister aware of any possible impediments to that strong recovery?

Senator COONAN—I thank Senator Watson for that thoughtful question. The government have a very strong record of achievement in responsible economic management. That is an unassailable truth. Our policies have delivered extraordinary growth and wealth creation in this country. The recent labour force figures alone showed that unemployment remained at 5.8 per cent, which is a 13-year low. The last time that Australia had a combination of a low unemployment rate—that is, below six per cent—and an inflation rate below three per cent was in December 1968. The key message from the last NAB monthly business survey dated 14 October this year is that Australia’s domestic economy ‘is still one of unrelenting strength’. Household wealth has increased by $1.6 trillion or around 90 per cent since the coalition came to power. As everyone knows, a large element of this growth has flowed from the housing sector.

One of the biggest impacts on the demand for housing has been the record low interest rates that Australians have enjoyed under this government. We now have standard variable mortgage rates at 6.5 per cent, down from 10.5 per cent under Labor, when this government came to office. The Commonwealth put in place the First Home Owners Scheme with a $7,000 grant, which has assisted over 500,000 families with the purchase of their first home. As of August 2003, the average monthly repayment on a housing loan throughout Australia was $450 lower than it was in the dying days of the previous Labor government.

APRA, the Australian Prudential Regulation Authority, recently undertook some stress testing of the scenario of a possible housing correction—although we, of course, do not want to have that experience. It found that banks, building societies and credit unions as a group enjoy strong capital positions today and could withstand such a correction. Of course, there remain concerns about the escalation in the value of real property and this reflects a number of factors. All of them are, as we speak, under consideration by the Productivity Commission, including, I might say, the impact on the cost of housing of the stamp duty imposed by the Labor states, which now generates an extraordinary $8.4 billion in state government revenues, and, of course, the impact of the land release policies of local governments and state governments.
I am asked about impediments to delivering a strong economy. I think the actions of the Labor Party are a very good starting point when you look at impediments to the economy. Labor are still playing politics against the national interest. They have constantly sought to block and undermine the coalition’s efforts. Just to mention a few, the Labor Party have opposed measures to balance the budget: not this year’s budget but last year’s budget. They have opposed labour market reform. They have voted against unfair dismissal legislation 16 times. They have voted against reform of the tax system. They continue to oppose welfare reform and changes to the PBS.

It seems that the member for Werriwa’s recent resolve to do something about the disability support benefits has now gone the way of GST and roll-back—or even, should I say, ‘the third way’. You certainly do not hear much about ‘the third way’ these days. By contrast, the Howard government has given Australia opportunities, and the thing that stands between further opportunities and greater prosperity in this country—better opportunities for all Australians—is the Labor Party.

**Senator WATSON**—Mr President, I ask a supplementary question. I noticed the Assistant Treasurer raised the question of the increase in stamp duty has now gone the way of GST and roll-back—or even, should I say, ‘the third way’. You certainly do not hear much about ‘the third way’ these days. By contrast, the Howard government has given Australia opportunities, and the thing that stands between further opportunities and greater prosperity in this country—better opportunities for all Australians—is the Labor Party.

**Senator WATSON**—Mr President, I ask a supplementary question. I noticed the Assistant Treasurer raised the question of the increase in stamp duty has now gone the way of GST and roll-back—or even, should I say, ‘the third way’. You certainly do not hear much about ‘the third way’ these days. By contrast, the Howard government has given Australia opportunities, and the thing that stands between further opportunities and greater prosperity in this country—better opportunities for all Australians—is the Labor Party.

**Senator O’BRIEN**—My question is to Senator Ian Macdonald, representing the Minister for Agriculture, Fisheries and Forestry. Can the minister confirm that his own department recognises the importation of infected animals, semen or food as the most likely path for the entry of foot-and-mouth disease to Australia? Can the minister confirm that Australia currently prohibits the entry of live animals, semen, uncooked meat or unprocessed dairy products from foot-and-mouth disease affected countries, including Kuwait and the United Arab Emirates? If so, will the minister maintain Australia’s protection against foot-and-mouth disease by prohibiting the return of the 52,000 sheep aboard the MV Cormo Express?

**Senator IAN MACDONALD**—I am again distressed that Senator O’Brien uses question time today, as he did a quite disgraceful contribution to the adjournment debate last night, to try to undermine Australia’s quarantine protections. It is one thing to play politics, and we are all guilty of that at times, but, when the national interests are at stake in a very difficult issue, I would have expected a bit more responsibility and maturity even from the Labor Party.
Mr Truss and the government have made it quite clear that quarantine and border protection are of absolute, paramount importance to Australia. We will do everything that is conceivably and reasonably possible to maintain the magnificent reputation that Australia has built up over many years. Why is the Labor Party undermining the best efforts of the government, the industry and anyone else involved in getting a particular resolution to this very difficult and complex position? It is a position that is not of the government’s making but one in which the government has responsibly intervened to try to solve.

We have mentioned quite openly that our No. 1 priority and goal is to offload the sheep at another port. It is not a question anymore of selling the sheep; we have indicated that we would give the sheep away. We have even indicated that we would be prepared to provide financial assistance to a developing or Third World country that might want to take the sheep and we have also indicated that our preference, if we were able to find a country to take them, would be to put people on the ground in that country to deal with those sheep after being offloaded. That sort of work continues. This work is made much more difficult by people who would suggest that there is something wrong with these sheep. We have had assessments from veterinarians of our own and of independent, international organisations which clearly indicate that these sheep are healthy—and if they are healthy, why don’t we return them to Australia? But when we go around the world to try and give these sheep away, other countries will look at the sort of clamour being raised by the opposition and say, ‘These can’t be healthy sheep.’ They are the sorts of difficulties we have because of this type of question.

The Australian government will go to extraordinary lengths to protect our quarantine situation. We have done that for many years and we will continue to do that. The Australian public can be assured that, if as an ultimate last resort they are returned to Australia, they will be returned in a quarantine situation which will be exceptional in the way of quarantine assessments and management of risks. We are determined to make sure that there is no risk to Australia and, indeed, that there is no risk to any country that may end up taking these sheep.

Senator O’BRIEN—Mr President, I ask a supplementary question. I again ask the minister if he can confirm that Australia currently prohibits the entry of live animals, semen, uncooked meat or unprocessed dairy products from foot-and-mouth disease affected countries, including Kuwait and the United Arab Emirates. Further, I ask the minister, given that every major rural industry organisation, the Australian Veterinary Association and at least 21—probably more by now—of the minister’s party room colleagues are absolutely opposed to returning the sheep to Australia, why is the government confident that this operation can be undertaken safely? Why are they wrong and the government right?

Senator IAN MACDONALD—Returning the sheep to Australia is, I repeat, an absolute last resort. The organisations Senator O’Brien talks about have a preference, as I understand media reports, for slaughter at sea. That is a suggestion that the government has looked at, but it is impractical. It also appears on legal advice that it would contravene the London convention on dumping at sea. Is Senator O’Brien suggesting that we should just thumb our noses at this international convention? Governments have the responsibility to look at all issues, and that is what we have done. We are trying to work through this with the industry in a responsible and mature way. All of the good work that the Australian government is doing...
Environment: Natural Heritage Trust

Senator BARTLETT (2.48 p.m.)—My question is directed to the Minister representing the Minister for the Environment and Heritage. Minister, is it the case that Natural Heritage Trust funds that have been approved for this financial year are being used for administrative purposes by the Department of the Environment and Heritage, including for the remuneration of members of the Threatened Species Advisory Committee? Is it an appropriate use of NHT funds to pay the internal costs of the department?

Senator HILL—Senator Bartlett’s question obviously seeks intricate detail, which I will, in turn, refer to the minister, Dr Kemp, and get an early reply.

Senator BARTLETT—Mr President, I ask a supplementary question. The second part of my question was not seeking intricate detail—it was simply asking whether it was appropriate for funds to be used in that way for administrative purposes. Can the minister also answer this in relation to NHT2 money: in the measures for A Better Environment, as the minister would be aware, the Howard government gave a commitment to spend at least $350 million of NHT2 money directly on measures to improve water quality during this term of parliament. Can the minister inform the Senate how much NHT2 money has been spent directly on measures to improve water quality to date and what the definition of ‘directly’ means in this context?

Senator HILL—As I recall, an element of the administrative overhead has in the past been met from the Natural Heritage Trust. That does not seem to me to be extraordinary. The important thing was that the emphasis was to get as much money as possible on the ground into the projects themselves, but Dr Kemp can provide further information in that regard. I suspect that the second question, relating to exactly how much money has been spent on water quality projects, might not be easy to answer, but I will refer it to him and see if he is able to give some information.

Immigration: Illegal Immigrants

Senator KIRK (2.50 p.m.)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. I refer the minister to the Joint Standing Committee on Foreign Affairs, Defence and Trade’s Human Rights Subcommittee statement on detention of illegal immigrants. Can the minister confirm that only 21 women and children have been provided with alternative accommodation since the previous minister announced these alternative arrangements back in December last year? Is it correct that, as the cross-party statement says:

... to date, the overwhelming majority of women and children are still being housed in inappropriate detention facilities.

Can the minister advise how many children and their parents have been held in high-security detention since December last year?

Senator VANSTONE—I thank the senator for her question. I do not have the detail of the numbers that were in a particular situation or are now in a particular situation. I will get you the detail that you have sought, but I can say this: I have visited Baxter, and the housing project there was nearly complete. I was verbally advised this morning that it has been completed. That means that there will be, if I can recall my verbal briefing at the time correctly, 45 more women and children that will be able to move into that accommodation, which you will understand is not detention in the sense of a detention facility. Try and make them as pleasant as
you can, they are still detention facilities. I recall asking about some barbed and razor wire along the back of one set of homes. Senator Kirk, I am sorry if I am distracting you; did you want to hear what the—

Senator Cook—What are you going to do? Are you going to paint the razor wire pink?

Senator VANSTONE—No, I am just asking whether Senator Kirk wanted to get another part of the question from Senator Mackay—which I would be happy to take. It was a courtesy that was going to be extended but your colleagues do not seem to be happy with that.

The PRESIDENT—Order, Minister! Could you address your remarks through the chair. I know it is easy to be distracted by interjections from the other side.

Senator VANSTONE—It is easy to be distracted when someone who asks a question is patently not listening to the answer and therefore does not appear to be at all interested in what they have asked. The point at which I digressed improperly from the question was in relation to some razor wire that was there. I did hear an interjection from someone asking, ‘What are you going to do, paint it pink?’ Such is the degree of seriousness with which the members of the opposition treat these matters. No, I asked about the razor wire. It has been put up, and is controlled by, the caravan park next door. It was put there before this housing project was there—about three kilometres away from Baxter in part of Port Augusta. The department is negotiating with the caravan park to see if they can take that down. As to the detail of your question, I will see what information I can get from the department. The only other thing I would add is that I was advised that all the children at Baxter—except for one who has cerebral palsy, who has apparently been moved to Adelaide—are now going to school in Port Augusta. Therefore the school in the Baxter facility is now used as an adult education centre.

Senator KIRK—Mr President, I ask a supplementary question. Minister, don’t the latest September figures show that 91 children remain in Australian detention centres and that there are at least as many in Nauru? What is the minister going to do about these children in high-security detention?

Senator VANSTONE—I thank the senator for her question. This is a difficult question. Nobody likes to see children in detention—nobody that I know, anyway. But, equally, nobody wants to say to those criminals who are operating as people smugglers and people traffickers that if you pick your mark properly—that is, you pick people with children or you provide children to them—you will more easily get in and not be put in a detention centre. There is a fine balance to be sought here. We are doing what we can to improve the situation. I remind senators opposite that I have been advised that there were more children in detention during the times of Labor governments—both in absolute numbers and the percentage of people detained. I do not recall—perhaps some people who have longer memories than I do might recall—whether Labor set up housing projects into which they put women and children, or whether they left them inside.

Immigration: People-Trafficking

Senator HUMPHRIES (2.56 p.m.)—My question is to the Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women. Will the minister update the Senate on how the Howard government is providing world-leading support programs to victims of people-trafficking?

Senator PATTERSON—I thank Senator Humphries for the question; it gives me an opportunity to elaborate on the answer that
Senator Ellison gave earlier this week regarding antitrafficking measures. The support for victims is a vital aspect of the government’s new $20 million antitrafficking package. Victims of trafficking are in a very vulnerable position. Most of the victims do not speak English and many of them are unable to read or write. They come from very poor socioeconomic backgrounds and many have been subjected to violence and abuse. Many suffer from ill health and special medical problems such as drug addiction and hepatitis. Research shows that providing support is significant in encouraging victims to assist trafficking investigations and to act as witnesses against traffickers.

It is extremely difficult for law enforcement agencies to secure successful prosecutions against traffickers without the testimony of the victims. A $5.6 million package has been announced for a victim support program to assist victims of trafficking. The new program, administered by three areas of government, will provide a comprehensive suite of measures to victims of trafficking in Australia—therefore they will be able to receive the best possible care and support. The Office of the Status of Women has been responsible for administering the victim support program. The Department of Family and Community Services will provide special benefit and rent assistance. The Department of Health and Ageing will have responsibility for the administration of Medicare.

Research from overseas shows that the provision of support for victims significantly increases the willingness with which victims participate and act as witnesses against their traffickers. Some people estimate that that increase in the numbers of people who are willing to cooperate can be as high as 50 per cent. The new victim support program will ensure that victims who assist in trafficking investigations are fully supported while they remain in Australia. They will have a case manager to provide individualised assistance and this will include being accompanied to interviews with police and Centrelink and being provided with safe accommodation, income support, medical treatment, access to training and legal services, and social support. All victims will have access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme. I think this package will be an important factor in assisting these people who are mainly women and children.

Because of the complex nature of human trafficking and the special needs of victims and requirements of law enforcement agencies, the program is expected to take several months to be fully operational. A tender for a case manager is being advertised in a few weeks. This is part of a whole package to deal with a practice which is totally unacceptable and which should be stamped out. This is one part of assisting those victims. It is part of ensuring that they are able to give us information and assistance in stamping that out without risking their lives or their future.

Senator HUMPHRIES—Mr President, I ask a supplementary question. Can the minister explain to the Senate whether she believes that the programs put in place by the Howard government are an improvement on those available previously under the Labor government?

Senator PATTERSON—Nothing was done under Labor. One of the other areas that was neglected was that of student visas. I came into the portfolio as parliamentary secretary to immigration. I have no doubt that some of those students that were going to the shonky colleges that the states refused to regulate were actually people involved in these traffickings. There are many ways in which this government has assisted and re-
duced the likelihood that women and children will be trafficked.

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

TRADE: LIVE ANIMAL EXPORTS

Return to Order

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.00 p.m.)—by leave—The Senate ordered that there be laid on the table no later than now the following documents relating to the voyage of the MV Cormo Express: the risk analysis concerning the return of the sheep stranded aboard the vessel and the latest master’s report revealing mortality aboard the vessel. I am advised by the Minister for Agriculture, Fisheries and Forestry that the government is still considering the emergency risk evaluation. However, the minister advises that the information will be made public and provided to the Senate when the government has finished considering it. The minister has provided me with a copy of the master’s report dated 13 October, which was sought. This report is no longer the current one, which the government has received this morning. I table the master’s report dated 13 October. The minister advises that he will consider providing today’s report after it has been considered by the government.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Attorney-General’s: Child Sexual Offences

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.02 p.m.)—Senator Murray asked me a question during question time on 13 October 2003. It was a question regarding a question on notice to the Attorney-General. The simple answer to the first part of the question on notice asked to the Attorney-General was no because it was not the responsibility of the federal Attorney-General to start an initiative of this nature, as sexual offences are not dealt with in Commonwealth courts. Commonwealth sexual offences are dealt with in the state courts. However I should add that, contrary to the impression given by Senator Murray in this question, the Attorney-General provided a more detailed answer to the second part of Senator Murray’s question on notice, drawing Senator Murray’s attention to the protections the Commonwealth has enacted for children in criminal proceedings for Commonwealth sex offences. I have another 1½ pages of fairly close type, which I seek leave to incorporate as a complete answer to Senator Murray’s question.

Leave granted.

The answer read as follows—

Senator Murray asked Senator Patterson, during Question Time, on 13 October 2003:

(1) 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 for 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?

(2) Does the minister representing children accept that such an attitude by the Attorney-General’s in saying just ‘no’ to that question means that children will continue to be discouraged from pursuing child sexual 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—The Attorney-General has provided the following answer to the honourable senator’s questions:

(1) The simple answer to the first part of the Question on Notice asked of the Attorney-General was ‘no’ because it is not the responsibility of the federal Attorney-General to start an initiative of this nature. Sexual offences are not dealt with in Commonwealth courts. Commonwealth sexual offences are dealt with in State courts.

I should add that, contrary to the impression given by Senator Murray’s question, the Attorney-General provided a more detailed answer to the second part of Senator Murray’s Question on Notice, drawing Senator Murray’s attention to the protections the Commonwealth has enacted for children in criminal proceedings for Commonwealth sex offences. The Government is committed to protecting children from exploitation and abuse and has led international efforts to combat sexual offences against children. The Government is always looking for opportunities to improve its response to this terrible crime. However, child sexual assault is primarily a matter for State and Territory Governments. It is the responsibility of each State and Territory Government to ensure that there is adequate protection for child complainants and child witnesses in proceedings for child sexual assault under State or Territory criminal laws.

The Commonwealth has already enacted this protection for children in criminal proceedings for Commonwealth sex offences. Relevant Commonwealth offences include Australia’s child sex tourism legislation and sexual servitude and deceptive recruiting legislation. The child sex tourism legislation is considered ground breaking, and is one of the toughest of its kind, containing penalties of up to 17 years imprisonment for Australians involved in sex offences against children overseas. This Government introduced strong legislation in 1999 which criminalises some of most serious forms of exploitation of persons. This legislation prohibits slavery, sexual servitude and deceptive recruiting for sexual services and provides tougher penalties where a sexual servitude or deceptive recruiting offence is committed against a child under 18.

The model provisions contained in the May 1999 report of the Model Criminal Code Officers’ Committee (MCCOC) entitled Sexual Offences Against the Person included improved offences, provisions for the protection of witnesses and complainants in proceedings for sexual offences and provision for a sexual offences counselling immunity. The report was developed in cooperation with State and Territory Governments through the Standing Committee of Attorneys-General and involved a considerable resource input from the Attorney-General’s Department. A number of jurisdictions have implemented the MCCOC recommendations.

The Government’s ongoing commitment to fighting child sexual abuse is also demonstrated by a number of recent policy developments. On 11 December 2002, Australia signed the United Nations Protocol relating to Trafficking in Persons Especially Women and Children. On 8 August 2003, the Standing Committee of Attorneys-General agreed to establish a working group to examine options to better integrate the federal family courts with state child protection systems. Another important initiative is the Government’s leadership role in combating child abuse in indigenous communities. On 28 August 2003, the Prime Minister announced a commitment of $20 million to address the consequences of violence and child abuse in indigenous communities.

On 13 October 2003, the Government announced a comprehensive whole-of-government strategy to combat trafficking in persons. The initiatives,
totalling $20 million, include improved legislative, preventive, law enforcement, and victim support measures.

These initiatives demonstrate the Government’s commitment to investigating, preventing and prosecuting the insidious crime of trafficking in persons, especially women and children.

(2) State and Territory Governments are responsible for ensuring adequate protection for child complainants and child witnesses in prosecutions for child sexual offences under the State and Territory criminal laws. The Commonwealth has already demonstrated a strong leadership role in this area by enacting protections for child complainants and child witnesses in proceedings for Commonwealth sex offences to ensure that child witnesses are able to testify as freely and effectively as possible. The relevant provisions in the Crimes Act 1914 include the following protections:

- a court may disallow a question put to a child witness in cross-examination in a proceeding if the question is inappropriate or unnecessarily aggressive
- a child witness’s evidence in proceedings must be given by means of closed-circuit television (some limited exceptions to this rule apply)
- a child witness may choose an adult to accompany the child while the child is giving evidence in a proceeding
- evidence of a child witness’s or child complainant’s sexual reputation or activities is inadmissible unless the court gives leave or the evidence is of sexual activities with a defendant in the proceedings
- if there is a jury, the judge is not to warn or suggest to the jury that the law regards children as an unreliable class of witness

As mentioned above, the model provisions contained in the May 1999 report of the Model Criminal Code Officers’ Committee (MCCOC) entitled Sexual Offences Against the Person included improved offences, provisions for the protection of witnesses and complainants in proceedings for sexual offences and provision for a sexual offences counselling immunity.

### Environment: Alternative Energy

**Senator HILL** (South Australia—Minister for Defence) (3.03 p.m.)—I have been able to get some further information to the answer I gave today to Senator Lees regarding the mandatory energy review scheme. I am advised that the panel has completed its report and handed that report to the Minister for the Environment and Heritage. The minister is currently digesting the contents of the report and its recommendations. The report must be tabled in the parliament by 18 January 2004, and this will be done. The Howard government is keen to see continuing growth in the renewable energy sector, and the Tambling report will help in that objective.

### TRADE: LIVE ANIMAL EXPORTS

**Return to Order**

**Senator O’BRIEN** (Tasmania) (3.03 p.m.)—When Senator Ian Macdonald rose in response to the return to order, the normal courtesy would have been to allow the opposition the opportunity to move to take note of that response. Mr President, I indeed was rising in my place when you called Senator Patterson. I am happy to defer my motion until after the taking note of answers, if that suits the convenience of the government, or I can do it now. But I will be seeking leave to take note of the statement on the return to order, in which Senator Ian Macdonald advised us that Minister Truss has declined at this stage to comply with the return to order in relation to the import risk analysis.

**The President**—I think you should do it now.

**Senator O’BRIEN**—I seek leave to move to take note of that response.

Leave granted.

**Senator O’BRIEN**—I move:

That the Senate take note of the document.
Labor does not accept the minister’s explanation for the government’s failure to comply with the return to order, particularly in relation to the import risk analysis. The explanation is that the government is still considering the document, not that the document does not exist, and no other reason is given. There is no reason that that document cannot be provided to the Senate, particularly as the minister admitted to its existence on 30 September, over two weeks ago. If the government is still considering it—if it is not yet convinced that the impact risk assessment that it has had since 30 September is viable—then one wonders why the government is so adamant that returning the sheep to Australia is a viable option. If it is so convinced, why is the government still considering it?

That really begs the question, because today is the 72nd day of this Cormo Express fiasco. Fifty-seven thousand sheep left Fremantle on 5 August and arrived in Jeddah in Saudi Arabia on 21 August. The ship was scheduled to depart the Kuwaiti port of Shuwaikh, bound for Australia, early this morning, but I understand that there has been a further delay. So it has been in that port for 13 days, when it initially was expected to be in that port for two days. Apparently it will leave later today. The Prime Minister has repeatedly ruled out slaughter at sea.

**Senator Ferguson**—So he should.

**Senator O'BRIEN**—It appears the sheep are headed back to the Australian mainland for slaughter following a quarantine inspection at the Cocos (Keeling) Islands. Senator Ferguson interjected, ‘So he should.’ I have read what is said in the paper. The government considers that that option is a public relations disaster.

**Senator Ferguson**—It’s not that at all. It’s against our obligations.

**Senator O’BRIEN**—That is an interesting comment, Senator Ferguson. Perhaps you can rise in this debate and tell us what has happened to the 5,000-odd sheep from this voyage that have died. Where were they disposed of? I will tell you where they were disposed of: except for those who remain on the vessel now because they could not be disposed of in the port of Shuwaikh, they have been disposed of at sea. That is the procedure for other live animal shipments where mortalities occur. Indeed, that has been mentioned in a 60 Minutes report and in a number of documents which are circulating—and which I am certain the government, Minister Macdonald and other senators in the chamber are aware of—as a common practice in relation to mortalities on these vessels.

I heard what Senator Ian Macdonald said in relation to some international law issues, but I ask the question: what has happened with the 5,000 sheep who have already died on this vessel, and what has happened to their bodies? I can assure the Senate that they are not still on the vessel and they have not been disposed of in port. We have had no absolutely clear statement from the government on its intention. Information, however, has been dribbling out via media doorstops, radio talkback, background briefings and indeed leaks from the coalition party room. A growing number of nations have rejected the sheep. That is a fact. A number of nations, such as the Indonesian government and the Iraqi interim administration, have publicly reaffirmed that rejection.

The departure of the sheep from Kuwait today is the very reason that the Senate has demanded the documents in its order. It is not a very complicated one. Clearly the government has the documents; that has been admitted by Senator Ian Macdonald. We have a master’s report which is three days old. I wonder why we cannot have the latest one—perhaps because it tells us the up-to-
The government is steadfastly refusing to disclose its assessment of the quarantine risk associated with the return of the sheep to the Australian mainland or to release proposed quarantine controls. Because the document existed on 30 September, one wonders whether what the government ultimately might release will have been amended to suit the government’s political needs, rather than the actual document that we have asked for. I make it clear that the opposition will be insisting on ultimately seeing the document and its variations through whatever process we need to follow to obtain it. The government’s refusal to comply with the Senate order today is entirely consistent with the secretive way in which it has dealt with this fiasco. I understand that that document, as I said, has been available since at least 24 September and was referred to by Minister Truss in a press conference on 30 September. I actually wrote to Minister Truss on 1 October asking for that document.

Honourable senators will be aware of a letter from Dr Bill Gee—former chief veterinarian, former head of the international animal health organisation OIE and former President of the Australian Veterinary Association—which has been published in major newspapers over recent weeks warning of dire quarantine concerns and consequences if the sheep return to Australia. He referred to exposure of Australian livestock and native fauna to exotic diseases including sheep pox, blue tongue, screw worm fly and Rift Valley fever.

The National Farmers Federation, the Cattle Council of Australia, the Sheepmeat Council of Australia, WoolProducers, the Australian Meat Industry Council, the Western Australian Meat Marketing Cooperative, the Sheep Breeders Association of Western Australia, the Western Australian Farmers Federation, the NSW Farmers Association and the Australian Veterinary Association oppose the return of the sheep on quarantine grounds. This week, Liberal members Mr Tuckey, Mr Haase and Mr Hawker broke ranks with Mr Truss and Mr Howard and openly opposed the return of the sheep. I understand that at least 18 other government backbenchers questioned or criticised at yesterday’s joint party room meeting the decision to potentially allow the return of the sheep.

Senator Ferguson—You obviously weren’t there.

Senator O’BRIEN—Senator Ferguson suggests that it is not true, but there are very strong stories circulating about that. I suggest I am relying on more reliable sources that I have heard so far.

Senator Ferguson—More reliable than those that were present?

Senator O’BRIEN—They may well be more reliable, for reasons which are well known to those present. Former Victorian Liberal Leader of the Opposition and experienced vet Dr Denis Napthine has also opposed the plan to return the sheep. For weeks, most animal liberation groups, including Animals Australia and Animal Liberation NSW, have advocated slaughter at sea.

An important matter related to quarantine is the impact of the return of the sheep on Australia’s trade position. Not only will the return of the sheep without adequate quarantine controls impact on Australia’s export markets—in lamb, for example—it will also serve to undermine Australia’s defence of its quarantine regime in the World Trade Organisation. An EU challenge on quarantine is currently under way. In the face of all this, the government has said nothing about how
it proposes to manage the quarantine risks associated with the MV Cormo Express, nothing about this assessment of risks and—except for the placement of fly swatters on the ship and additional blood tests—nothing about how it will control the risk represented by these sheep. Nor has the government said where the sheep are going to be slaughtered.

The Senate order demanded the production of the master’s report revealing mortality aboard the vessel. We have one that is now three days old, which was tabled by the minister today. But we know that the government receives a daily report because Senator Ian Macdonald told the Senate just that. We have a report that is three days old; I wonder why we cannot have a more up-to-date report. The government should explain that. It was not explained in the statement, other than saying that the government was still looking at it. One wonders why it cannot release for the Senate’s information and certainly for public consumption more up-to-date figures on the mortality events for the ship.

While two independent veterinary inspections have cleared the sheep of any infectious diseases or conditions, including scabby mouth, the sheep have been confined to pens aboard the ship for 72 days. At least 5,200 have died, and it is not clear how many might survive a return journey, especially if that journey is via Cocos (Keeling) Islands with some quarantine checks to be conducted there. Australia’s livestock and meat processing industries deserve to know how the government proposes to manage the quarantine risk associated with the return of the MV Cormo Express and so do the 57,000 thousand Australians whose jobs depend on Australia’s livestock and meat sector not being compromised. The Australian people are sickened by Mr Truss’s inept handling of this fiasco, and they deserve an answer on the condition of the sheep aboard the vessel. The Senate deserves full compliance with its return to order, and I ask the minister to reflect on the inadequate response which he has given and table the requested documents. *(Time expired)*

**Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.14 p.m.)*—I do not want to prolong this debate unnecessarily as I appreciate that the take note of answers is still to be dealt with. I do want to respond to Senator O’Brien though and tell him what the people of Australia are really sick and tired of, and that is the opposition playing politics with a matter that is of significant national interest. It is a situation that has arisen not through the government’s making but one which we are responsibly addressing, along with the industry and along with many other stakeholders. I do urge Senator O’Brien, who I think, generally speaking, has the interests of Australia at heart, to consider what these petty political attacks on Mr Truss are doing to Australia’s reputation.

Mr Truss has received universal commendation for the way in which he has handled this most difficult issue, and I think the people of Australia understand better than you, Senator O’Brien, that this is a difficult situation and it has to be worked through. You raised the issue of disposal at sea. The legal advice I have is that sheep dying on the way over were macerated and disposed of—this is allowed for under the convention. But that is a bit different from throwing overboard 50,000 recently killed sheep with their stomachs slit open. That is in conflict with the London convention on disposal of wastes at sea, as I am advised. There is a very big difference between disposing of 20 or 30 sheep overboard a day while the ship is moving and 50,000 sheep overboard, and I would have thought that whether or not that is the legal position—although I am advised it is—
even commonsense would explain the difference between those two situations.

I reiterate that the minister for agriculture has advised that the information will be made public, and I anticipated that when I first answered this question. The government has been investigating it and looking at putting in place risk management regimes in conjunction with the industry. The master’s report has been tabled. The most recent master’s report only arrived this morning and has not been considered but it will be made available.

Mr Truss has been open—I will not say more open, because government ministers are always open in everything that they do—and I do not think anyone could criticise the openness with which Mr Truss has dealt with this matter. He has held regular news conferences. He has appeared on national television. He has explained the government position. He has not hidden anything whatsoever. It is a most difficult position and whichever way you turn there are problems to be addressed. The government is addressing those problems maturely and responsibly. I would have thought that this is one instance—there are not many that happen in our business—where national wellbeing would override any political point scoring that might be thought to be obtained from this very difficult issue.

Question agreed to.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator CONROY (Victoria) (3.19 p.m.)—I move:

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

Today we have seen this government exposed yet again for its soft-touch regulation when it comes to dealing with the top end of town. Let us just revisit history for a minute. When the government released their much-vaunted first draft CLERP bill nearly one year ago, their proud boast was the 72 pages and 44 recommendations in the bill. But there was one issue that never got a mention in the 72 pages and 44 recommendations. There are no prizes for guessing it was about executive remuneration. Twelve months ago, in your big CLERP 9 document, there was not one word. You have been dragged screaming and kicking on this issue.

Senator Ferguson—What did you do about it?

Senator CONROY—Senator Ferguson asks what we proposed. Our proposals were already on the table. We had already put our proposals on the table. This is a government that is soft on the big end of town. This is a government that has been forced to adopt Labor’s proposals on how to deal with corporate excess. The strategy from this government on this issue is: what is the minimum we can try to get away with to look respectable? We have seen the government dissembling.

Ross Cameron blew the whistle. Last Friday in the Australian Financial Review he said that shareholders should stop indulging in ‘carping negativity’, because they dare to ask questions about why their shareholders’ funds are being looted by CEOs in this country. We are not talking about the US and the grossly obscene excess we have seen there; we are talking about the looting of Australian publicly listed companies, and shareholders have had enough. Ross Cameron is out of touch when it comes to this issue. We have seen the sort of excess—and I know that some of my colleagues are going to talk about some of it—and the looting that has gone on.

We have seen David Higgins, the ex-CEO of Lend Lease, take home $8 million on his
departure including—and wait for this—he has lost $715 million of shareholders’ funds in one year. They paid him $1.61 million to not go and work for a rival. I would have paid him that much to go and work for their rivals! That was what they gave him. This year we have seen David Murray of the CBA take home $2.5 million. That is a 7.4 per cent increase for running the Commonwealth Bank despite the fact that the bank’s net profit slumped 24 per cent.

That is what gets up the nose of shareholders; that is why it is important that something be done about this sort of excess. Why? I want to quote from the Harvard Business Review about why these reforms are important:

When shareholders fail to engage, either in setting direction or holding board members accountable for their behaviour, an important link in the governance system is missing. In this context, a director’s allegiance shifts from its proper base—the shareholders—to the nearby boardroom, where fellow directors and management fill the void.

What Labor has been about in leading this debate is empowering shareholders. What has been the Prime Minister’s attitude? Let us talk about the crocodile tears of the Prime Minister. The only thing John Howard has ever done about corporate excess in this country is talk about it. In 1996, in relation to wage restraint, Mr Howard said:

... the obligation to display wage restraint, the obligation to ensure that wage increases are linked to productivity gains, is not an obligation that is confined to people on low and middle incomes. It is an obligation that is also to be accepted and to be met in full by people on high incomes.

This government has a record; it is a record of self-regulation and light touch regulation, and it has been the green light for corporate greed. We will not get much out of this government. As they describe it, they are committed to finding the right balance. That is a balance that does the minimum amount it can to stamp down on corporate greed in this country. We have to do more than just what is in this package if we are going to give shareholders power, start reining in the greed and get the snouts out of the trough. (Time expired)

Senator WATSON (Tasmania) (3.24 p.m.)—The Senate is taking note of certain matters that relate to what is commonly referred to as CLERP 9. For those listening to this debate, that refers to a coalition initiative, the Corporate Law Economic Reform Program, a great initiative by the government. I would like to take this opportunity of acknowledging the outstanding contribution made by the former Parliamentary Secretary to the Treasurer, the Hon. Ian Campbell, in developing this bill and this act. His contribution was very significant and no doubt contributed to the Prime Minister’s decision to elevate him to ministerial status.

Interestingly, this bill was referred to a Senate committee before it hit the parliament. It was referred to the Joint Committee of Public Accounts and Audit, which for the first time looked at a major matter in relation to the private sector. The JCPA has had a long history of actively seeking to improve the role and independence of the Commonwealth Auditor-General, and the government believed that it was an essential agent of the government’s accountability to parliament and for ensuring that there was good corporate governance in the public sector. This inquiry was a great opportunity for the committee to bring its expertise on audit, corporate governance and other matters to independently review this particular legislation. The examination was carried out and the report was presented in August 2002.

What is surprising is that it was a unanimous report from a committee that included
Labor members and senators. It is also surprising to find that since that report has come down, the Labor Party have moved away from what is in those recommendations. That is indeed unfortunate. The Labor Party then took a position different from that which they are taking today. In a sense, there is a little bit of political opportunism here, because this is a far-reaching reform, an initiative of this government, to overhaul certain deficiencies which were in the law. There were deficiencies, and we are not walking away from that, and there were excesses. I remind honourable senators that those excesses were not nearly as bad as those in the United States, but we all have some sorrowful memories of HIH and other disasters. In relation to the opposition’s current position, I will quote from the report of the joint committee—a unanimous report—where it says: The Committee is not convinced that an overly prescriptive reaction is warranted or appropriate.

Senator WONG (South Australia) (3.29 p.m.)—I rise to speak to Senator Conroy’s motion, and I wish to speak particularly to answers given by the Assistant Treasurer in question time today. What we saw today, again, was the inaction and timidity that characterises this government’s approach to corporate governance and corporate regulation. The CLERP 9 discussion paper was released in September last year. We have had it out for a year but it is only now that we have finally got to the stage of having a bill. Surprise, surprise, it is a draft bill, so we are going to have a further period of consultation with the corporate sector about regulation before anything can be done to rein in some of the documented corporate excesses which Australians have become sick and tired of.

So first there was inaction from the government and then, if you look at the text of the bill and the minister’s answers today, timidity. They are extremely timid in their response to the corporate sector. One wonders why. Are they simply frightened of scaring the big end of town by requiring them to disclose properly to shareholders some of the practices in their boardrooms? The Howard government continues to put the interests of directors over those of shareholders despite their championing of Australia as a shareholding society. They keep playing to the big end of town instead of improving corporate practice and reining in corporate excess.

Today the Assistant Treasurer was asked a number of questions. One of them from me was this: why ought not directors disclose, when they are seeking election to a board, the relationship between the director and the company? Why ought not the director disclose that? The minister could not provide an answer to that. She could not provide a good
reason why shareholders ought not be told, if a director is seeking election to a board, whether a director has a commercial or other relationship with a company or a relationship with one of the other directors. One fails to see what shareholder value would flow from such relationships. If there were shareholder value in such relationships, then you come back to the question of why you would not disclose it. Is it such an onerous task to disclose it? These are not issues that the minister chose to address in her answer. Instead she went on and on about not wanting to be too prescriptive. Her mantra is that CLERP 9 has struck the right balance and that the government does believe in transparency and disclosure. It seems they believe in transparency, but only a little bit of transparency, and disclosure, but only a little bit of disclosure.

Another question the minister failed to properly answer in question time is why CLERP 9 proposals fail to prohibit a company loan to directors. This is a question I am sure a lot of Australians would be interested in. Why is it that directors might have access to either interest-free or cut-rate loans from companies when the rest of Australia has to go to a bank or other financial institution for this sort of credit? Is there shareholder value in permitting these loans to be advanced? If there is, perhaps someone on the government side can get up and explain to me what shareholder value is to be found in allowing companies to provide capital in the form of loans to directors at a cut-price rate. I cannot see how that leads to better corporate governance or in fact leads to more profitable public companies, and that is what we are talking about here. Again, the Assistant Treasurer simply goes on and on about not wanting to be prescriptive, which seems to be the standard response when asked why they are not doing anything at all.

We are simply told by the government that we in the ALP know nothing about doing business. I wait with bated breath for an explanation from the government benches as to why things such as disclosure of a relationship with the company and disclosure of a relationship with other directors are bad for doing business, why they would be such a fetter on the ability of business to engage in its activities, and finally why loans to company directors ought be permitted. I wait with bated breath for the explanation as to why these are important issues. Perhaps the minister could also explain how those things would be to the detriment of shareholders. If this government is interested, as it keeps announcing, in disclosure and in shareholders being informed about the activities of companies, why is it opposed to basic disclosure of things such as relationships between directors seeking election? (Time expired)

Senator FERGUSON (South Australia) (3.34 p.m.)—Today is a very interesting day. Later on we will debate an MPI based on the performance of this government in relation to the economy. I have never seen such a free kick to the government as that which will be proposed by Senator George Campbell at a later date in relation to the Australian economy. If there is one area involving the interests of Australians that this government can be terribly proud of, it is what has happened to our economy since 1996, when you compare it to our predecessor. We have Senator Conroy getting up and talking about executive remunerations and other things that this government has acted on in the time it has been in power, particularly in relation to CLERP 9. For 13 years Senator Conroy and his party did absolutely nothing about executive remunerations—not a thing. The only party that is interested in making sure that there is some equality and some fairness in relation to directors’ remuneration is this party, the government party, the Liberal-National parties. Senator Conroy comes in here and complains, and yet he and his
party did absolutely nothing—not a thing—over a period of 13 years. We have this political opportunism from people like Senator Conroy and Senator Wong, who has just spoken, who feel that they can touch some little political nerve whenever we see the publicity about some executive remuneration.

My colleague Senator Watson has already explained as a member of the Joint Committee of Public Accounts and Audit that the Labor Party joined with the government in 2002 in a unanimous report in relation to executive remuneration, transparency and a range of other issues that were covered in that report. What has changed in the view of the Labor Party in relation to that unanimous view that they held only last year? Is it because they see some political opportunism because of public comment or have they gone back on the principles that were enshrined in that report, which was unanimous? That was report 391 of the joint public accounts committee. All I can say is that Senator Conroy, as spokesman, ought to go back and look at what his party thought 12 months ago. Perhaps he wants to come in here and say, ‘We were wrong; we should never have supported the unanimous view of this committee; we should have done something entirely different and gone our own way. We should have put an overly prescriptive regime in place. We made a mistake in 2002 in joining with the unanimous report of the public accounts committee.’

What Senator Conroy and Senator Wong want is black-letter law, more prescription. We have got to the stage now where we have had exposure drafts, where we have had a unanimous report and where we have given all the stakeholders a chance to have a say. Shareholders will have a far greater say than they ever had under the Keating government and the Hawke government. In the 13 years of Labor government there was no prescription whatsoever. They were very happy to let executives have a free rein then, but all of a sudden, having written and been part of a unanimous report, they have changed their minds and told nobody. Shareholders now have a say when previously shareholders had no say. When Senator Conroy talks about reining in the excesses of some executive directors, perhaps he ought to think about reining in the excesses of some of the union leaders who dominate his party. In many ways, the excesses of union leaders affect what happens in this country in a far greater way than anything that executives might do.

Report 391, the report of the joint public accounts committee, has dealt with transparency and disclosure. That is the important thing. We now have a situation where the government’s CLERP package is designed to improve disclosure and transparency in relation to executive remuneration packages. This government has achieved the right balance, and what we want in this whole affair is the right balance between being overly prescriptive and black-letter law. This government has achieved the right balance in improving the level of disclosure to shareholders and in avoiding prescriptive regulations that will overburden companies with red tape. (Time expired)

Senator GEORGE CAMPBELL (New South Wales) (3.39 p.m.)—I also rise to take note of Senator Coonan’s answers in respect of questions asked of her today regarding CLERP 9. I look forward to hearing Senator Ferguson’s contribution to the debate that will follow this one in respect of the government’s performance on debt. I look forward to hearing his contribution, but I do not think he will be allowed near the debate at all.

In coming back to the issue of CLERP 9 and the questions to Senator Coonan today, Labor did not say that we were opposed to
what is in CLERP 9. We welcome some of the reforms. We are particularly happy to see the government adopting Labor’s proposals in respect of giving shareholders a non-binding vote on executive remuneration policy. But the reality is that the government has refused to take the issues far enough to deal with what are substantial excesses by the big end of town.

In his contribution, Senator Watson talked about the excesses as if they were in the past—that they were gone, that no more excesses were occurring, that they had all been cleaned up. He spoke as though CLERP 9 had put the clamp on the corporate sector. Let me tell Senator Watson what happened yesterday at the annual general meeting of Southcorp, one of our biggest companies: they reported a $923 million loss and halved the share value of the company. That was the performance that the executive directors of Southcorp reported to their annual general meeting yesterday. But what did they do when it came to executive salaries? The CEO got a payout of $6 million and the top 10 executives got a payout of more than $1 million each. This is a company that has just lost $1 billion, that has just halved its share price, and the executives have got performance payment for doing it. And that is exactly what the corporate sector in this country has been doing since the mid-1990s: rewarding itself for corporate failure.

Senator Watson knows that there was a litany of corporate greed in this country in that period. Look at the performance of the executive directors of HIH. They ripped off people who had put their money into that company. Look at the performance of George Trumbull on AMP. He took a major company, put it down the gurgler and then took off to the United States with $13 million in his back pocket. They are the sorts of people who are running major companies in this country today. Look at Gilbertson from BHP Billiton. With $30 million in his back pocket, he said, ‘Thank you very much. See you later, friends. I’m off. I’ve got my share of the stake.’

We would be happy to support the government’s reforms, but I do not think you are serious about them. You only have to look at the statement of your Parliamentary Secretary to the Treasurer in the Financial Review on Friday. He said that we should not be obsessed with emoluments to executives and directors, that we should not worry about that. But you are obsessed with black-letter law when it comes to trade unionists and the union movement. You have about 12 bills wanting to put in place black-letter law, and you will have a whole raft of bills wanting to put in place black-letter law in the building industry when those bills eventually come before this chamber. It is all right for you to adopt the black-letter law approach—and I see you are smiling, Senator Brandis—

Senator Brandis—I am always smiling.

Senator GEORGE CAMPBELL—Be careful, because the voters might wipe the smile off your face at the next election. You are quite happy to bring black-letter law into this chamber when it comes to ordinary workers and suppressing their rights in the workplace, but you say that black-letter law is not an appropriate response to dealing with the excesses of executives of major companies in this country. Senator Watson, you know they have been like bees around the honey pot for the past decade, and this government has done nothing about putting the lid back on it—and you will not do it because you are not prepared to take on the people at the big end of town.

Senator Watson interjecting—

Senator GEORGE CAMPBELL—It is a discussion paper, nothing more. Where is the legislation?
The DEPUTY PRESIDENT—Senator George Campbell, address your comments through the chair.

Senator GEORGE CAMPBELL—It is nothing more than a discussion paper, and it will be interesting to see—(Time expired)

Question agreed to.

Immigration: Visas

Senator STOTT DESPOJA (South Australia) (3.44 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by Senator Crossin today relating to the Sammaki family and their application for a visa.

This question was inspired by a photograph that the Australian Democrats revealed publicly today. It was a photograph that I made available—

Senator Faulkner—It wasn’t inspired by that at all.

Senator STOTT DESPOJA—I take that interjection. We thought that the photograph was the subject of the question in the lower house today. It is the photograph that shows Prime Minister Howard holding the hand of four-year-old Sara Sammaki, daughter of Mr Ibrahim Sammaki, who has spent more than two years in detention. He is now in the Baxter detention facility in South Australia. Those two children, Sara and Sabda Sammaki, have applied for a visa—I know that, because I am one of their sponsors—and that visa request for two weeks to visit their father has been denied.

This case is worse because—as many honourable senators would know, they were sold into servitude in a red-light district in Bali but have been rescued as a consequence of the goodwill of an Indonesian-Australian woman who is now their carer—not because of any efforts attributable to this government. Yet we have now seen a photograph taken around four days ago of the Prime Minister holding the hand of four-year-old Sara.

That expression of what we hope is compassion is not reflected in government policy. It is not reflected in the fact that these kids cannot get a two-week visa to visit their father, whom they have not seen for two years. These children have been practically orphaned, albeit they have a carer now who is looking after them out of the goodness of her heart and indeed is suffering financial and other difficulties as a consequence of dealing with two extra children in what I believe is a one-income household.

The photograph attests to the fact that the Prime Minister has seen in the flesh, has presumably spoken with and has certainly held the hand of one of these children—both children are in the photograph. Does this represent a change of heart by our Prime Minister and our government or are they simply going to be holding the hands of the children in this photograph but not actually holding their hands in the way that it matters—that is, granting a minimum two-week visa?

The application for this visa has been supported by at least two members of parliament—Kate Reynolds MLC in South Australia and me—and by magistrate Brian Deegan, who has made it clear that he will be a guarantor. He will provide finances and ensure that there is no flight risk or any other risk posed by these kids aged eight and four. They just want a visa for two weeks to see their grieving father, who is in Baxter detention centre. I acknowledge that the government—I think it had a lot to do with the ef-
forts not only of Kate Reynolds but also, I think, of the Premier, Mike Rann, in South Australia—ensured that Mr Ibrahim Sammaki was able to be a part of the memorial service in Adelaide at the Botanic Gardens on the weekend, albeit flanked by three ACM guards who, I note for the record, were very discreet and helpful indeed. He was flanked by three security guards to attend a memorial in order to grieve as others did over their lost loved ones.

I hope that the new minister will do something about this issue. I hope that today’s efforts by both parties to draw attention to this issue will be respected and acted upon. I hope the Prime Minister knew exactly who he was talking to when this photograph was taken. If he did not, he should act on it now. This government and the minister need to provide a two-week visa for these children to see their grieving father. The Prime Minister, now that he has been captured holding the hand of this child, displaying what we presume is compassion, must act on that compassion and ensure that those applications—

(Time expired)

Question agreed to.

PETITIONS

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

Environment: Great Barrier Reef Marine Park

To the Honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows:

We strongly reject the proposed draft-zoning plan of areas in Queensland by Great Barrier Reef Park Authority (GRMPRA) a federal government department. Furthermore we object to the way the submissions were used in forming the proposed draft zoning plans without proper public discussion (public being the undersigned) to allow an equitable and sustainable fishery for future of the Great Barrier Reef and for the fishing industry in general.

Your Petitioners request that the Senate should:

• Oppose all Howard government policy initiatives that will undermine the integrity, universality and ongoing viability of the fishing industry (both professional and recreational) in Queensland.

• Allow proper consultation and discussion between GRAMPRA and the undersigned without bias.

• Allow the undersigned and GRAMPRA to form a sound basis to the proposed zoning plan and allowing the fishing industry (professional and recreational) combined to heavily define the zoning areas of the Great Barrier Reef to a mutual and beneficial agreement for all parties concerned.

by The President (from 1,052 citizens).

Constitutional Reform: Senate Powers

From the citizens of Australia to the President of the Senate of the Parliament of Australia

We the undersigned believe that the Prime Minister’s call for Senate Reform is an attempt to dilute the powers of the Senate and to enable the Executive to have absolute control over parliament.

We urge all Senators to ensure the powers and responsibilities of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people and to oppose any moves by the current, or future, Governments to weaken the ability of the Senate to be a check and balance on the Government of the day.

by Senator Bartlett (from 60 citizens).

Immigration: People-Smuggling

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

We request that the Senate call for a full independent judicial inquiry into the role of Australian Defence Force personnel and the Australian Federal Police in immigration-related activities including (a) the circumstances surrounding the sinking of the SIEV-X and (b) the people-smuggling disruption program in Indonesia.

by Senator Bartlett (from 43 citizens).
Child Abuse
To the Honourable Members of the Senate in the Parliament Assembled

The Petition of the undersigned draws attention to the damaging long-term effects to Australian society caused by the sexual assault and abuse of children and the concealment of these crimes within churches, government bodies and other institutions.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to initiate a Royal Commission into the sexual assault and abuse of children in Australia and the ongoing cover-ups of these matters.

by Senator Bartlett (from 20 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 Moore (from 11 citizens).

Education: Higher Education
To the Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned draws to the attention of the Senate, concerns that increasing university fees will be inequitable.

Your petitioners believe:

a) fees are a barrier to higher education and note this is acknowledged by the Government in the Higher Education at the Crossroads publication (DEST, May 2002, Canberra, para 107, p, 22);

b) fees disproportionately affect key equity groups—especially indigenous, low socio-economic background and rural, regional and remote students—and note, participation of these groups improved from the early 1990s until 1996 but have subsequently fallen back to about 1991 levels (lower in some cases) following the introduction of differential HECS, declining student income, support levels, lower parental income means test and reduction of Abstudy;

c) permitting universities to charge fees 30% higher than the HECS rate will:

a. substantially increase student debt;

b. negatively impact on home ownership and fertility rates;

c. create a more hierarchical, two-tiered university system; and

d. expanding full fee paying places will have an impact on the principle that entry to university should be based on ability, not ability to pay.

Your petitioners therefore request the Senate act to ensure the principle of equitable access to universities remain fundamental to higher education policy and that any Bill to further increase fees is rejected.

by Senator Stott Despoja (from 40 citizens).

Petitions received.
NOTICES

Presentation

Senator Conroy to move on the next day of sitting:

That the Senate—

(a) notes that the Government’s draft Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 will fail to create a robust regulatory framework which firstly, ensures that boards are accountable and secondly, ensures that shareholders are empowered;

(b) condemns the Government for its failure to crack down on corporate greed; and

(c) expresses its concern that the self-regulatory approach of the Howard Government has failed to produce outcomes that benefit the shareholder, the employee or the retiree.

Senator Troeth to move on the next day of sitting:

That the Senate—

(a) recognises the annual World Rural Women’s Day held on 15 October 2003; and

(b) notes that:

(i) the idea to hold a World Rural Women’s Day arose at a United Nations Conference for Women in Beijing in 1995, and that it has been held every year since 1996 to raise the profile of rural women, credit their crucial—yet largely unrecognised roles—and promote action in support,

(ii) the major role rural women play in food and fibre production, food security and the development of worldwide rural economies is often overlooked: rural women—mainly farmers—represent more than a quarter of the total world population (at least 1.6 billion); women produce on average more than half of all the food that is grown; alarmingly women own only 2 per cent of all agricultural credit, and

(iii) consistent with the values of World Rural Women’s Day, the Australian Government is committed to creating developmental opportunities for rural women in this country, and with two industry leadership initiatives designed to foster the development of rural women—Industry Partnerships Corporate Governance for Rural Women and Rural Industries Research and Development Corporation’s Rural Women’s Award—recognises and supports the contribution women make to rural Australia.

Senator Bartlett to move on the next day of sitting:

That the Senate—

(1) That, on Thursday, 23 October 2003, the Senate meet at 9.30 am.

(2) The routine of business on that day shall be as follows:

(a) from 9.30 am to 10.30 am, government business only; and

(b) from noon:

(i) government business only, and

(ii) at 7.20 pm, adjournment proposed.

(3) That, on Friday, 24 October 2003, the Senate meet at 11 am.

(4) The routine of business on that day shall be as follows:

(a) from 11 am to 3.45 pm, government business only; and

(b) at 3.45 pm, adjournment proposed.

Senator Bartlett to move on the next day of sitting:

That the order of the Senate relating to the days of meeting of the Senate for 2003 be varied by adding an additional sitting week as follows:

Monday, 17 November to Thursday, 20 November 2003.

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

(a) notes that strike action called by the National Tertiary Education Union, Community and Public Service Union, and other unions has closed universities nationwide;

(b) recognises that this action comes as a direct result of the Government’s invasive and aggressive industrial relations agenda, clumsily forced on the sector as part of the Backing Australia’s Future package;

(c) notes that this agenda will have an impact not only on the working conditions of general staff and academics but also on the broader quality of higher education in Australia;

(d) endorses the action of the unions involved in this action;

(e) supports the right of these unions to collectively bargain on behalf of their members;

(f) respects the ongoing right of these unions to take protected action when necessary; and

(g) calls on the Government to scrap the proposed higher education workplace relations requirements and allow universities to bargain constructively with unions and their members.

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

That the management of the quarantine risks associated with the return of the sheep stranded aboard the MV Cormo Express and related matters be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by the last sitting day in November 2003.

Senator TCHEN (Victoria) (3.50 p.m.)—I give notice that 15 sitting days after today I shall move:

That the Child Disability Assessment Amendment Determination 2003 made under section 38D of the Social Security Act 1991, be disallowed.

I seek leave to incorporate in Hansard a short summary of the committee’s concerns with this determination.

Leave granted.

The document read as follows—

Child Disability Assessment Amendment Determination 2003 made under section 38D of the Social Security Act 1991

This Determination adds to or modifies the description of six disabilities on the List of Recognised Disabilities in Schedule 3 of the principal Determination.

The Committee notes that this Determination has a retrospective commencement date, having been made on 12 August 2003, but commencing on 1 July 2003. Whilst the retrospective commencement appears to be beneficial in effect, the Explanatory Statement does not contain any assurance that this does not disadvantage any person other than the Commonwealth, pursuant to s 48(2) of the Acts Interpretation Act 1901. The Committee has written to the Minister seeking an assurance that no person has been disadvantaged.

Senator TCHEN (Victoria) (3.51 p.m.)—I give notice that 15 sitting days after today I shall move:

That the Inclusion of Species in the List of Threatened Species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999, be disallowed.

I seek leave to incorporate in Hansard a short summary of the committee’s concerns with this instrument.

Leave granted.

The document read as follows—

Inclusion of Species in the List of Threatened Species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999

The Committee notes that this instrument is dated 4 March 2002. It is not clear whether this is a typographical error, or whether there has been a delay of eighteen months between the making of the instrument and its gazettal. The Committee
has written to the Minister seeking clarification of this matter.

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

That the Senate—

(a) notes that:

(i) university staff around Australia will take national industrial action on 16 October 2003 in protest against the Howard Government’s unfair university changes, including hardline and untenable industrial relations conditions that have been placed on $404 million of desperately needed university funding.

(ii) seven unions covering university staff across Australia will be supporting the strike, and

(iii) vice-chancellors across the country have expressed their lack of support and concern in relation to the Government’s requirement to link funding to industrial requirements; and

(b) calls on the Federal Government to provide this funding to universities on the basis of quality and improved educational outcomes.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) recalls that:

(i) on 10 December 2002, the Senate called on the Australian Government as a matter of urgency to take whatever steps were required to return to Australia Mr David Hicks and Mr Mandy Habib, incarcerated at Camp X-Ray in Guantanemo Bay, Cuba, to determine whether they should be freed or face trial, and

(ii) on 14 August 2003, the Senate called on the Australian Government to take immediate steps to secure the release from Camp X-Ray and return Mr Hicks and Mr Habib to Australia;

(b) notes that the Australian Government has failed to respond to these calls and that Mr Hicks and Mr Habib remain incarcerated in Camp X-Ray; and

(c) calls on the Prime Minister (Mr Howard) to use the visit to Australia of United States President George W Bush in the week beginning 19 October 2003 to request the return to Australia of Mr Hicks and Mr Habib so that they can face trial or be freed.

Senator Brown to move on the next day of sitting:

Recognising that the Sydney Opera House is having its 30th birthday, that there be laid on the table by the Minister representing the Minister for the Environment and Heritage, no later that 3 pm on 27 October 2003, any assessment made since 1996 in preparation for, or consideration of, a world heritage nomination for the Sydney Opera House.

Senator Harris to move on the next day of sitting:

That the Senate—

(a) considers that the MV Cormo Express must not proceed directly from a foreign port to any Australian mainland port, as this would compromise Australian quarantine regulations;

(b) notes that the MV Cormo Express must undergo a process of quarantine including cleaning, disinfecting and checking of the ship and its cargo;

(c) considers that prior to the MV Cormo Express entering the Australian territorial waters of the Cocos Islands, the Government must take regard of the following:

(i) the MV Cormo Express may be carrying unwanted organisms in its ballast and drinking waters,

(ii) at least 125 tonnes of sheep excrement will have accumulated during the voyage back from Kuwait and will need to be disposed of,
(iii) this excrement contains highly concentrated levels of nitrates and phosphates that have been shown to be highly toxic to coral organisms, even in minute quantities,

(iv) Cocos Island is a coral atoll and the lagoon and surrounding oceans are extremely rich in coral,

(v) burying the excrement on the island may not be feasible for logistical and environmental reasons as screwworm fly larvae may be present in the excrement,

(vi) the introduction of screwworm fly to the island or the Australian mainland would be devastating to Australian agriculture,

(vii) due to the size and draft of the MV Cormo Express, it would be unable to anchor within the lagoon,

(viii) the depth of the surrounding water and the rate at which the depth increases would make it virtually impossible for the vessel to stand off and anchor within the port limits of Port Refuge, and

(ix) if the sheep were to be unloaded at Cocos, the availability of water and food stock will have to be addressed; and

(d) considers that, because of these factors, the Government must recognise that the Cocos islands are an unsuitable alternative destination for the sheep on the MV Cormo Express.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that Lake Cowal is:

(i) listed on the Australian Register of the National Estate and Environment Australia’s Directory of Important Wetlands, and is a National Trust landscape conservation area, and

(ii) home to 170 species of waterbirds as well as many migratory bird species that are protected under the China-Australia Migratory Birds Agreement and the Japan-Australia Migratory Birds Agreement;

(b) calls on the Government to:

(i) recognise that the Lake Cowal/Wilbertroy wetland contains values worthy of its listing under the Ramsar Convention on Wetlands of International Importance, and

(ii) work with the New South Wales State Government to achieve Ramsar listing of the site; and

(c) calls on the Minister for the Environment and Heritage (Dr Kemp), if Ramsar listing is achieved, to reconsider the decision that the proposed construction and rehabilitation of an open pit goldmine and associated infrastructure at Lake Cowal does not require ministerial approval under the Environment Protection and Biodiversity Conservation Act 1999.

Senator Nettle to move on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Trade (Senator Hill), no later than 30 October 2003, documents detailing the results of the independent environmental and social audit of the Sepon Mine project in Laos, conducted by Graham A Brown and Associates and provided to the Export Finance Insurance Corporation, the providers of political risk insurance for this project.

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.57 p.m.)—I present the 13th report of 2003 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 13 OF 2003

1. The committee met on Tuesday, 14 October 2003.

2. The committee resolved to recommend—
   That the Financial Management and Accountability (Anti-Restrictive Software Practices) Amendment Bill 2003 not be referred to a committee.

The committee recommends accordingly.

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

   Bill deferred from meeting of 12 August 2003
   Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003.

   Bill deferred from meeting of 19 August 2003

Jeannie Ferris
Chair
15 October 2003.

NOTICES
Postponement

Items of business were postponed as follows:

   Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for 16 October 2003, relating to the disallowance of the Fisheries Management Amendment Regulations 2003 (No. 3), as contained in Statutory Rules 2003 No. 112, postponed till 30 October 2003.

   Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to the disallowance of clause 4(3) of the Housing Assistance (Form of Agreement) Determination 2003, postponed till 30 October 2003.

   Business of the Senate notice of motion no. 2 standing in the name of Senator Bolkus for today, relating to the reference of matters to the Legal and Constitutional References Committee, postponed till 16 October 2003.

   Business of the Senate notice of motion no. 3 standing in the name of Senator Murray for today, relating to the reference of matters to the Employment, Workplace Relations and Education References Committee, postponed till 16 October 2003.

   General business notice of motion no. 646 standing in the name of Senator Allison for today, relating to a resolution of the National Party’s Federal Conference on the ethanol industry, postponed till 16 October 2003.

   General business notice of motion no. 652 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to nuclear weapons, postponed till 16 October 2003.

   SCIENCE: CHIEF SCIENTIST

Senator BROWN (Tasmania) (3.58 p.m.)—by leave—I move the motion, as amended:

That the Senate—
(a) notes:
   (i) that Australia’s Chief Scientist Dr Robin Batterham is also the chief technologist for mining giant Rio Tinto, and
   (ii) that Dr Batterham continues to advise the Government on matters relating to Australia’s greenhouse policy;
(b) calls on the Government to conduct an independent review of the advice Dr Batterham has given on geo sequestration; and
(c) requests the Minister for Science (Mr Peter McGauran) to make the job of Chief Scientist full-time and conditional on its officeholder having no pecuniary interest which involves real or apparent conflict with any of the duties involved.

Senator CARR (Victoria) (3.59 p.m.)—by leave—I would like to make a short statement on this motion about the Chief Scientist. This is a serious matter. This is a motion which is calling for an independent inquiry into certain matters of research that the Chief Scientist has presented, about
which there have been allegations of a conflict of interest. The opposition will be supporting this proposition, and I would like to explain briefly why I feel that is necessary.

The government was advised yesterday—directly by me, through the minister’s office and his ministerial adviser, and at the Press Club in a direct discussion with the Minister for Science, Mr McGauran—that unless the government were able to produce the relevant documents required in a Senate return to order the opposition would be supporting this motion. The government has failed to provide those documents.

It needs to be stated that this is a position whereby the opposition do not prejudge the case—I have no reason to doubt that the Chief Scientist is a man of stature and no evidence that he has behaved improperly. We have called for an independent inquiry of these matters. We have done so simply because the government has failed to provide important documents, which the Senate has asked for and which are legitimate for the government to provide. This is a problem that has arisen simply because the government maintains a position where the Chief Scientist is operating on a part-time basis and is employed on a part-time basis by Rio Tinto for a figure—I am advised and have yet to be corrected on this—of some $700,000 per annum. To me that presents a situation in which there appears to be a conflict of interest on matters of major public policy. This is a question we feel ought to be resolved by way of an inquiry. We have called on the government to conduct an independent inquiry—not by the Senate at this point—to provide the documents and to address the issues which, in my judgment, could be done very quickly.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.01 p.m.)—by leave—I want to respond to some of the remarks made by Senator Carr on Senator Brown’s motion. The Chief Scientist was appointed because of the wide range of experience he brings to the role, including his active, current involvement in the real world of research and development and innovation in industry through his employment with Rio Tinto. The Chief Scientist provides advice to the government on many issues relating to science, engineering and innovation. However, he is by no means the primary source of advice on matters relating to Australia’s greenhouse policy.

The Chief Scientist is able to provide independent advice to ministers. His advice is considered by relevant ministers as they see fit, along with any other advice they may receive. There is no basis to subject the Chief Scientist’s advice to independent review. The Chief Scientist is diligent in ensuring that he has declared any conflict of interest—real or perceived—in his dealings. I doubt that there is a leading scientist in Australia who would not have complete faith in his competence or his integrity.

The government considers that it was appropriate for the Chief Scientist to be appointed on a part-time basis while holding employment in a relevant field. The arrangements for the engagement of the Chief Scientist include provisions dealing with disclosure and management of conflict of interest. Where the Chief Scientist is involved in providing advice in relation to the allocation of funds, such as in his role as a member of the Cooperative Research Centres Committee, appropriate probity arrangements are in place. The Chief Scientist has declared any conflict of interest in his role in the CRC program. Rio Tinto also has a firewall arrangement in place to ensure that the Chief Scientist is not involved in proposals seeking Australian government funding.
Senator BROWN (Tasmania) (4.03 p.m.)—by leave—The motion is concerned with the evidence that the Chief Scientist has put before a number of committees, including the Prime Minister’s scientific advisory committee. He has provided figures for the potential cost of geosequestration of carbon—an unproven technology but one which would greatly help the coal and aluminium industries, of which Rio Tinto is a major player in Australia—which state that this technology could achieve the outcome of sequestrating carbon at something like $10 a tonne.

As far as I know, no other exponent or expert in the field has come up with and put on the record a figure as low as that. Generally the figures are somewhere between $40 and $200 per tonne, not $10 per tonne. Among others, I spoke to the World Bank’s expert in the field, Dr Robert Watson, when he was in Canberra two weeks ago. I asked him what his figures were, and he said in the order of $60 to $200 a tonne. But if the Chief Scientist is giving evidence to the Prime Minister and to his advisory committee that it is $10 a tonne then no doubt they are going to view this as potentially a much more commercial reality. In the allocation of funds that flow from that, other competing potentials like solar power, energy efficiency and wind power will tend to be discounted. They will have a harder time being funded.

Last year, lo and behold, while the renewable energy cooperative research centre was being defunded, four research centres—including one looking at geosequestration, in which Rio Tinto had involvement—were funded by the government. There is scarce funding. The government has the Chief Scientist as adviser. The Chief Scientist’s figures are lower than others I can discover and they feed into a system which must impact on funding of research centres. If the figure is valid, there is no worry about having an independent analysis of it. I might add that my information is that the Chief Scientist gave the figure of $10 a tonne—which is very attractive in influencing future planning by government in geosequestration—as having come from Roam Consulting in Brisbane, but in fact it turns out that Roam Consulting in Brisbane does not own that figure. Moreover, Roam Consulting was being paid in turn by Rio Tinto. There is a prima facie case to be answered.

The apparent conflict that is involved here is very serious. Hundreds of millions of dollars depend upon the advice that the Prime Minister and the government get from the energy sector as to where research and development dollars should go. It has to be the right advice: it has to be balanced, it has to be correctly attributed and it has to be the prevailing advice which is corroborated by peers. I am concerned that that has not been the case. This motion simply calls on the government to have an independent assessment. As Senator Carr said, the motion passed by the Senate asking for documents from the government to look at the original Roam consultancy document, which went to the Prime Minister’s advisory council, has so far been turned down. It is right for the Senate to therefore ask for an independent inquiry. I flag here that, if the government is not going to agree with that, there will be further measures put forward through which the Senate can pursue this matter.

Question put:
That the motion (Senator Brown’s), as amended, be agreed to.

The Senate divided. [4.13 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 34
Nees............ 30
Majority........ 4
Question agreed to.

MILITARY DETENTION: GUANTANAMO BAY

Senator STOTT DESPOJA (South Australia) (4.18 p.m.)—I move:

That the Senate—

(a) recognises that global terrorism is a threat to the international rule of law and the fundamental human rights of all peoples;

(b) 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;

(c) 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 Servicemembers’ 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

(d) expresses concern at the US disregard in these instances for fundamental human rights and the principles and institutions of international law, which we must seek to defend in the fight against terrorism.

Question agreed to.

HUMAN RIGHTS: CHINA

Senator STOTT DESPOJA (South Australia) (4.19 p.m.)—I ask that general business notice of motion No. 641 standing in my name for today, relating to the People’s Republic of China and Falun Gong practitioners, be taken as formal.

Leave not granted.

Senator STOTT DESPOJA—by leave—I ask through you, Mr Acting Deputy President, what the problem is. I was not aware that there was one. Perhaps the whip could enlighten me and then I might seek leave to defer this matter rather than proceed with the formal suspension of standing orders.

Senator MACKAY (Tasmania) (4.19 p.m.)—by leave—The Labor Party will be opposing this motion, and we are keen to have the opportunity to get our views on the record.

FIRST ATOMIC TEST: 50TH ANNIVERSARY

Senator WONG (South Australia) (4.20 p.m.)—I move:

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 Wallatinna 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.

Question agreed to.
SCIENCE MEETS PARLIAMENT

Senator STOTT DESPOJA (South Australia) (4.20 p.m.)—I move:

That the Senate—

(a) notes that:
   (i) the annual ‘Science Meets Parliament’ event in Canberra is being held on 14 and 15 October 2003, and
   (ii) this event provides a valuable opportunity for Members of Parliament to meet scientists from their electorates;

(b) congratulates the Federation of Australian Scientific and Technological Societies for organising this event; and

(c) urges all political parties to recognise the importance of science to this nation’s future, economically, socially, culturally and environmentally, and to adopt policies which reflect this fact.

Question agreed to.

IMMIGRATION: PEOPLE-SMUGGLING

Senator BROWN (Tasmania) (4.21 p.m.)—by leave—I move the motion, as amended:

That the Senate—

(a) notes:
   (i) the Government’s failure to respond to the two Senate orders of 10 December and 11 December 2002 concerning the People Smuggling Disruption Program and the ineffectual pursuit by Australian justice authorities of the alleged people smuggler Abu Quassey,
   (ii) that it is 2 years since 142 women, 65 men and 146 children perished after their boat, referred to as SIEV X, sank, and that the Government has still failed to establish where the vessel sank or release a list of names of the dead; and
   (iii) that the Minister for Justice and Customs (Senator Ellison) has revealed that a list was provided to the Australian Federal Police from a confidential source, but that it is unlikely that a full list of those who boarded SIEV X or those who drowned will ever be available; and

(b) calls on the Government to produce the list and any information it possesses as to its veracity.

Question agreed to.

IMMIGRATION: VISA APPROVALS

Senator BROWN (Tasmania) (4.22 p.m.)—by leave—I move the motion, as amended:

That the Senate condemns this Government for its inhumane decision not to allow the children, Sabda (age 8) and Sara (age 4), of Bali bombing victim Endang Sammaki into Australia to visit their father Ebrahim Sammaki at the Baxter detention centre.

Question agreed to.

NOTICES

Postponement

Senator STOTT DESPOJA (South Australia) (4.23 p.m.)—by leave—I move:

That general business notice of motion no. 641 standing in my name for today, relating to the People’s Republic of China and Falun Gong practitioners, be postponed till the next day of sitting.

Question agreed to.

NUCLEAR DISARMAMENT

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.24 p.m.)—I move:

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 ratify the Comprehensive Nuclear Test Ban Treaty as soon as possible.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator BRANDIS (Queensland) (4.24 p.m.)—I move:

That the time for the presentation of the report of the Economics Legislation Committee on the Late Payment of Commercial Debts (Interest) Bill 2003 be extended to 29 October 2003.

Question agreed to.

SPORT: RUGBY LEAGUE

Senator MACKAY (Tasmania) (4.25 p.m.)—At the request of Senator Hutchins, I move:

That the Senate—
(a) recognises the important role of the Commonwealth in funding and encouraging junior and school sport programs;
(b) notes the importance of such programs for the citizens and children of western Sydney, especially those involved in the sport of rugby league;
(c) congratulates the Penrith Panthers Rugby League team for their victory in the National Rugby League Grand Final held on Sunday, 5 October 2003, making the Panthers Premiers for 2003;
(d) recognises the role that Commonwealth support plays in the facilitation of the sport of rugby league;
(e) notes the importance and significance of this victory for the people of western Sydney; and
(f) congratulates those true believer Panthers fans who have, through difficult times, kept the faith and finally been rewarded with a Premiership victory for their team.

Question agreed to.

COMMITTEES

Legal and Constitutional Legislation Committee

Meeting

Senator FERRIS (South Australia) (4.25 p.m.)—At the request of Senator Payne, I move:

That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 27 October 2003, from 7.30 pm, to take evidence for the committee’s inquiry into the provisions of the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 and the Migration Agents Registration Application Charge Amendment Bill 2003.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Consumer Debt

The ACTING DEPUTY PRESIDENT (Senator Cherry)—The President has received a letter from Senator George Campbell proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:

Economic growth in Australia is being driven by the massive explosion in consumer debt, which has led to the following:
(a) increasing Australian household’s vulnerability to interest rate changes;
(b) reducing the productive potential of Australia’s manufacturing sector;
(c) jeopardising Australia’s long term rate of economic growth; and
(d) a massive increase in levels of foreign debt, increasing our current account deficit, increasing Australia’s vulnerability to international monetary changes and reducing our economic sovereignty, and
the Government has failed to implement policies to generate sustainable economic growth.
I call upon those senators who approve of the proposed discussion to rise in their places.

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

The ACTING DEPUTY PRESIDENT—
I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator GEORGE CAMPBELL (New South Wales) (4.27 p.m.)—I rise today to discuss a matter of major public importance, and that is principally the massive explosion that has occurred in consumer debt in this country and the fact that the government has done nothing to rectify the problem.

Since 1996 we have witnessed a massive explosion in debt in all areas of the Australian economy, particularly in foreign debt but also in relation to household debts. The government will claim that this is due to the increasing size of housing loans. Obviously that is a worrying part of the trend. However, the most significant increase has been in consumer debt, and this has the potential to increase the vulnerability of Australian families, reduce our long-term growth potential and reduce our economic sovereignty. The share of consumer debt to total household debt has gone from 16 per cent in 1996, when this government was elected, to 35 per cent in 2003. The rate of total household debt to disposable income has gone from 16 per cent in 1990 to an estimated 45 per cent by June 2003.

The majority of this increase has taken place under the economic stewardship of the Prime Minister, John Howard, and the Treasurer, Peter Costello. The difference between income and consumption expenditure, or the borrowing gap, not including housing purchases, has increased from $13 billion in 1996 to $55 billion in 2002-03 or from four per cent to around 11 per cent of disposable income. According to the National Institute of Economic and Industry Research, the build-up of consumer debt explained roughly one-third of Australia’s growth rate between 1996 and 2001 and for the last two years has roughly matched the entire growth rate in GDP. Let me repeat this. According to one of the leading economic institutes, all of Australia’s growth in the last two years and a third of the growth between 1996 and 2001 were solely due to an unsustainable explosion in consumer debt. This is not due to the housing boom; this is people consuming now and paying later.

This has been accompanied by a massive decline in Australia’s savings. The net household savings ratio has fallen from 10 per cent in 1990 to minus 0.5 per cent in March 2003. That simply means that Australia as a whole is not saving anything. We are running down our present savings to pay our debts. These two circumstances, a massive increase in debt coupled with a negative savings rate, have some very serious consequences, a number of which I will touch on later. Access Economics stated that Australia is the most interest rate sensitive market in the world because we rely so heavily on debt—that is, the government’s preferred economic consultants say that Australian families are extremely vulnerable to any interest rate changes. The government knows this is a problem, and it has known this since 1998. In the 1998 Senate estimates, Mr Ted Evans, the then Secretary to the Treasury, said:

Economic problems, almost wherever they occur, go to the question of debt—which is why Australian governments have been intent on reducing public sector debt to make the government sector less vulnerable. That same advice ought to go to private borrowers as well.
This is the government’s chief economic adviser saying in 1998 that the level of household debt was making families vulnerable and that the government should do something about it. That was when household consumer debt was $61 billion. It is now over $230 billion—I repeat: over $230 billion—but the government has done nothing to address this issue.

The Reserve Bank has revealed that, last June, credit card debt totalled $24.24 billion, a jump of $205 million on May’s figure. This debt rose from $6.6 billion in March 1996 to $24.24 billion in June this year, constituting an increase of something like 400 per cent. Insolvency and Trustee Services Australia, ITSA, released statistics last week that showed another worrying leap in debt agreements. For the previous year, 4,395 debt agreements were entered into. This is a significant rise on the preceding year, when 3,805 debt agreements were entered into—a rise of some 15.5 per cent. These figures mean that, even at the low interest rates we currently enjoy, many Australian families are having trouble meeting their financial commitments.

Mr Acting Deputy President, what do you think will happen when interest rates rise? This is not about talking down the economy, as Treasurer Costello constantly complains—even though I am sure we will be accused of that by those on the other side of the chamber when they get to their feet—but at some point the reality is that interest rates will rise. Let me outline to you what will happen then: people will decide that they cannot afford to borrow to finance current consumption, so they will stop consuming. This will lead to an economic downturn and job losses, leading to a decline in property prices. The Australian Prudential Regulation Authority, APRA, warned last week that home owners holding $14 billion in mortgages could default on their repayments under a scenario of a 30 per cent plunge in property prices. This is what the government’s own financial watchdog says could happen if interest rates go up.

Dr John Laker, board member of APRA and Assistant Governor of the Reserve Bank, had some interesting things to say last week. He said:

The recent momentum of the housing market cannot be maintained. Credit growth must inevitably return to a more sustainable relationship with nominal GDP...

Further:
Looking ahead, the main potential source of risk to financial stability would be a substantial correction in the housing market, impacting on the balance sheets of authorised deposit taking institutions through mortgage defaults.

This economic fall will obviously be greater because of the factors that have driven its growth in the last two years—essentially, consumer debt. Australia is spending more than it actually has. If our growth had been based on an expansion of industries exporting manufactured goods, the economy could survive a decline in domestic demand arising from interest rate increases. Since our industries have been driven by and have responded to domestic demand, this reduction in consumption will hit the economy hard. In fact, the economy will be hit harder than many people think, because the nature of the economy has been altered by the rise of consumer debt.

National Economics has set out three ways that household debt has adversely affected the manufacturing sector. Firstly, the debt explosion has crowded out direct foreign investment in manufacturing by forcing the interest rates and exchange rates higher than would otherwise have been the case. Secondly, it has allowed unsustainable growth in domestic demand resources, which would have otherwise been allocated to
manufacturing expansion and has been reallocated to support the expansion in the construction and services sectors. This has resulted in a permanent loss of capacity and exports. Thirdly, this government has begun to think it is too easy. The coalition continues to believe that high and sustained economic growth can be achieved by letting the finance sector drive the economy. This government has cut export assistance and industry assistance programs and is lazy in its efforts to attract direct capital inflow. This will come back to haunt us when interest rates begin to rise and we can no longer rely on domestic demand to sustain economic growth.

As discussed earlier, this has reduced our potential long-term economic growth rate. The debt explosion has led to a massive increase in levels of foreign debt, increasing our current account deficit, increasing Australia’s vulnerability to international monetary changes and reducing our economic sovereignty. This consumer debt has almost solely been funded by foreign borrowings, which have tripled over the seven-year period between 1996 and 2003, from approximately $60 billion to $183 billion. This is clearly a position that is not sustainable.

When John Howard was Treasurer back in 1983, the current account deficit was minus 3.5 per cent and net foreign debt was 7.4 per cent. He helped blow out this debt by increasing Commonwealth general government net debt in his years as Treasurer, from one per cent of GDP up to 7.9 per cent of GDP when they were thrown out of office in 1983. And now foreign debt has hit an all-time record under the Howard government. It is $362 billion, and has doubled since Peter Costello became Treasurer in 1996. Who can forget the debt truck? Remember the debt truck that the Liberal Party toured around this country, saying that our foreign debt was at unsustainable levels? I again make the point that the Treasurer, who was a prime promoter of that debt truck, and the Prime Minister have managed to double our foreign debt in the seven years from 1996 till 2003. Who will ever forget the coalition partners, when they were in opposition, taking around this country the debt truck, parading it around the nation at that particular time?

And what did Prime Minister Howard say about the debt truck at that time? In a speech to the Real Estate Institute on 17 October 1995, he had this to say:

The debt truck has helped heighten in the eyes of the Australian community the link between our level of overseas debt and the high level of interest rates ... obviously if one has to borrow money from a situation where one is already in debt, when one is heavily mortgaged ... obviously one is going to be charged a premium ... The same thing applies for a nation.

Under the Howard government’s economic management, that debt truck has become a road train that is now parked in the driveway of every household in this nation. Where is the debt truck? We have not seen it since 1996. They obviously have a big garage somewhere. They have stuck it in there, the cobwebs have grown over it and they have forgotten about the issue. They have conveniently forgotten all of the things they said to the Australian public in 1993, 1994 and 1995 about foreign debt, because they cannot sustain their arguments any longer, given that they have managed to double it in the short period of seven years.

This government is incredibly hypocritical when it comes to the most economically justifiable form of debt—that is, public sector debt financed infrastructure. There is nothing wrong with debt if the capital raised is invested and brings a return—be it social or private—that is greater than the sum borrowed and the subsequent interest payments. Yet this government is obsessed with running the nation’s budget like a household budget. It does not realise the difference between a
family running a household budget on $30,000 or $40,000 and the federal government with outlays in the tens of billions of dollars every year. Quite frankly, if a CEO ran a company with the zero debt mantra of this government, they would be laughed out of office. In fact, quite a few of them have in recent times; although they have taken most of their company’s assets with them on the way.

Productive investment financed by debt is a good thing; it is completely different from the massive consumer debt we are debating in this chamber. We should note that Peter Abelson, of Applied Economics, has found that the most efficient method of funding urban infrastructure is public sector borrowing or public sector bonds. The government’s access to cheap interest rates, often at half the rates developers would have to pay, makes public sector debt financed infrastructure a more efficient option. Peter Abelson was quoted as saying:

... for every $100 million of infrastructure, the community pays an extra $4 million to $5 million a year for the government’s refusal to raise public money to finance the infrastructure.

These are serious issues that merit further discussion, and they stand in stark contrast to what we are discussing today, which is this government’s failure to curb the massive explosion in consumer debt which has led to an increase in the vulnerability of Australian households to interest rate changes; a reduction in the productive potential of Australia’s manufacturing sector; a decline in Australia’s long-term rate of economic growth; and a massive increase in levels of foreign debt, increasing our current account deficit, increasing Australia’s vulnerability to international monetary changes and reducing our economic sovereignty.

The reality is, Mr Acting Deputy President, that the government is sailing along, skimming along, on a fair wind at the moment, but once that wind turns you watch how rapidly the vulnerability of this Australian economy and its consumer debt and foreign debt will be exposed. You watch how rapidly things will change. We will have an entirely different set of circumstances to deal with that will be much more difficult to deal with in the longer term than were the circumstances that arose in the late 1980s and the early 1990s. For these reasons the government should be condemned, and I commend this matter of public importance to the chamber.

**Senator BRANDIS** (Queensland) (4.44 p.m.)—I have to begin by saying how much I like Senator George Campbell. I like Senator George Campbell immensely. One of the things I like most about Senator George Campbell is that he has a terrific sense of humour! Just think of a Labor senator who was a union heavy before he came into this chamber, as was Senator George Campbell, coming into this chamber and giving this government a lecture on economic management. What a rich sense of irony Senator George Campbell must have. But it does not stop there. The economic issue on which Senator George Campbell decided to mount his critique of the Howard government was nothing other than the issue of debt. Debt! When the Labor Party last had the reins of the Treasury, his party rolled up the public debt of this country to $96 billion. After 7½ years of hard work, proven economic management and skilful policy settings, the Howard government has reduced the $96 billion debt mountain which was left to us by Senator George Campbell’s party to $30 billion. The
Howard government has reduced that debt by more than two-thirds in only 7½ years. And Senator George Campbell—I have to give it to you, Senator Campbell; you have more front than Mark Foys—comes in here and gives us a lecture about debt.

Let us run through the economic indicators which tell us what the policy successes of the Howard government and the economic outcomes delivered by Treasurer Peter Costello have brought to Australia. First of all, for the second consecutive month, we have unemployment at 5.8 per cent—functional full employment. Unemployment with a five in front of it: the old light on the hill aspiration that the Labor Party never delivered on but the Howard government has. That is the lowest unemployment figure for 13½ years. The second thing is inflation. The current inflation rate in Australia is 2.7 per cent. Consistently during the period of the Howard government the inflation rate has been within the target range prescribed by the Reserve Bank. The great destroyer of prosperity, the great destroyer of jobs—inflation—has been tamed by the Howard government. The third thing is interest rates. At the moment, the standard variable housing interest rate in this country is 6.55 per cent. Do you know how long ago it was that interest rates in this country were that low? It was in 1963, when I suspect Senator George Campbell was still on the Clydeside or wherever he came from. That was the last time that interest rates in Australia were as low as they are now. Yet Senator George Campbell comes into this chamber and gives us a lecture on debt!

Let me give you some other indicators, not from the government but from surveys conducted within the business community. Did you know, Mr Acting Deputy President, that the National Australia Bank index of business conditions in August this year indicated the most favourable business conditions in nine years? Did you know that the index of consumer confidence in September this year was just shy of the nine-year high posted in July this year? So we have the highest business confidence in nine years, the highest consumer confidence in nine years, the lowest interest rates in 30 years, the best employment figures in 13½ years, the best inflation figures in memory—and Senator George Campbell comes in here and gives us a lecture about the government’s economic management! But do not just take it from me. Let us hear what the OECD has to say. In March 2003, the OECD published its annual survey of the Australian economy 2003-04. Let me read to you from the summary of its findings—its report card, in effect—on the record of the Howard government:

Dogged pursuit of structural reforms across a very broad front, and prudent macroeconomic policies firmly set in a medium-term framework, have combined to make the Australian economy one of the best performers in the OECD, and also one notably resilient to shocks, both internal and external. Incomes growth has remained brisk, employment is expanding, inflation is under control, and public finances are healthy. All the indications are that the continuing effects of previous reforms will continue to help the economy to combat shocks in the immediate future ...

Underpinned by historically low interest rates, rising terms of trade, strong productivity growth, a generous subsidy to first-time home buyers and high levels of business and consumer confidence, domestic demand growth has barely been affected by the recent cyclical downturn in most other OECD countries.

That is the report card of the OECD, the assessment by external economists; that is not Howard government propaganda. As you would know, being an economist yourself, Mr Acting Deputy President Cherry, OECD economists are very tough minded. That is their appraisal of the Howard government.
I should interrupt myself to say that there is one area that the OECD singled out for criticism in the economic management or the structure of the Australian economy. Do you know what the OECD said was the largest outstanding problem? It was the failure of the Howard government to effect sufficient structural reform in the labour market. We know why that is: because on 16 consecutive occasions in the last 7½ years the reforms the Howard government has been trying to make to free up the labour market have been blocked in the Senate by Senator George Campbell and his ilk; and, to their shame—because they should have more sense—Senator Murray and the Australian Democrats. So the one black mark against the Australian economy, according to the OECD, is that authored by our good friend Senator George Campbell.

There is one other statistic I want to tell you about, Mr Acting Deputy President. Senator George Campbell warned us of the terrible consequences of household debt. The best measure of the impact of household debt on individual households is personal bankruptcies. In the last year, personal bankruptcies have fallen from approximately 6,000 to approximately 5,000. That indicator—it is a lagging indicator—speaks the opposite of the message that Senator George Campbell is trying to give us today.

Let me turn to what the shadow Treasurer, the member for Werriwa, Mr Mark Latham, thinks about Senator George Campbell’s argument. This is what Mr Latham told Paul Sheehan, the Sydney Morning Herald columnist, in an article on 1 April 2002. Allow me to quote Mr Sheehan:

Interestingly, Latham isn’t worried about debt. Like all good capitalists, he thinks our increased debt has been put to good use. “Debt is always relative to assets,” he told me. “In the mid-1980s, Australians held $4 in assets for every $1 in household income. Today, they hold $6.50 in assets for every $1.”

He even believes that much of the growth in levels of credit card debt has been put to productive use. “More than 50 per cent of small-business financing in Australia comes off the credit card. Most of these small-business operators can’t afford an accounts department.” Many people who run small businesses are shrewdly using the centralised credit card and billing facilities of credit card companies as a cheap back-office operation.

That is Mr Mark Latham’s view of Senator George Campbell’s argument. So there we have it. This representative of the political party that over 13 years drove this economy into the dirt—

Senator Tierney—The guilty party!

Senator BRANDIS—The guilty party—that had home interest rates at 17 per cent—comes and lectures us. It is a joke!

Senator MURRAY (Western Australia) (4.54 p.m.)—Whoever said that lawyers were dry and boring! I thank Senator George Campbell for the opportunity to speak on this matter of public importance. It does allow the Australian Democrats to express their views on the items he draws attention to concerning the national economy. Before I remark on my views, I would like to remark on the views of the Prime Minister. I think the Prime Minister deserves the very high reputation he has for political acumen. He has the caution that comes from a great experience and great knowledge of the political world. I recall him frequently saying, both to his party room and the public at large, that the worst thing you can do in government is to start to show the signs of hubris, overconfidence, arrogance and triumphalism. Forgive me for saying so, Senator Brandis, but I smelt, detected, heard and felt all those attributes in your remarks and, indeed, in the remarks of others within the coalition. I think it is a truism known to all men and women who participate in public affairs, probably
over the many thousands of years we have been at this political game as a race, that it is when you are at your peak, at your most triumphant and at the top that you are most at risk. I seem to recall Julius Caesar was murdered at the very height of his powers. I am not suggesting anyone should murder this government—far from it—but I do suggest that Senator George Campbell has drawn attention to some concerns about where the economy is at present.

Obviously, the government are going to criticise the Labor Party for their record on interest rates, and it is a cross they have to bear. That is as inevitable as the sun coming up in the morning. But, rather than simply going back 10 years and talking about the Hawke-Keating era, which is now in the long distant past, we should be concerned with the current economic climate in the country. The Democrats have been raising the problems that we see in Australia’s economy for many years, and particularly in the past year. To put this in perspective, I must acknowledge that at the moment the picture is positive and that the government do deserve credit where credit is due. In particular, they have reduced public sector debt in a major way and they have balanced the books. There are low interest rates historically, low inflation and low unemployment—although not low enough. Economic growth is reasonable to good, and the government is in surplus for the reasonably foreseeable future.

But, if that is a good story, we have to look at the flip side, the darker side. Although our interest rates are low by historical standards, they are high in real terms and they are high by international standards. What the government is failing to tell Australians is that, compared with the rest of the developed world, we are paying high interest rates. And it is worrying that economists, and even more worrying that the Reserve Bank, are talking about interest rate rises, possibly by the end of the year and certainly by next year.

This is unusual, as the last recorded economic growth figure did show GDP increasing by only 0.1 per cent in the June quarter, although I do recognise that was a low point and it is unlikely to continue at that low point. Everyone in the country knows that over the past few years we have had a massive boom in housing prices. This boom is unsustainable but has been fuelled by the government’s policies. These policies have created as many losers as they have winners. For every property owner that has made a significant capital gain, another family has been unable to enter the housing market. For every happy seller there is a sad buyer who will find that they have paid too much. The buyer may be left with a massive debt when the property market cools. Senator Coonan today acknowledged that APRA is so concerned that it has assessed whether banks can take a 30 per cent drop in housing prices. That is pretty substantial. If there is one constant in economic history, it is that booms always end.

I mentioned our internationally high interest rates. It is worth pointing out that another consequence of this is a higher Australian dollar, particularly against the US dollar, and a negative impact on farmers and exporters, which is of quite some concern. High interest rates also impact on the cost of running business. Presumably, this is why this matter of public importance raised by Senator George Campbell deals with the manufacturing sector and the impact of these interest rates.

Unfortunately, the Labor Party has proposed no credible alternative economic policies as yet to deal with these specific issues. As far as I can tell, the Labor Party, if in government, would continue to fuel the housing boom. Unfortunately, Mr Latham was overruled when he recognised that nega-
tive gearing needed to be reformed. This is a massive cost to the Australian taxpayer. It is artificially increasing housing market prices. The Democrats believe that losses from investments, such as shares and property, should be quarantined. The losses should not be used to reduce tax on other earned income. Unfortunately, the Liberals and Labor are in bed on this issue.

A fascinating graph on investment property debt appeared in the most recent ABS statistics on lending finance. The graph shows that before 1999 the monthly borrowings for investment properties were fairly stable and hit a peak of $2.2 billion. It is now, some four years later, at nearly $6 billion a month. It has nearly tripled. The graph of debt shows that it has steeply risen since 1999. Oddly enough, this coincides with another time when the Liberals and Labor were in bed together.

Labor allowed the government to cut capital gains tax in half. The Democrats did not support that cut at the time, but the Labor Party supported the coalition’s policy and the result was a $2 billion a year tax cut for high-income earners. The only people who benefit from that are those with investment share portfolios and investment properties and this has helped fuel the housing boom. The Democrats assert that this is another reason for the massive increase in debt, because Australians have been taking advantage of this capital gains tax cut by borrowing excessively to buy property. Only the Democrats are promoting economic policies that would cool the property boom, policies that would be economically sound and socially fair that would result in reduced interest rates and allow the government to fund the health and education systems. (Time expired)

Senator TIERNEY (New South Wales) (5.00 p.m.)—I was rather incredulous when I read what the matter of public importance was about this afternoon, particularly when I saw at the bottom that the matter was being moved by the Labor Party. The whole matter is about debt. Briefly, I contrast the record of this government in the last seven years with the neatly balanced contrast of the previous government in the seven years which preceded that. If we compare our record from 1996 to 2003 with Labor’s record from 1989 to 1996, there are two periods of seven years where you get an absolutely remarkable contrast of a very poorly performing ALP government with the excellent economic performance that we have had in the last seven years under the Howard government.

I was absolutely amazed that Senator George Campbell raised this matter, given the comparisons over those two periods of the two governments in the areas of consumer debt, overseas debt and government debt. On all these counts, what Labor did was a massive failure. It took many years, in the early stages of the Liberal government, to turn this situation around. But we now have a situation where all the economic indicators after seven years are pointing in the right direction. It is absolutely amazing, given that track record, that Senator George Campbell comes in here on a fishing expedition based on speculation that maybe interest rates will go up.

If you have a look at the period I am speaking about, Senator George Campbell, you will see that interest rates have gone up a few times. They went up in 1994, under your government, and then they went up under us in 2001. On both of those occasions they were very weak rises in interest rates. They did not last very long and they collapsed back again. So, even if your proposition is right, you will probably find, given the excellent economic conditions in Australia, that you have exactly the same scenario. We are in a very different economy, very different
from the one when you were running the trade union movement and when we had Paul Keating as the Treasurer. It is a much more robust economy, it is a much more resilient economy, and that is largely because of the policies of this government.

I turn to three areas which have been indicated as areas of debt that you are concerned about, beginning with consumer debt. We find at the moment that the growth of household consumption is at an extremely high level. It was at 3.6 per cent in June 2003. But consumer sentiment—in other words, the confidence of the consumer—is running 18 per cent above the long-term norm. Why are consumers so confident? That is the basic question. If this is one of the forces that is driving the economy, why are they spending? The reason is that the government have delivered on jobs, on wages, on low interest rates and on tax reductions. We have had 1.2 million jobs created since 1996. We have interest rates running now at an incredibly low level—Senator Brandis mentioned the lowest in over 30 years at 6.5 per cent—and unemployment rates at 5.8 per cent. Real wages have gone up 12.2 per cent in the last seven years. That is real growth. That is not inflation. Senator George Campbell or the next speaker might want to enlighten us of the record of the Labor government over 13 years where there was a two per cent rise. We have gone way up. Here are the consumers with the best economic conditions in 13 years and, on top of that, they have real rises in their standard of living. Their real wealth is going up, their real income is going up and, Senator George Campbell, that is the reason why we now have this boom and why consumers are spending at such a high level.

Let us move to the second area: foreign debt. Senator George Campbell did make much of this in the debate. He said that during our time the level of foreign debt has gone up—and that is quite true; it has gone up from 39 per cent to 48 per cent of GDP. Let us have a look at what happened under the Labor Party. Senator George Campbell forgot to mention that under Labor it went from 14 per cent to 39 per cent. Just compare those figures. There was a massive increase under the Labor government.

The debt servicing ratio is the important thing that you have to look at here. The debt servicing ratio under us is 8.3 per cent and under Labor it hit 20 per cent. That was very worrying. Paul Keating used to stay awake at night worried about foreign debt. He talked about a banana republic. The whole nation was shocked and worried about that. It is not an issue at the moment. The reason it is not an issue is that the debt servicing ratio is down from 20 per cent under Labor to eight per cent.

Yet again we have support from Mark Latham. Senator Brandis quoted Mark Latham on another matter. That was a recent quote. I want to go back to 1994 and what Mark Latham had to say in the House about foreign debt. He said high foreign debt is a "tendency towards xenophobia on issues such as the current account deficit and foreign debt". He said:

The truth is that the current account deficit is the equivalent of the capital account inflow. Capital inflow into Australia is a huge vote of confidence by international investors in the strength of our economy.

They have more confidence in our management, Senator George Campbell, than in your management. What is the measure? Let us pick only one measure. The Standard and Poor’s rating under us is AAA. Under Labor it was downgraded; under us it was upgraded. That is the sign of great economic management.

I do not have time to go into the other level of debt, which of course is government
debt. That was covered by Senator Brandis very thoroughly. Of course, that is the shining example of good economic management. There was Labor racking up debt at more than $10 billion a year—their budget deficit hit $17 billion in two years. What have we done? We have returned it to surplus. We as a government have shown good economic management in terms of household debt, government debt and foreign debt. That is in marked contrast to the record of the Labor Party. We stand as a shining light in economic management, which makes this whole matter of public importance a total nonsense. (Time expired)

Senator MARSHALL (Victoria) (5.10 p.m.)—I too rise today to speak on this matter of public importance. I am amazed at the sensitivity that the government senators have approached this debate with. Your whole argument is based on spin and illusion. The state of this economy is really underpinned by low interest rates. It is really worrying to me that you do not seem to be in a position—

Senator Abetz—Through the chair.

Senator MARSHALL—Through the chair, to acknowledge that there is anything wrong with this economy, even though both of the speakers for the government today have talked about their strong certainty that interest rates won’t rise. They based their whole argument on that premise. We want the parliament to consider and expect the government to be considering the state of our economy if the economic situation does change and interest rates increase. We have some very grave concerns about the high levels of debt. These are the actual levels today, and you just simply want to ignore them.

Senator Abetz—Oh, hypocrisy!

Senator MARSHALL—Senator Abetz interjects. He only wants to talk about the past, but the reality is that we are considering today’s economy. We are talking about the situation as it is today. I know you do not want to talk about it and you want to believe the spin and the illusions that this Treasurer constantly puts on the economy, but you ought to consider these figures and these issues very seriously.

During Treasurer Costello’s seven-year preside over the Commonwealth Treasury we have seen the setting of a number of infamous records, none of which he, the government or the Australian people can be proud of. Under this government we have seen record levels of household debt, record levels of credit card debt, a record current account deficit, record levels of foreign debt and record low household savings. All those are facts. Senators opposite simply cannot deny that those figures are real. They are mixed into the total economy. It is really a concern to me that government senators can completely discount those economic indicators and keep pushing ‘As long as interest rates don’t rise, everything will be fine.’ That is a very dangerous situation for us in this country to be in.

The Treasurer boasts about his record on retiring public sector debt, which he has successfully done by selling off Commonwealth assets. However, with the other hand Treasurer Costello has been pushing the nation’s debt onto individuals everywhere, particularly families and students. We are now in a situation where even the most miniscule rise in interest rates will have a devastating effect on families and individuals everywhere who are already struggling to make ends meet under the Howard government.

Senator Brandis—What’s your proposal?

Senator MARSHALL—I will get to that if I have enough time, Senator Brandis. You have been interrupting me a lot already. Let’s just see how we go. Access Economics have
stated that Australia is the most interest rate sensitive market in the world because the economy relies so heavily on debt. Tory Maguire states in his *Daily Telegraph* article of 16 September titled 'When interest knocks hard on debt’s door':

It's the year of the mortgage and thousands of Australian families have borrowed big, not realising how close they are to disaster.

They are living on the financial edge and just a few interest rate increases could push them over. The figures speak for themselves. Since 1995 the average annual increase in household credit in Australia has been 14.2 per cent; in the US it has been eight per cent; Japan, 2.9 per cent; and Britain, 7.4 per cent. Malcolm Farr stated in his *Daily Telegraph* article of 1 September titled 'Price of paradise has added interest':

We would be international credit card champs were it not for Spain (15.7 per cent).

Reserve Bank figures released on 30 September reveal that personal non-housing debt in Australia has reached $94.6 billion, representing a staggering increase of almost $10 billion in the last year alone. In June 1996 personal non-housing debt stood at nearly $48 billion, or $2,614 per person. By August 2003 this figure reached $4,752 per person, representing an increase of 82 per cent in only seven years.

To put this figure in perspective so far as households are concerned, in June 1996 each household in Australia owed an average personal non-housing debt of $7,079. By August 2003 this figure had reached $12,402 per household, representing a 75 per cent increase in only seven years. The share of consumer debt to total household debt has gone from 16 per cent in 1996 to 35 per cent in 2003. The rate of total household debt to disposable income has gone from 16 per cent in 1990 to an estimated 146 per cent by June 2003.

The Reserve Bank’s latest figures on credit card and charge card debt, released on 18 September this year, showed that Australian debt in this regard had exceeded $24.58 billion to July 2003—an increase of $273 million from the previous month—which represents another new record figure. That figure is also representative of an over 400 per cent increase on the $6.6 billion figure recorded in March 1996. The average amount owing on every credit card or charge card in Australia today stands at $2,284. When one considers that on average each household has just over two credit card or charge card accounts, average credit card debt per household has reached over $4,600. This figure represents a trebling of that recorded in June 1996, when the figure stood at $1,600. Our future prosperity is being placed on the credit card, and this is clearly unsustainable for the long term.

According to the National Institute of Economic and Industry Research, the build-up of consumer debt explained roughly one-third of Australia’s growth rate between 1996 and 2001 and, for the last two years, has roughly matched the entire growth rate in GDP. Our growth is being driven by consumer debt. So, here we have a Treasurer prancing into the parliament boasting about the nation’s economic growth rate, but he is taking credit for a totally unsatisfactory result. The result: a 0.1 per cent increase in the June quarter was built primarily on consumer and household debt.

It is an economy treading water, running out of breath and being allowed to run on an unsustainable course which can only lead one way and to one outcome: a deteriorating national economy and a devastating effect on the household budgets of all ordinary Australians and their families. Consumer debt has been almost solely funded by foreign borrowings, which have tripled over the seven years of the Howard government. Consumer
debt has risen from approximately $60 billion to $183 billion in only seven years. This is clearly not sustainable. The difference between income and consumption expenditure—not including housing purchases—has increased from $13 billion in 1996 to $55 billion in 2002-03, or from four per cent to around 11 per cent of disposable income. These figures are as startling as they are alarming.

Moving on to the current account deficit, when John Howard was Treasurer back in 1983 the current account deficit was negative 3.5 per cent and net foreign debt was 7.4 per cent. Mr Howard helped blow this debt out by increasing Commonwealth general government net debt in his years as Treasurer from one per cent of GDP to 7.9 per cent of GDP when they were thrown out of office. Now foreign debt has hit an all-time record under the Howard government. It currently stands at $362 billion and has doubled since Peter Costello became Treasurer. Let me now turn to the issue of Australian household savings, where the figures, again, are very worrying.

_Senator Abetz interjecting—_

**Senator MARSHALL**—You ought to be worried about these figures, Senator Abetz. I know you just want to live in this illusory world where everything is fine, but try to put yourself above the spin and illusion and accept that you ought to treat these issues seriously. (*Time expired*)

**Senator SCULLION (Northern Territory)** *(5.20 p.m.)*—Speaking of illusions, I am sure no Australian is under the illusion that this is anything other than sheer puerile nonsense. To come to this place and accuse John Howard and the coalition government of somehow mismanaging economic policy in this country is just an affront to every Australian. Senator George Campbell must have drawn the short straw to be the one who had to bring to this place this discussion of a matter of public importance. One of my colleagues said to me last week, ‘Nige, don’t worry about the economic policy of the Labor Party—they wouldn’t know it if they were looking straight at it.’ I think this MPI has vindicated that today, because they are looking straight at an economic miracle. That is recognised by not only people in Australia but also every international pundit in the financial area. They say, ‘This is where we need to look to for sustainable economic management of a country.’ They look to the coalition in Australia; they look to the wider benefits that are afforded to the Australian people. The last line of this ridiculous proposal reads:

… the Government has failed to implement policies to generate sustainable economic growth.

We have only sustained economic growth at an average rate of 3.5 per cent since we came into office in 1996! We have sustainable growth that is the envy of the world. It is just a miracle. I am so proud to be part of a government who have not even achieved this in buoyant circumstances; we have achieved this, without precedent, in the most difficult international circumstances. We have had the Asian meltdown, where most of our near neighbours were in a position of critical mismanagement. That should have had a huge impact on us, because it certainly did on their other trading neighbours, but no—the Australian economy was resilient because this government had the fiscal knowledge to make sure that it did not turn down with the rest of those economies.

Then, of course, we had the synchronised downturn of some of the other major countries—the United States, France, Germany and Italy. The world shook its head when the American crash came and said: ‘Look out. The Aussie dollar and everything else is going to go down.’ But suddenly there was nothing. There was more confidence in the
economy because of good fiscal management. We have had a drought. In the last year we have had one of the worst droughts in Australia’s history. It should have had a huge impact on our economy, but it seems that the economy is so sustainable and so strong that we will survive even that. There was the effect of Ansett and SARS on the major input of export dollars into our economy through tourism. Then we had the terrible tragedies of international security—Bali and September 11—which could have caused all sorts of terrible problems with our economy. But we survived. We not only survived, which is an A.D. Hope adage; we lived, we thrived and we have prospered through those times. Australia should look very proudly at this government, which has managed in those circumstances to bring such a wonderful array of benefits. But do not take my word for it. Take the word of international pundits in the media. The London Financial Times in September said of Australia’s performance:

In fiscal policy, prudence has prevailed, with small budget surpluses persisting for many years. A range of structural reforms which continue to have a long-run, dynamising effect on economic performance have given the economy the flexibility to withstand shocks such as the global economic slowdown in 2001.

You could go on forever with third-party endorsements from economic experts from around the world. They are pointing to us and saying, ‘Now that is the way forward.’

I will continue to look at figures in these areas. I have not been in this place long, and I have to say that I am not much of a statistician. I would like to convert these figures into something I understand: 1.2 million new jobs. What I understand from that figure is that there are young Australians today who are benefiting in a whole range of ways—in how they feel about themselves, their future, contributing to the community and being part of the community because they have a job.

When the other side were in government, their mismanagement meant we were one million jobs down.

As has already been mentioned, we have productivity increases of some 2.4 per cent per annum. Under Labor’s economic mismanagement in the 1990s, I can remember when not only my business—which happened to be a fishing boat—but also the home of my wife and me was at risk because interest rates were at 17 per cent. We almost lost our home. It was not the cyclones, it was not the difficulty of working in one of the harshest environments of the world; it was the fact that we were under a Labor government that mismanaged the economy that almost sent me to the bottom of the sea. That is the reason that many Australians in 1996 caused the Labor Party to come very justifiably a very clear second. Over one million people were unemployed. They remember those circumstances, as they should. They were not allowed to contribute to and participate in community life as a consequence of that mismanagement.

On the flip side of that, people ask why people are spending money. They are spending more money now because they have a high degree of confidence in the financial management capacity of the Australian government. Those with any appreciation of debt and financial management would understand that the important issue with debt is not the size of the debt but the capacity to service the debt. Obviously, we have bigger incomes and we can afford bigger houses. We have had low interest rates, which is attractive for growth, and I think that underpins the growth we are having in Australia today. But do not ask us. Mr Latham, the current shadow Treasurer, said in 1994:

So this empty piece of rhetoric about high national debt cannot be sustained once we look at the most important figures, which are those concerning debt servicing.
Perhaps he should have picked up the phone before he said this and had a chat to his then Treasurer about this issue, because I am sure he would have enlightened him. Every single Australian needs to stand proud and tall and point to the economic management of today that has allowed the rest of the world to look to us and say, ‘That’s the economic miracle that is Australia.’

**The ACTING DEPUTY PRESIDENT (Senator Hutchins)—**Order! The discussion on the matter of public importance is concluded.

**COMMITTEES**

**Scrutiny of Bills Committee**

**Report**

**Senator CROSSIN (Northern Territory) (5.26 p.m.)—**I present the 12th report of 2003 of the Senate Standing Committee for the Scrutiny of Bills. In doing so, I highlight the fact that there is no Alert Digest report this week. In the five years I have been on the committee, I think this is the first time there has been no Alert Digest report—and that is for the simple reason that there were no new bills introduced into the Senate since the committee’s last meeting. I note for the Senate that it is a most unusual occurrence that there is no Alert Digest. It is a very unusual situation. Today we have only a report from the Scrutiny of Bills Committee, being the 12th report of 2003.

Ordered that the report be printed.

**Public Works Committee**

**Report**

**Senator COLBECK (Tasmania) (5.27 p.m.)—**On behalf of the parliamentary Joint Standing Committee on Public Works, I present the 11th report of 2003, entitled RAAF Base Richmond reinvestment project, Richmond, NSW. I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in **Hansard**.

Leave granted.

*The statement read as follows*—

Medium-term investment in facilities at RAAF Base Richmond is required in order to maintain operational capability until 2010, or until the long-term future of the base is decided. The estimated cost of the project is $35 million.

It is proposed that the reinvestment project will address critical shortcomings in the facilities and infrastructure supporting current capability, such as engineering services and working and training accommodation. The proposed works comprise:

- construction of a new combined headquarters complex for 36 and 37 Squadrons;
- construction of new, purpose-designed Mechanical Equipment Operation and Maintenance Section (MEOMS) facility;
- construction of an extension to the east side of 33 Squadron hangar;
- upgrade works to 36 and 37 Squadron hangars and workshops;
- upgrade and rationalisation of high voltage electricity reticulation;
- construction of new ablution facilities to service the western portion of the base; and
- upgrade and repair of the stormwater drainage system.

Having inspected the facilities to be addressed under the works proposal, the Committee wished to ensure that occupational health and safety issues and fire safety measures of an appropriate standard would be met across the entire base. The Department of Defence told the Committee that present funding ensures that these standards are met throughout the base.

Members had concerns about the comfort and amenity of personnel. The Committee noted that in some instances, work areas and associated ablutions or meals areas are to be located in separate buildings. The Department of Defence responded that separate ablutions blocks were common throughout the base as collocation can pose contamination risks. The Committee recommends
that, in order to improve the comfort and amenity of personnel, a covered walkway be provided between the existing fuel testing laboratory and the office building to be constructed under the reinvestment proposal.

Given the ageing facilities at the base, the Committee wanted to know whether existing services infrastructure would have the capacity to support the proposed development. The Department of Defence emphasised that the proposed work is intended to replace or refurbish existing facilities and no additional load on services is anticipated.

The Committee questioned the Department of Defence on two environmental issues. The Department of Defence submission mentioned that some structures on the base contain asbestos. The Committee was concerned that personnel could come into contact with harmful material. The Department of Defence assured the Committee that it has a range of procedures in place to prevent contact and conducts regular audits. The Committee also enquired if there had been any chemical spillages at the base affecting the local stormwater system. The Department of Defence told the Committee that incidents had occurred but were contained by existing procedures.

According to the Australian Heritage Commission, the proposed works will require the demolition of some heritage-listed Bellman Hangars. The Department of Defence informed the Committee that negotiations will continue with the Heritage Commission on this matter.

Recognising the bases' importance to the local economy, the Department of Defence expressed its commitment to promoting opportunities for businesses in the Hawkesbury region. The Department will divide the project into several parts and conduct briefings on the tendering process to assist local enterprises to bid successfully for works packages.

While not within the scope of the current proposal, it was brought to the Committee's attention that the living-in accommodation at RAAF Base Richmond requires refurbishment. The Committee was therefore interested to learn more about the Department of Defence's plans to address deficiencies in this area. The Department explained that; while there are no immediate plans for refurbishment, a current study is investigating priorities for Defence accommodation Australia-wide.

Finally, several witnesses raised the issue of the future of the RAAF Base Richmond. The Committee recommends that a decision on the long-term future of RAAF Base Richmond be made as soon as possible, to ensure the most effective use of public funds.

Having inspected the base, it is apparent to the Committee that the upgrade of facilities at RAAF Base Richmond is essential to maintain operational capability and provide an appropriate working environment for base personnel. The Committee therefore recommends that the proposed RAAF Base Richmond reinvestment project at Richmond, NSW, proceed at the estimated cost of $35 million.

Mr President, I wish to thank the many people that assisted the Committee during the course of inspections and the public hearing in Richmond, my fellow Committee members and the secretariat staff.

I commend the Report to the Senate.

Question agreed to.

DOCUMENTS
World Trade Organisation

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—I present a response from the chief of staff to the Minister for Trade, Mr Vaile, to a resolution of the Senate of 16 September 2003 concerning the World Trade Organisation Ministerial Council.

Senator O'BRIEN (Tasmania) (5.29 p.m.)—by leave—I move:

That the Senate take note of the document.

Senator Carr—Did you say it was from the chief of staff?

Senator O'BRIEN—Yes, Senator Carr; it is a response from the chief of staff to the minister and not from the minister himself. It is, I think, a matter that would have senators perplexed. One would have expected that the minister would have responded to the Senate,
not his chief of staff, but obviously that is the minister’s decision.

Senator Carr—That would be unprecedented, wouldn’t it?

Senator O’Brien—I cannot recall a circumstance where a government response to a resolution of this chamber has been delegated to a chief of staff. Perhaps the government will correct me and advise me of the circumstances, but I have not experienced it. I would be interested to know what the normal protocol is. One wonders whether the minister has seen the document—I presume he has but, if he has, why did he not sign it? Perhaps we can be further advised by the government as to what the protocol for this chamber is and what they expect of ministers in responding to resolutions of this chamber.

As I have said before in this place, the failure of the Cancun talks is a failure on many fronts. It is a failure of the WTO and, unfortunately, a failure of the Cairns Group. In the end, it must be seen as a failure of this government and, in particular, Minister Vaile. It is certainly a black mark against us as the chair country and Minister Vaile as the chair of the Cairns Group.

Australian farmers, and indeed all Australians, stood to share in increased export revenues of around $4 billion had the Cancun talks been successful in resolving issues around the so-called three pillars of effective world agricultural trade reform: improved market access; a reduction in domestic support; and a reduction in, with a view to the elimination of, export subsidies. Australia’s dairy, beef and mutton producers could have been big winners from successful Cancun discussions on a protocol arising from the Doha Round. Another group who could have been winners—and for whom the failure of the Cancun talks is an especially bitter blow—is the Australian sugar industry. The sugar industry and the communities who rely on it have been buffeted for a number of years by the passing perils of drought and crop pests and obviously the perennial problems of a corrupted world market and low world prices. Unfortunately, they have also had to bear the blundering of Minister Truss and the effects of a trade minister who has obviously been asleep at the wheel.

The Cairns Group was established by a number of nations under the guidance of Labor in August 1986. The Cairns Group was committed to achieving a fair and market oriented agricultural trading system not only for the good of Australian farmers but also as a means of contributing to regional stability and wealth by allowing farmers of developing nations to have a fair go in world trade. With Australia effectively permanently the chair of the Cairns Group, it has been an invaluable tool to assist us to meet our trade goals and, through its network of 17 developed and developing nations, to understand the objectives of our trading partners better. Therefore, it is unbelievable to me that, as the chair of the Cairns Group, Mr Vaile was unaware and therefore unable to halt or guide the emergence of the Group of 22 nations—the G22 as they are known. It simply defies belief when you consider that at least 10 Cairns Group members became members of the Group of 22.

In Cancun, the developing nations led by the G22 found themselves pitted against, in particular, the European Union, Japan and South Korea—not on an agricultural issue but on the so-called Singapore issues. As a result of the pursuit of these issues by some developed nations and the opposition of the G22, including those 10 Cairns Group members, the talks at Cancun failed. Had Minister Vaile not been asleep at the wheel, had he known of the emerging group that would eventually become the G22 and had he worked with them, the outcome at Cancun could have been vastly different and poten-
tially vastly more beneficial to Australian farmers and—perhaps as, or more, importantly—farmers in the poorer nations of our region.

The minister has claimed that no result is better than a bad result. At least that seems to be the view of his chief of staff. My view is that no result is a bad result for Australian farmers. As I said earlier, I find it noteworthy that the minister did not view the resolution to be important enough for him to respond on his own behalf, but has asked or delegated that task to his chief of staff.

I will finish on this: we have not heard the end of the issue of the Group of 22 nations. We may have seen the end of the Cairns Group as an effective front-line negotiating force at WTO level. I hope that that is not the case, but unfortunately many commentators see that as a reality and that the Cairns Group may be relegated to a group which deals with some of the technical issues around trade rather than being front-line negotiators. If that occurs, unfortunately, that will put Australia back in the rank, as it were, with a whole lot of other nations. We would cease to be a lead force in WTO negotiations. That obviously has an impact on our international standing and the sooner the government recognises that, and finds a way of addressing it, the better. Certainly Labor, when it returns to office, will be seeking to address the problems which have been created by the lack of attention of this administration.

Question agreed to.

PARLIAMENTARY ZONE
Proposal for Works

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—In accordance with the provisions of the Parliament Act 1974, I present a proposal by the Joint House Department for works within the Parliamentary Zone, together with supporting documentation, relating to the restoration of the forecourt scoria.

Senator ABETZ (Tasmania—Special Minister of State) (5.36 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 to restore the Forecourt scoria.

AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT
REGULATION OF GENETICALLY MODIFIED FOODS

Return to Order

Senator ABETZ (Tasmania—Special Minister of State) (5.37 p.m.)—by leave—This statement is on behalf of the Hon. Tony Abbott, the Minister for Health and Ageing. The order arises from a motion moved by Senator Nettle on 9 October 2003, as agreed by the Senate, concerning documents relating to the proposed Australia-US free trade agreement and the regulation of labelling of genetically modified foods in Australia and/or the United States. I table a number of documents relevant to the order, including correspondence between the Department of Health and Ageing and private individuals, whose names have been removed for reasons of privacy.

With respect to a number of other documents relevant to the order, I inform the Senate that the government considers that it would not be in the public interest to disclose those on the grounds that it could damage international relations. It is not in the public interest to release documents that relate to an ongoing negotiation between Australia and the United States. The government is also claiming public interest immunity for a number of documents prepared for the purpose of the deliberative processes involved
in the functions of the government, as disclo-
sure would be contrary to the public interest.

TAXATION LAWS AMENDMENT BILL
(No. 7) 2003

Consideration of House of Representatives
Message

Message received from the House of Rep-
resentatives returning the Taxation Laws
Amendment Bill (No. 7) 2003, acquainting
the Senate that the House has disagreed to
the amendments made by the Senate, and
desiring the reconsideration of the amend-
ments disagreed to by the House.

Ordered that consideration of the message
no. 428 in Committee of the Whole be made
an order of the day for the next day of sitting.

COMMITTEES

ASIO, ASIS and DSD Committee
Reference

The ACTING DEPUTY PRESIDENT
(Senator Hutchins)—A message has been
received from the House of Representatives
transmitting a resolution referring the Intelli-
gence Services Amendment Bill 2003 to the
Parliamentary Joint Committee on ASIO,
ASIS and DSD for inquiry and report. Cop-
ies of the message have been circulated in
the chamber.

Employment, Workplace Relations and
Education References Committee
Report

Senator CARR (Victoria) (5.40 p.m.)—I
present the report of the Senate Employment,
Workplace Relations and Education Refer-
ences Committee entitled Order for produc-
tion of documents on university finances,
together with documents presented to the
committee.

Ordered that the report be printed.

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

Leave granted.

Senator CARR—I move:

That the Senate take note of the report.

The Senate is increasingly facing a contemp-
tuous government: a government that is con-
temptuous both of the parliament and of the
Australian people when it comes to provid-
ing basic but critical information which
would go towards evidence based policy
formulation in this country. We have an in-
creasingly secretive government and an in-
creasingly obstructionist government. Le-
gitimate requests for material from the gov-
ernment are being rejected at an unprece-
dented rate. We now have a record number of
returns to order that have not been responded
to by this government. This particular matter
arose from the failure of the government to
respond appropriately to a return to order. On
the Notice Paper at present, there are 46 un-
answered returns to order. This is a very sig-
nificant increase on the numbers of previous
years.

There is also a record number of unan-
swered questions on notice. At my last count,
there were some 428 questions outstanding.
That is more than double the average for
every year since 1996. We had an average of
about 100 outstanding questions in previous
years; we are now up to 428. Departmental
officers are increasingly being instructed by
their superiors during Senate estimates to not
answer questions on the basis that the mate-
rial is ‘advice to the minister’. Research re-
ports are being doctored and suppressed.
Senate committees are being criticised by
departmental heads for asking too many
questions. The government has information
that is readily available but refuses to pro-
vide it, clearly because such information
does not suit its immediate political ends.
The government is behaving in a dishonest,
deceitful, duplicitious and arrogant manner. It
has contempt for the role and responsibilities
of the Senate and for the democratic process
that underpins those. The government does not want to know about the importance of ensuring that there is evidence based policy formulation.

There is an increasing reliance within the government on three excuses for not providing basic information: executive privilege, commercial-in-confidence and the old chestnut of ‘advice to the minister’. Frankly, it is not good enough. They have overused and worn out the value of those. Increasingly, these devices are being used to hide basic information which should be made available to inform the public and assist them in making judgments about the directions of policy. In this particular case, university finances were kept away from public scrutiny at a time when the government was telling the country it was embarking upon a major, open-ended inquiry in which all options were on the table. It is quite clear that basic information, critical to make assessments about the future directions of universities, was withheld by the government to prevent proper scrutiny of the available options.

We have a situation where the government has sought to frustrate attempts by the Senate to inform itself and to inform the public about the financial difficulties that are facing many universities in the country. Requests for information about the future financial health of universities have been refused. What happened on that occasion? The Senate passed a motion for a return to order for relevant documents, and the government refused to provide information in response to that motion on the spurious grounds that such documents were commercial-in-confidence. The Senate committee examined those claims, sought responses from the vice-chancellors and found that, on many occasions, the vice-chancellors themselves did not concur with the government’s claim that these documents were commercial-in-confidence. They asserted that the DEST claims were without validity. None of the 15 vice-chancellors who responded to the committee’s request for information cited commercial-in-confidence as the basis for any objection to handing over any documents.

There is no evidence that universities provided information to DEST on a confidential basis. Information was required by law to be provided; it was a condition of grant. At no point was there a requirement in legislation that that information not be made available to the public or to the parliament. Many vice-chancellors pointed out that they were happy to send the information to the committee. There were occasions where vice-chancellors did object to this information being made public on the basis not of commercial-in-confidence but of the inaccuracy of the information provided by the department itself.

We have a situation here where the department was seeking to keep information secret not because it was commercial-in-confidence but because it was in error. That in itself is a serious problem if we are relying on such information to make policy. In terms of the normal procedures of this chamber, it is quite clear that there are legitimate grounds for not complying with returns to order. Those grounds essentially hinge on the claim of public interest immunity—that it is not in the public interest to release that information. That is not the ground on which the Commonwealth is claiming to reject these returns to order; the government is arguing the information is commercial-in-confidence and therefore should not be made available. There is no evidence to support that claim.

Much of the information that we have been provided with was available in other quarters. In fact, all of the information that was sought was made available retrospectively. The detail of this request went to the prospective information. It is all very well to
look in the car rear-vision mirror and see where you have gone; in education, you want to know where you are going. When it comes to public policy of this type, that is a critical piece of information. It is information which the government has readily available. It would not cost a great deal more money to provide it. The government failed to do so because it was actually worried about what that information would show.

We had a situation where leading researchers—some inside the government’s own department—found evidence that the HECS changes that were introduced in 1996 had had a serious detrimental effect on certain categories of people, particularly working-class men. That information was suppressed. The government attempted to keep that information secret until such time as pressure was brought to bear by the Senate processes. Of course, the officers concerned were bucketed. They were attacked as being methodologically flawed in their approach. They were denigrated in a whole series of ways. But there have been a number of attempts made by this government to keep basic information secret, and we see this as yet another example of how that occurs.

The Australian university system has been on a bit of a slide since this government imposed its cuts back in 1996. We have seen some universities do extremely well, but most are right on the breadline. There are basic questions here about the opportunities for many hundreds of thousands of Australians to secure an education. Many hundreds of thousands of Australians have a big stake in these matters. Some 47 per cent of all Australians attend university at some point in their lives, so it is important that we get basic information about the financial health of the system. We can see the extent of the damage being imposed on the system in all sorts of ways, yet this government is seeking to prevent basic information being made available to the public. We now know that three universities of the 38 take a quarter of all the fee income, over half of the investment income and 45 per cent of the total profit. There is no level playing field in the system at the moment; there are huge winners and losers. This is the sort of basic information the government would like to keep to itself.

I was the chair of that inquiry and I am the chair of the inquiry that is currently under way with regard to the government’s higher education package. In terms of the submissions presented to us in both the first inquiry and the current inquiry—and we have had some 19 vice-chancellors, for instance, present evidence to the committee to date—we have seen considerable concern being expressed. I think that, if people did have a grasp of what was actually going on in the system, there would be a clearer impression of the future options that are available to us.

There have been grave concerns expressed by state governments around the country about the regional impacts of the changes that are being proposed at the moment. This is the sort of information we could present to people to allow them to examine its detail and to understand the implications of the policy options that are being considered. We have a situation at the moment where the government is dividing the university system and the students that are participating in it into winners and losers. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.51 p.m.)—I move:

That the order of consideration of government business orders of the day for the remainder of today be as follows:
No. 1 Superannuation (Surcharge Rate Reduction) Amendment Bill 2003, consideration in committee of the whole of message no. 421 from the House of Representatives.

No. 2 Superannuation (Government Co-contribution for Low Income Earners) Bill 2003, consideration in committee of the whole of message no. 427 from the House of Representatives.

No. 3 Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003, consideration in committee of the whole of message no. 420 from the House of Representatives.

No. 5 Petroleum (Submerged Lands) Amendment Bill 2003 and a related bill.

No. 7 Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003 and a related bill.

Question agreed to.

SUPERANNUATION (SURCHARGE RATE REDUCTION) AMENDMENT BILL 2003

Consideration of House of Representatives Message

Consideration resumed from 9 October.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.52 p.m.)—I move:

That the committee does not insist on amendment no. 7 to which the House of Representatives has disagreed.

Senator SHERRY (Tasmania) (5.52 p.m.)—We are dealing with the first of three messages that relate to a package of two measures, and a third amendment that relates to the issue of the removal of discrimination with respect to superannuation that currently applies to same-sex couples. It is apparent from the messages that have been returned to the Senate that the Liberal government in the House of Representatives is intent on removing the successful amendment to the bill we are currently discussing—that is, the amendment to remove the discrimination that currently exists for same-sex couples.

As for the package of measures, this message deals with an exclusive tax cut to apply to high-income earners’ superannuation.

When I refer to high-income earners, I mean there is an exclusive tax cut for those who earn more than $96,000 a year. It is a very exclusive tax cut, because 95 per cent of the Australian work force earn less than $96,000 a year. The Labor Party does not support this exclusive tax cut, and I have made that point on many occasions both in this chamber and publicly at various forums. Labor does not support this tax cut for the fundamental reason that it is exclusive: it applies to a very small group of Australian taxpayers who have a high income, earning more than $96,000 a year, and it confers an exclusive and guaranteed benefit to that group of taxpayers. Labor has put forward what it considers to be a fairer and more positive alternative proposal: that is, to reduce the contributions tax that applies to most, but not all, Australians’ superannuation from 15 per cent to 13 per cent. Labor has presented a positive alternative to the exclusive tax cut we are being asked to approve here this evening.

The second message relates to a matching government contribution of up to $1,000 for low-income earners if their income is $27,500 or less. So, with respect to the other element of the package, if an individual voluntarily places $1,000 into superannuation, they will receive a matching co-contribution from the government of $1,000, provided their income is less than $27,500. The matching contribution phases out as incomes approach $40,500. The Labor Party support the low-income earner co-contribution. We
have been critical of some of the exaggerated claims made about who benefits. We have been critical and we have posed a number of questions, both to the minister in the Senate and in other forums, about precisely who will benefit from this low-income earner co-contribution and about the numbers. I have referred to exaggerated claims. I suppose the most infamous exaggerated claim was that made by the now minister, Senator Ian Campbell, who referred to Australians becoming millionaires as a result of this low-income earner co-contribution. Not even the minister, Senator Coonan, would dare to confirm the millionaire claim made by Senator Ian Campbell, who is now a minister.

Labor has focused on trying to ascertain the approximate number of people who will benefit from this low-income earner co-contribution. Whilst the Liberal government, the minister representing the Treasurer on this occasion and Senator Cherry have been somewhat triumphal in their media releases and public comments, it is apparent that up to four and a half million Australians who could benefit—

**Senator Cherry**—They could!

**Senator SHERRY**—I will take that interjection, Senator Cherry.

**Senator Cherry**—They are eligible.

**Senator SHERRY**—They are eligible; that is right. It is apparent that the reality is very different. On the government’s costings and projections, it is some 450,000 or 460,000 who will benefit. Despite those magic words of ‘up to’ and ‘could benefit’, the reality is very different. Indeed, the figure is remarkably close to the government’s—

**Senator Cherry interjecting**—

**Senator SHERRY**—I was going to draw the analogy with children’s superannuation accounts, Senator Cherry. This government predicted on 5 November 2001, in the run-up to the election, that 470,000 people would take up children’s superannuation accounts. To date, I am informed there are about 500 of them. However, I must say I do believe that the appeal of the low-income earner co-contribution will certainly exceed a 500 take-up rate. I would be confident of that, whatever the final figure may be. We have made an attempt to ensure that we have some real picture of the likely benefits to low-income earners.

There are a couple of potential flaws. The low-income earners co-contribution is open to middle- and high-income earners, because they can make the contribution on behalf of their lower income spouse or partner. So, indirectly, higher income earners can benefit from this program. The Democrats have insisted on a measure that will require some analysis of the partner’s income. I have to take the credit here—I think it was my suggestion that the Democrats either kindly incorporated into the legislation or insisted the government insert into the legislation.

There is another reason why the Labor Party supports the low-income earner’s co-contribution: it was a Labor idea. The co-contribution was a Labor policy initiative. Labor proposed a three per cent government co-contribution in 1995, which this government committed itself to keep and then dropped in 1997. Labor’s alternative proposal of a three per cent government co-contribution, which would have applied to all Australian superannuation and not just to some 450,000 or 460,000, would have delivered an additional $4.5 billion into superannuation once it was fully operational, whereas the Democrat-Liberal government deal delivers some $215 million—I am using the 2007-08 year here—in additional superannuation contributions. Whilst we appreciate the government copying a Labor policy—one that the government had dumped—
and then coming back and presenting a low-income earner’s co-contribution, it is a very much watered down version. There is a contrast in that there is a guaranteed tax cut for high-income earners—all high-income earners get the tax cut—whereas approximately one in 10 low-income earners will receive the government co-contribution. Labor does not regard that as balanced.

Let me come to the final issue, which is the successful Labor amendment to this bill we are considering, which the Liberal government rejected in the House of Representatives—that is, to amend the general superannuation law to remove the discrimination against same-sex couples. I am pleased that, before this matter was referred to the other place, the Senate voted to support Labor’s amendment. I acknowledge likewise that Labor supported the amendment moved by Senator Brown and the amendment moved by the Australian Democrats on the same issue. I have been asked, quite reasonably, why Labor have on this occasion chosen to move such an amendment and support it where, on previous occasions, the Australian Democrats and/or Senator Brown have moved an amendment along similar lines, if not identical ones, and the Labor Party have not supported it. We have taken a position that this issue of same-sex couples and superannuation must be dealt with. It must be resolved. The discrimination must be removed. It is very difficult to do that when this government—which is clearly intractable, stubborn and determined to avoid this issue and remove the discrimination—has a majority in the House of Representatives. However, on this occasion, Labor have taken the approach that we need to try to force this issue—to get this Liberal government to deal with this issue of removing the discrimination against same-sex couples. This presented one of those few opportunities where realistically we are in a position to put much greater pressure on this Liberal government to agree to remove the discrimination against same-sex couples.

Labor hoped the government would have considered the amendments by the Democrats, the Greens and the Labor Party that were successfully moved in this place, and we hoped that the government would have reconsidered its position in the time we have had since this matter was last considered in the Senate. I understand that the government has not reconsidered its position—it has not even discussed it that I am aware of—and it has not taken the issue back to cabinet. Senator Coonan may be able to present us with some up-to-date information on the matter, but the government has point-blank refused. The Democrats might have some additional information. I will listen with interest. I understand they requested some sort of statement from Senator Coonan. I will be interested to see if we get it and, if so, in what form.

Labor saw this as an opportunity to press this issue of equal rights for same-sex couples with respect to superannuation. Labor has taken a view that there is a fundamental issue of human rights here with respect to same-sex couples. In addition to that, there is the fundamental issue of property rights. Superannuation in this country is the individual property right of Australians, subject to trustee supervision, management et cetera. The issues of the discrimination that apply to same-sex couples and superannuation have been well canvassed in the Senate. The actual details of that discrimination with respect to death and disability, insurance, estates, defined benefits and reversionary benefits have been well canvassed, and I do not intend to go into them in detail today.

I did watch the debate in the House of Representatives, particularly the comments by the new minister, Mr Ross Cameron, who...
claimed in his speech that there is a forthcoming bill on choice of fund legislation. He took the opportunity to highlight that the government’s choice of fund legislation, which is due to be debated in this parliamentary sitting, would allow same-sex couples to choose a superannuation fund that best serves their needs—that is, a fund with governing rules that allow payments to same-sex couples. It is absolute crap. It is absolute nonsense.

Senator Troeth—Mr Acting Deputy President, I rise on a point of order—

Senator SHERRY—I withdraw that expression. This is a fundamentally untrue claim by Mr Cameron in the other place. It is absolute nonsense. His claim that the government’s so-called choice of fund legislation overcomes the fundamental discrimination in law against same-sex couples is grossly misleading. It is not the superannuation funds that are at the heart of the problem; it is the law that the superannuation funds are required to meet that is at the heart of the problem. It is another example of this Liberal government refusing to deal with the issue of removing discrimination against same-sex couples and refusing to acknowledge the importance of this amendment. (Time expired)

Senator WATSON (Tasmania) (6.07 p.m.)—We all know that the Labor Party is suddenly against co-contributions and is against a reduction in the surcharge, small though it may be. It is interesting that, in order to try to get some additional support for its opposition, the Labor Party has joined with some minority senators in using the same-sex couples debate to try to destroy this legislation. Senator Sherry, I remember that you agreed during the hearings of the Senate Select Committee on Superannuation that the committee regarded the co-contribution as a very important first step in assisting a targeted group of taxpayers to boost their retirement savings, and it supported the adoption of the government’s co-contribution bill.

Not long ago, we heard Mr Latham suggest a similar sort of approach: that low-income people should be given savings money—not for superannuation but for savings—on a very much more generous basis.

Which arm of the Labor Party is really talking? One arm of the Labor Party, its shadow Treasurer, is putting forward a suggestion that low-income earners need government assistance to boost their savings. We have a very generous measure, within limits, in the Superannuation (Surcharge Rate Reduction) Amendment Bill 2003, for low-income earners in particular, for amounts to go into superannuation. Senator Sherry had no objection to that; it was not a part of his minority report. There was a minority report attached to certain features of this bill but that was not one of them.

I remind the Senate that this exclusive tax cut, which we spent about 10 minutes talking about—to ‘a very exclusive group’, he said; yes, it is a small group—addressed something that should never have been there in the first place. It was put there to overcome a black hole of $10 billion created by the Labor Party before it left office. To ensure that a good cross-section of the community suffered in the claw-back required to bring it back into surplus, the surcharge was introduced. I have always had problems with it. But here we have the first opportunity to reduce a front-end contribution tax and it looks as though it will be defeated. It is a small amount, and the Liberal-National Party coalition have gone a long way in meeting the demands of opposition senators in reducing the benefit. I applaud them for that. They cut a deal with the government—in other words, reduce the amount of the surcharge and increase the value of the contributions tax by extending the amount up to $40,000 before it
cuts out. I applaud that because a lot of people will be affected by it, but it would be a pity if this whole thing were to be scuttled on the issue of same-sex couples.

Quite a number of years ago, honourable senators will recall, our Senate committee brought down a report that did see some injustice in this issue. But what I am concerned about is that the problem you are trying to solve is wider than just the same-sex issue debate. I think it would be a travesty of justice if we were to pass this sort of amendment that gives exclusivity to this particular group but that excludes other desirable people. I will give you a simple example: there are two sisters, one a professional going out to work and earning reasonable money and the other who stays at home to look after mum in her old age. The sister who stays at home has never been in the work force. Mum suddenly dies and there are two sisters living alone. That situation does not come under the same-sex couples banner. Don’t you think there is an injustice in the sense that there is a denial of opportunity for superannuation funds to flow through that sort of channel?

This issue really needs to be brought back under a banner that is not identified as a same-sex issue but as a justice issue, encompassing all these sorts of people. I say that we should look at this issue in a separate and wider context, rather than in narrow confines where there will be sections of the community saying, ‘We can’t agree with this,’ simply because it is seen to be primarily directed to a particular group. I believe it will be unfortunate if we kill a bill that will give a lot of benefit to people, because there is a lot interest out there.

Members of the committee, including Senator Cherry and Senator Sherry, would be aware that the majority of evidence that we received when this issue was taken to an inquiry in the outside world was that people saw some benefit, some progress, in a reduction in the surcharge as a first step. It was a first step, albeit such a small step that there would be an indication to future governments that this should be continued along the line. It would be a first step in the reduction of front-end taxes. We do not like front-end taxes because, across the spectrum, front-end taxes take off, in terms of compounding, the final benefit. Tax the final benefit—that is what everybody wants. In a sense the Keating government conned us all, with a few exceptions, when it introduced the concept of front-end taxes. Now the very people who introduced that concept are opposing this first step to reduce that front-end tax. The submissions say that it is better to take a reduction now in what has proved to be a generally unpopular tax, a tax that people acknowledge is costly to collect and is unconstitutional because it is not universal—there are exceptions now, as court cases have shown—rather than to debate the merits that are not included in the bill.

The government has listened to the call and made the co-contribution more generous. FitzGerald and others have demonstrated quite convincingly that this concept of co-contribution is the best way to go to help lower-income earners. To the credit of some of the opposition parties, the government has agreed to extend the threshold in the interests of getting the bill through. We have now had sufficient debate and it is time to get the bill through so that people who are in need can benefit from the legislation.

This is an important point. Getting rid of the surcharge, in a very small way, over three years is an equity measure. It is not a big amount but at least it is a signal of the intention to remove it. To remove it in one lump sum, I agree, is too much. For many people, superannuation is not a particularly attractive option because superannuation tax rates are significantly higher than the ordinary per-
sonal tax rates. Why should superannuation vehicles be taxed at a rate which is higher than the top marginal tax rate that applies to individuals? There is another side of the justice coin. You can say that they can afford it, but you have to bring some reasonable equality across the spectrum of tax and superannuation laws. The surcharge has been criticised, particularly when it applies to women who have had broken working patterns. When in later years they try to make up their superannuation, the contribution fund enables them to provide for a dignified and self-sufficient retirement—and that is what superannuation is all about.

Where is the feminist movement within the ALP? They are not querying people like Senator Sherry who are leading the superannuation debate. People like Mr Latham are saying that we have to increase savings, but Senator Sherry says, ‘But not in superannuation.’ Where is the consistency of your policy, other than the policy of outright opposition? I understand where Senator Greig is coming from. There is a solution, but the solution has to be seen to be wider than just being directed at the very narrow corridor that you are addressing. The community will not appreciate what you are trying to do or, if the government gives in, where it is seen to be giving in on this matter.

The issue has to be debated and clarified in a better way than barnstorming at this time. We know that the Labor Party does not want either and they see this as a measure for scuttling it. I think that is unfortunate. I say to the other senators: look at it in the clear light of day, on a proper occasion, but, for heaven’s sake, let this get through because it is a signal of the importance of beginning to get rid of the surcharge which Senator Sherry fought for years and years—now we have seen a big U-turn. A lot of people worry about the credibility of politicians.

It is important to get rid of front-end taxes, and a small reduction of the surcharge is not a bad first step in the right direction. Over time, as budgets permit, we would hope that successive governments will pick this up in relation to the general contribution tax and have taxes at the end, when people collect, as part of the general simplification of taxation laws. These sorts of measures complicate the system. We have to begin taking the complications out of superannuation and, as a first step, this is the way to go. Let us not deny that opportunity of moving forward.

Senator CHERRY (Queensland) (6.19 p.m.)—I rise to respond to the two previous speakers, who raised some interesting points. Firstly, Senator Watson is dead right: we need to go further than simply the same-sex issue, although discrimination against same-sex couples is part of the discrimination in a range of categories. I have in front of me an Administrative Appeals Tribunal case, [2000] AATA 8, 13 January 2000, concerning a son in a very close-knit family who died. The evidence says that the son lived at home with his parents and helped in the delicatessen on the weekend. When he died, the parents were taxed on his superannuation when it came back to them. In that case, the argument was that, even though the AAT acknowledged that the family had been getting the support of their son working in the shop and the emotional support of him living at home with them, he was not financially supporting the family; in fact, the evidence was the other way. His marriage had broken up, he had moved back home to his parents’ house and his flat was being sold. The AAT decision says:

15. In the present case there is no suggestion that the applicants were in any sense financially dependent on the deceased. Indeed, the evidence is that for almost all of his life the deceased relied in varying degrees upon the generosity of the applicants—
the parents—
for his financial support. The Tribunal under-
stands that the dependence asserted by the appli-
cants is one of physical support helping out with
the running and management of the family busi-
ness.
16. However, the evidence does not support a
conclusion that either applicant relied to any sig-
nificant extent on the profits of the family delic-
tessen business for their financial survival.
Therefore, as financial dependence was not
found, the family was taxed. What we object
to is the notion that superannuation benefits
should be taxed when they are passing within
a family or a same-sex relationship or any of
the myriad of different relationships that ex-
ist out there in modern Australia. That is why
the amendments which the Democrats have
moved to a subsequent bill are superior to
the ones which Senator Sherry has moved to
this bill—our amendments dealt with not just
the same-sex issue but also with the broader
category of interdependency and broader
relationships.

I note that, in the message that has come
back from the House of Representatives, the
government has sought to argue:
A dependant is ordinarily interpreted to include
those partly financially dependent or financially
inter-dependent with the member. Therefore,
same-sex partners can usually access the death
benefits of their partner where the dependency
test is met and the House considers that this
amendment is not necessary.
The decision that I read out is case law and it
is an example of the courts showing that that
whole notion of financial dependency has its
limits. To rely purely on financial depend-
cency is to downplay the important emotional
dependency or the important other physical
support that can exist within a same-sex cou-
ples, family relationship or a whole range of
different circumstances. It is important that
the Senate acknowledge that our law does
have a problem. The problem arises because
we are taxing death benefits in desperate
family situations where someone has lost a
loved one. We are taxing them and putting
them through the angst of having to face a
taxing situation if they cannot prove this
economic definition of financial dependency.

A relationship is more than just finance.
Finance is important, but a relationship is
much more than just financial dependency.
There is emotional dependency. There is, in
this case, the dependency of helping in a
family business. There is a whole range of
different things that we need to recognise. I
will deal with the merits of the amendments
we are moving when we come to the third
House of Representatives message, but cer-
tainly the Democrats are of the view that
Senator Watson has raised very strong points.
I think it is time that the government as a
whole took on board the view that we do
need to deal with the issue of the categories
that fall outside this narrow law put in place
by the Labor government in 1992. I think it
is time we as a Senate and as a parliament
reviewed it and that we actually deal with
these discriminations.

The point is that we should not be taxing
death benefits that are shifting within a close,
interdependent or family relationship. We
should not be dictating by law whom you
can and cannot leave your superannuation to.
The government talks at various times of the
importance of choice—choice when a person
is alive—but I think that choice should ex-
tend to when people are dead as well. I think
it is a very important principle. That is one of
the reasons why the amendments we have
moved to the Superannuation (Government
Co-contribution for Low Income Earners)
(Consequential Amendments) Bill deal with
these issues in a very comprehensive way. I
thank Senator Watson for his comments, be-
because I think they are important in acknow-
l edging the need for us to go further and deal
with all different types of relationships.
I acknowledge that partial dependency is picked up in the current law. There is plenty of case law in the Superannuation Complaints Tribunal that deals with partial dependency. When you look at cases like Faull’s case, the courts have tried to stretch it as far as they possibly can to ensure that the tax impost on a family situation of a superannuation benefit passing through is not picked up. The High Court, the Supreme Court, the Federal Court, the AAT and the Superannuation Complaints Tribunal have stretched this law as far as they can, but it still falls short because you still have to prove an element of financial dependency to get through the law. And that is the problem. Occasionally, various people in this place criticise judges and say that they should not be stretching the law, but judges have compassionate times. When you are dealing with a situation where you have a death benefit that should be passed on to someone else and the government is going to tax that because you cannot prove financial dependence, it is really criminal and really appalling to have that as a legal outcome. It is something that I think this parliament has to fix. That is one of the debates we need to have.

Coming back to the package as a whole, and the wonderful speech that Senator Sherry treated us to earlier about the surcharge package, I remind the chamber that the Labor Party’s policy is for a two per cent tax cut across the board in superannuation contributions. Under the package we are dealing with today, in this financial year the cut to the surcharge is half a per cent, next year it is 1½ per cent and the year after that it is 2½ per cent. The benefit after the end of three years under this package vis-a-vis Labor’s is the grand total of half a per cent. That is what we are arguing about. What the Labor Party’s package does vis-a-vis the package we have negotiated with the government is that it transfers money from low-income people to middle-income people. We had this debate earlier.

The Democrats have got the government to agree—and I am very pleased with the underlying package we have reached agreement on—to transferring $460 million from the forward estimates on a surcharge cut to a matching co-contribution for low-income people. The result is that two-thirds of the funding of this package goes to people earning under $40,000 a year. There are 60 per cent of Australians earning under $40,000 a year. We can argue until the cows come home about how many of those will pick up the package. I was very delighted with—and I quoted it earlier in the debate—the research at the Chifley Research Centre which suggested that pick-up rates could be very high. The evidence from overseas is that these sorts of voluntary savings measures do in fact encourage people to save.

We had a debate on a matter of public importance earlier put forward by Senator George Campbell, which I had the joy to chair, that referred to the desperate need for Australia to increase its household savings. Why don’t we encourage people to save by giving them a boost when they save? That is what Mark Latham was arguing when he was talking about his matched savings accounts and that is pretty much what George Campbell was saying today. We all need to save more. That is what this package is about: encouraging people to save more.

I cannot see why the Labor Party would want to take the money out of that savings incentive and give it to middle-income people as a tax cut on the superannuation contribution they are already making compulsorily. That does nothing to increase national savings.

Senator Sherry—And voluntarily.

Senator CHERRY—And voluntarily as well, but the vast bulk of it will be a dead
weight loss because it will be going on SG contributions which they already were making. It is a dead weight loss. At least under this proposal we are putting up, if they save more they will get more. We will actually get more money into the accounts of low-income people. The key thing about this package is that the vast bulk of the benefit goes to people on lower incomes. Under Labor’s proposal—the two per cent across-the-board tax cut—the vast bulk of the benefit goes to people on average incomes. That is why the Democrats are very proud to defend this package, because we are delivering a very significant benefit to low-income people at the bottom end. We will also continue to urge the government to move on this whole issue of recognising same sex interdependent relationships, but I will deal with those issues when we deal with those messages later.

The point I make at this stage is that this package is a good package. It is a package which has the significant potential to expand the savings pool in Australia and to encourage people to save. From that point of view, it is worth doing. It is very much worth doing, because 90 per cent of the benefit in this financial year goes to low-income people and 70 per cent of the benefit in the second year goes to low-income people. Over the course of four years, 66 per cent of the benefit goes to low-income people. That is assuming a low take-up rate. That is assuming the same number of people pick up this benefit who currently pick up the superannuation low-income earners rebate. If any people pick it up over and above the current low-income earners rebate pick-up rate, then we will see even more of that money going to low-income people. That is an even better outcome for Australia. It means people are saving more. We are doing something about the fact that we are now the wooden spooner in the OECD with respect to our national savings rate.

I cannot see why we cannot ensure this package moves through because it is such a good and important package. I cannot see why we cannot also deal with the issue of discrimination because it is a fundamentally important issue. Why are we in a situation where, when we are dealing with death benefits, we are putting death taxes on death benefits passing within family relationships? Why are we as a parliament doing that? The parliament does need to deal with that issue at some point. The Democrats are very keen to see the government’s response to that later in this debate. We need to find a way through all of this to ensure that we get this very good package for low-income people. We need to get these incentives in place to encourage people to save and we need to deal with those issues that Senator George Campbell was talking about today—about getting our national household savings rate up. We need to ensure that when people do save they can have choice about what happens to their savings when they die. We need to deal with that in the SI(S) Act and the ITAA as well.

It is interesting to note, when trawling through the various writings of the Superannuation Complaints Tribunal, that it has produced a very long paper—a very good paper—on the legal issues on death benefits. I commend that paper to senators. It deals with a whole range of issues that have come out of the 500 cases that the SCT has dealt with in respect of death benefits. Some of the issues that come out of that show the enormous complexity of this particular area. But it keeps coming back time and time again to the issue of financial dependency and the need to improve powers of financial dependency.

I think families in Australia are about more than financial dependency. I think rela-
tionships in Australia are about more than financial dependency. I think they are about that physical support of running a delicatessen on the weekend. They are about the emotional support of a same-sex couple as well as of a heterosexual couple. They are about sisters living together and providing support, as Senator Watson suggested. They are about a whole range of things. I think it is time we as a parliament put value on that and ensure that the value we place on these relationships is not just a financial one but rather an emotional one, a physical one, thereby recognising all the different groups which make up our country.

This has been a very interesting debate right from the very beginning. I want to pay tribute to the government’s preparedness to amend this package to date to deal with the issue of low-income earners and to ensure those benefits flow. We need to ensure those benefits are capable now of flowing not just during someone’s life but at the end of someone’s life as well. That is an issue I do hope the government is prepared to address at the appropriate point. As other people will want to speak tonight, I will leave my comments there. But, from our point of view, I would note that the amendments the Democrats have moved to the consequential amendments bill do deal with interdependency as well as same-sex couples, which makes them superior to the amendments we are discussing here.

**Senator Sherry**—Property rights are difficult for the Nationals!

**Senator BOSWELL**—No, it is not property rights. It is the other thing that I am referring to and you know quite well—same-sex couples. We would find it very difficult to support it. I plead with the Democrats. This bill will assist low-income families and will help people who have family when a fairly low sum of money gets transferred from different areas within that family that requires 30 per cent or 40 per cent tax on it. I know it is very difficult. I have had quite a number of submissions made to me on this matter, where people have had a son or daughter die and they try to pass the money on to their sister, brother or nephew and find that half of it disappears in taxation.

**Senator Cherry**—It has to be fixed.

**Senator BOSWELL**—I hope it will be fixed. As I say, I have had personal experience of it, and it must happen time and time again. It seems to me that you have put so much work, effort and time into this bill. We all would like it to go through, for all the reasons that you enunciated in your speech. I have just done a quick exercise on my personal self-interest—you know it is racing, and now it is trying—but it will not make much difference to me. I think it is about $80 a year to people on our level of income.

**Senator Sherry**—That’s not right. It is a lot more than that. In our fund it is, mate!

**Senator BOSWELL**—Is it?
Senator Sherry—The first year.

Senator BOSWELL—I have just got some advice. On the first year, I was told it was $80.

Senator Sherry—The first year.

Senator BOSWELL—Yes, $80 in the first year. I am looking for advice on that. I am trying to say that it is not going to help the big end of town; it is going to help the very small end of town. I, for the life of me, cannot see why the Labor Party would not support it. But I have a great deal of difficulty fathoming the Labor Party on many issues and this one is just another mystery to me. They say they are the working man’s friend, they stand up for the blue-collar workers and they support the battlers, yet when the $40,000-a-year battlers are offered something they walk away from it. That is totally wrong. The people down at the pub who spend all their money letting their three or four kids play football or basketball do not have any real excess income to put away. Then this bill comes along, supported by the Democrats and the National and Liberal parties. The Labor Party stand at the polling booth and say they support the worker, but they do not support the worker. That is probably why the worker does not support them now. That is probably why the workers and the Howard battlers now vote for the Liberal and National parties.

One thing raised at the National Party conference was the cliche ‘insanity is doing the same thing the same way and expecting a different result’. You are doing the same thing time and time again. You are neglecting your blue-collar workers, and they are neglecting you. You have been doing it for the last three elections, and you are going to do it again and you are going to get the same result. Those people are going to vote for the Greens, the Democrats or the Liberal Party; they are not going to vote for you.

Senator Sherry—They’re not voting for the National Party; we know that.

Senator BOSWELL—They may not vote for the National Party, but they are certainly not going to vote for the Labor Party. They are looking elsewhere. That is why you are in a terrible situation where the Greens are gradually catching up on you. You are going to lose those inner city seats because what is going to happen—and you have seen it so regularly—is the Democrats will get a few votes, the National-Liberal Party will get a few votes and by the time the votes are parleyed up they will go past the Labor Party. If you keep neglecting your blue-collar workers, then you are going to lose seats. They are saying to you, ‘Listen to us, we need your help,’ and you are ignoring them all the time, and consequently you are going to lose seats. You escaped by the skin of your teeth in Melbourne Ports and you lost a by-election to the Greens in a safe Labor seat.

You do not seem to be able to adjust. You put one hand in the fan and lose five fingers and then you immediately put the other hand in the fan and lose five fingers and you say, ‘What happened?’ If that is the way the Labor Party want to go, that is the way they will go. Obviously you are not going to take any notice of me. I have seen it down at the polling booth. Let me repeat this anecdote. I live in a working-class area; in fact, it has never been held by anyone except the Labor Party for the last 100 years. The Nationals won it once in 1974, but it is basically a very hard-core Labor seat. When we had the referendum on the Constitution my wife came back from the polling booth and said, ‘I have never had a better day in my life. It was an absolutely fantastic day because, as I was handing out the cards, all the old Labor voters came and said, “Good on you, girlie, you are doing a great thing,” and then they walked over and abused the Labor Party.’ She said that had never happened to her be-
fore. I am just saying that you keep losing contact with your basic workers. I might add that it got so bad that the Labor guys ran up the white flag at about 12 o’clock and went home, because they were sick of getting abused. Anyhow, it made my wife’s day very happy because she said that normally she was on the other end of the abuse but this day was a terrific day because the Labor Party came down and congratulated her on standing up for their beliefs.

This is a good bill. I have just come into it at the end. From my own personal experience and representations I have had from other people—not a lot; maybe 10 or 12 over 20 years—where this has happened, where a sister has died and tried to pass it on to another sister, brother or nephew, there has been a tax on it.

Senator Sherry—Are you going to vote for the Democrat amendment on the third message then?

Senator BOSWELL—I will not be voting for it. I am trying to be honest about it. I cannot vote for that. Our constituency could not support it—and I understand you have a different constituency—and we have to represent our constituency. I do not want to bring that into this debate.

Senator Watson—It just needs rebadging.

Senator BOSWELL—Maybe it needs rebadging or something. As Senator Watson has said, it would be hard for us to do it. I would not want to see the bill go down and battlers on less than $40,000 lose their refund because we have a philosophical difference. We should sort out the philosophical difference. We can debate it as much as we like, but we cannot neglect or walk away from these people on less than $40,000 because there is a philosophical difference. You know the bill is good. We have accepted every amendment that the Democrats put up. We have backed it all because we think you have done a pretty good job and we are prepared to go along with you. So let us not fall at the last hurdle and cut the worker’s nose off despite our face because of our philosophical differences. That is not what we are here for.

We are here to provide the best legislation for the majority of the people, and you—the Democrats and the National and Liberal parties together—have done that. The Labor Party then come in and say, ‘We’re not going to do that, because there’s a philosophical difference.’ Of course we have our differences. We represent different people with different ideas. That is part of parliament. We come in and represent those people, and your constituency is different from mine. But it is for those reasons we should debate, for instance, whether we believe in same-sex couples or something like that. We should not put a gun at the worker’s head and say, ‘You’re going to get shot because there was a philosophical difference.’

The bill is a good one. Your amendments have been accepted. I hope we can progress this, because there is not much in it at the moment. As I say, I went over and checked and—just as a rule of thumb—ran it through various income groups. It did not seem to me that there would be much in it for the big end of town. It seemed to me that all the benefits—or 66 per cent of the benefits—would flow to those I would call the battlers. Senator Watson is an expert on this bill. He has spent the last 10 years of his life working on superannuation; maybe he could add a bit more information to support the legislation going through.

Senator GREIG (Western Australia) (6.46 p.m.)—In the few minutes remaining, I would like to make a few points. The most immediate point I would like to make is to express my shock at Senator Boswell saying that the Senate ought to have a debate on
same-sex couples. On the very last occasion when I attempted that, Senator Boswell was screaming at me across the chamber to not do that and, in fact, that neither he nor his constituency wanted to do that, they never wanted to do that and they will never support bringing on the sexuality and discrimination bill. If he has changed his mind, fine.

Senator Sherry interjecting—

Senator GREIG—It is true, Senator Sherry, that you have made some strong statements about this being a human rights issue and Labor being committed to this reform, and that you would insist on bills which the government really wanted. But at the time you did quarantine that to super choice. You did not mention this bill, and I think it is fair to say that in that context Senator Cherry went into negotiations with the government in good faith, knowing that the Labor Party would not insist on same-sex amendments to this particular bill. So, to see the amendment from Labor—their first ever on this issue—come out of the blue as it did was, as Senator Watson correctly said, to see Labor using the issue of same-sex couples as a torpedo or a weapon to sink a bill that they are ultimately going to vote against. I regret that.

I think it is also important to make the point that, if that is going to be your strategy from now on, then I must appeal to consistency. There is a bill that Senator Coonan is now promoting dealing with the splitting of couples’ incomes. That is a proposal that would discriminate against same-sex couples. Are you going to be consistent and insist on amendments to that bill? To the minister I would say—given that your argument to date has been that this particular bill on co-contributions is about individuals and does not touch on relationships and, therefore, these amendments are not appropriate and you will support them on that basis—what possible argument can you provide to not support them on the income splitting bill, which is specifically about relationships?

Mr Cameron in the other place has argued that the super choice bill would allow for same-sex couples to move to that particular regime and avoid the discrimination. I am deeply offended by that argument. Lesbian and gay people are the only people for whom it is suggested that market forces should be the answer to human rights.

Senator Cherry—And they still get taxed.

Senator GREIG—And they still get taxed. It is only the gay and lesbian community to whom anybody would dare suggest that, rather than having national legislation to end discrimination, it should be done by market forces. It is deeply and personally offensive, and it is wrong. Senator Watson has said that it would be a great pity if this bill were to fail on this particular point. I agree. But, if it does, the blame for that rests with the government and its ridiculous position on this issue. We know where it comes from. I do not think it comes from Senator Coonan. I think her heart is in the right place. It comes directly from the Prime Minister and cabinet. We know that because the Prime Minister stated, in an interview with Mr Kerry O’Brien on the 7.30 Report about two years ago, that he opposed equal rights and equal superannuation conditions for same-sex couples because it would lead to gay marriage. That is where it stops so far as the government is concerned.

Progress reported.

DOCUMENTS
Commonwealth Scientific and Industrial Research Organisation

Senator CARR (Victoria) (6.50 p.m.)—I move:

That the Senate take note of the document.
The advice of the CSIRO annual report 2002-03 directly contradicts the puff piece that we see in the Financial Review today on the CSIRO. The claims on page 1 of the Financial Review today that the CSIRO is now going to establish prescriptive performance targets have demonstrated, once again, that journalists do not necessarily have the opportunity to check the facts. We have seen these types of performance targets set before, and we have seen many occasions when those performance targets have not been met. In fact, when we go through this annual report, we notice some fundamental trends being reinforced—trends I have identified through the Senate estimates processes. May I begin by asserting that CSIRO staff are doing an excellent job. There are many of our finest scientific minds employed by the CSIRO. They are doing that excellent job under extraordinary duress and despite the failure of this government to provide the adequate financial and infrastructure support that is required to ensure that the CSIRO is able to perform at its optimum.

What we see in these measures, however, is that there is still no triennial funding. This is a position that I have called on the government to reverse—and I suggest it is appropriate that we all do so, because the government should restore triennial funding to the CSIRO. The effects of the government’s short-term commercial emphasis are now becoming very clear. This report shows that IP revenue has fallen by 18 per cent in the year and that external earnings as a percentage of total revenue have fallen to 34.1 per cent—a further fall of 0.6 per cent on the past year. External earnings targets are somewhat higher than that, but the actual achievements are static and barely keeping pace with inflation. What has happened to the great leap forward that we were promised by the CSIRO in the last five-year plan? In today’s Financial Review the CSIRO is quoted as saying it has a target of $1.1 billion in revenue by 2006-07. This compares with what was termed the ‘stretch target’ of $1.3 billion in the last five-year plan. That was trumpeted as the great new performance measure that was going to be insisted on. We would like to know what has happened to that $200 million.

We see in this report yet again that the basic funding streams for the CSIRO, the basic drivers for their scientific achievement, remain static. At the same time, we see the number of refereed scientific publications and reports still below the 1997 level, while consulting or client reports increased by 35 per cent in the same period. There is a 10 per cent increase on last year. The number of postgraduate students supervised by the CSIRO has fallen by 28 per cent, which includes a net loss of 74 students in the last two years. There is evidence of a massive cultural change occurring within the CSIRO, but this is hardly in the direction that the government claims. The content of this annual report confirms that there is a drift towards short-termism, and we see that in the number of staff being appointed on short-term contracts. Any organisation must constantly refresh itself, but what we are seeing in the CSIRO at the moment is scientists of excellence, great experience and great knowledge being lost and younger replacements being brought in on short-term temporary placements. A Business Review Weekly article of 11 September put quite a contrasting position to that put in the Financial Review today.

It is quite clear, with the block grant of the CSIRO now directly under threat in the reviews being undertaken by this government, that the government strategy of moving to break up the CSIRO continues apace. We are seeing in this both the Chief Scientist and the ARC arguing for the removal of such funding. We notice from the Chief Scientist’s
recent report—which the government has yet to release but which we were able to draw attention to yesterday at the Press Club—that the position of Australia’s scientific achievement is under serious threat because of the government’s failure to provide the necessary research and development funds and the necessary research infrastructure. Our position by international standards is declining. This report demonstrates yet again further evidence of that. *(Time expired)*

Question agreed to.

**National Occupational Health and Safety Commission**

**Senator MARSHALL** (Victoria) *(6.57 p.m.)*—I move:

That the Senate take note of the document.

I draw the Senate’s attention to a very good report. I have not yet had time to go through all the tables in detail as yet but I will do that, and I will have more to say to the Senate at a future time. I do however want to draw the Senate’s attention to some of the comments in the chairman’s message. In particular, he says:

In 2001-02, an estimated 2,200 deaths in Australia were linked to the workplace, compared to 1,750 killed on Australian roads. On this basis, the workplace is more dangerous than the road.

He goes on to say:

Central to this is the need to make everyone aware of how appalling it is for a country of Australia’s prosperity, skills and capabilities to suffer the consequences of work related death and injury to hundreds of thousands of our people every year.

The chief executive officer in his review says:

According to preliminary workers compensation data, there were 198 traumatic fatalities in Australia in the 2001-02 year. In addition, it is estimated that there were more than 2,000 work related disease fatalities. The cost of work related injury and disease is estimated to be in excess of $31 billion.

This would have to make occupational health and safety the major issue facing our industries today. Yet we saw when the government had an opportunity to investigate one of our most significant industries, the building and construction industry, with the Cole royal commission, they all but failed to address any occupational health and safety issues in that investigation. For $60 million, Australians were entitled to expect that issues such as the horrific accidents that plague the construction industries would have been properly investigated.

It is worth noting, and this report confirms it, that almost one construction worker is killed on the job in the building and construction industry every week. It is an issue of utmost concern. However, has it been adequately addressed by the royal commission or was it directed to do so? Of course the answer is no. Even though the royal commission had the power to investigate all issues affecting the industry—and the unions pressed the Cole royal commission regularly to investigate the horrific number of injuries within that industry and to try to address the enormous costs to the industry that have been confirmed in this report before us today—there was only window-dressing in this regard with only two findings of breaches of health and safety rules reported. However, all in all, it pales in comparison to the findings made against workers and their unions.

It was well known from the outset that the outcomes to be found by this royal commission into the building and construction industry had been predetermined from the beginning. It was simply an exercise in union bashing and nothing more. This has been well documented in the media by many individuals, even those known not to be the most union friendly around. Take for instance Sydney 2UE’s Alan Jones, a self-confessed
friend of Minister Abbott. In September last year, he said:
There has been a fairly major exercise in union-bashing going on for some months, calling itself a Royal Commission into the building industry.
Remember, this is the same building industry that delivered the 2000 Olympic Games and all its infrastructure miles ahead of time.
It is worth noting also that while the Olympics were delivered ahead of schedule they were also well under budget.
Jones went on to note that ‘97 per cent of hearing time had been devoted to anti-union topics; 604 employers were called to give evidence and only 33 workers; three per cent of witnesses were from the ranks of workers and 71 per cent were employers or their representatives; and only two per cent of hearing time was spent on topics which did not adversely affect the union’.

The Cole royal commission was ridiculously biased against unions and everyone knows it. The Victorian unions gave the commission the names of 200 companies suspected of illegal or inappropriate behaviour. Of them only one of the companies was investigated during the public hearings. Unions were attacked by the commission for overzealousness in auditing employers’ books yet, when the commission dealt with the fact that these audits showed unlawful activity by employers, the report simply notes ‘the failure by some employers to comply with the requirements of awards and agreements’. Issues such as the underpayment of wages, workers compensation, fraud, illegal migrant labour, tax evasion—

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! The honourable senator’s time has expired.

Senator MARSHALL—I seek leave to continue my remarks later.
Leave granted; debate adjourned.

ADJOURNMENT
The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! There being no further consideration of government documents, I propose the question:
That the Senate do now adjourn.

Defence: HMAS Parramatta
Senator PAYNE (New South Wales) (7.03 p.m.)—I rise tonight to make some remarks about the commissioning of the Australian Defence Force’s newest Anzac frigate, HMAS Parramatta, which was commissioned in Sydney on 4 October. It is fortuitous indeed that you are in the chair this evening, Mr Acting Deputy President Hutchins. I congratulate the new commander of HMAS Parramatta, Commander Michael Noonan, on taking command of his ship and of course wish Commander Noonan and his crew the very best for their future activities.

I found the commissioning ceremony to be a grand and historic occasion. In fact, it was an absolute honour to be there and the first opportunity I have had to attend such an event. The Parramatta is Australia’s newest Anzac frigate. The primary roles of the Anzac class are surveillance and patrol, the protection of shipping and strategic areas, naval gunfire support in support of the Army, disaster relief in the region and search and rescue. To fulfil those roles they have very impressive specifications: displacement of 3,600 tonnes, a length of 118 metres, a range of 6,000 nautical miles at 18 knots and a speed of 27 knots. Any casual observation of HMAS Parramatta would confirm in anyone’s view that she is indeed a very creditable addition to the Anzac frigate fleet. Parramatta is important for a number of reasons, not the least of which is her importance to the Australian Navy. To me, and to those of us who work in and around the city of Parramatta, she is a particularly important vessel.
Also present at the commissioning ceremony were the member for Parramatta, Ross Cameron, and the Mayor of the city of Parramatta, Paul Garrard. I think it is fair to say that any casual reader of the Parramatta Advertiser would know by now that HMAS Parramatta has most certainly been embraced by the city of Parramatta and by the community. In the run-up to the commissioning, the reports of the Parramatta Eels providing jerseys and of the various parts of the community really welcoming Commander Noonan and his crew with open arms were very heart-warming. The commissioning ceremony itself offered a very valuable opportunity to see some young, dedicated and enthusiastic members of the RAN among the ship’s company of 170 officers and sailors and to be part of, as I said, an historic occasion.

In fact, the story of HMAS Parramatta is a very interesting one. ‘Parramatta’ is the oldest name in Australian naval history. There have been three previous RAN ships to bear the name and each of those saw service in a major conflict. The name Parramatta was taken in recognition of the Burrarahungtal people, a clan of the Darug people whose territory extended from the Parramatta area to beyond the Blue Mountains—and, again, anyone who works in and around Parramatta and Western Sydney would knows that the Darug people are very proud of their heritage and their history.

HMAS Parramatta (I) was the first ship of the then fledgling Commonwealth Naval Forces, which became the RAN. She was a River class torpedo boat destroyer, displacing 700 tonnes and capable of a top speed of 28 knots. She was launched in 1910 and in 1913 entered Sydney Harbour for the first time as part of the RAN’s first fleet. She served with distinction in World War I, most notably in the destruction of German signal stations at the outbreak of the war and during the hunt for the German Far East fleet. Her list of achievements and contributions goes on for some time. After the war, she was used in a variety of training roles and was eventually paid off from naval service in April 1928. Interestingly for the people of Parramatta today, the bow and stern sections of Parramatta (I) were salvaged in 1973 and later unveiled as memorials to the ship at Garden Island, where the bow lies, and the city of Parramatta, where the stern lies. I would pass it on most days travelling to and from my office.

HMAS Parramatta (II) was a Grimsby class slip of 1,060 tonnes commissioned in 1940. She sailed from Fremantle in 1940 en route to the Red Sea, where she spent the next nine months escorting, patrolling and mine sweeping in what was then one of the world’s most torrid zones. It was extraordinary work. In April 1941 she took part in the British operations against Italian Eritrea and East Africa and then transferred to the Mediterranean station. There is a disturbing and typically challenging World War II story in relation to her involvement in action from that point. Suffice it to say, while escorting a small steamer into Tobruk in company with the sloop HMAS Auckland, the allied ships came under attack. At about midnight on 26 November she was fired upon several times and was finally hit by a U-boat torpedo. The ship was torn apart, rolled rapidly to starboard and sank—138 men lost their lives; 24 survivors were recovered.

HMAS Parramatta (III) was commissioned in 1961 as the first of the six River class antisubmarine frigates or destroyer escorts. She was then crewed by 250 officers and sailors and had a top speed of 30 knots. She completed several overseas deployments and spent many months on the Australia station. There were a number of highlights in her career, including escorting vessels to Vung Tau, Vietnam. She was extensively
refitted between 1977 and 1981 and was decommissioned from the RAN in 1991.

HMAS Parramatta (IV) follows a very proud tradition of ships of the Royal Australian Navy named Parramatta. The links she has with the city of Parramatta are also significant, including the design and origin of her badge, which is derived from the Parramatta City Council seal of 1939. As I said earlier, the salvaged stern of HMAS Parramatta (I) is situated in the city of Parramatta now. The Parramatta Eels have adopted the ship, the mayor has adopted the ship and, in a very short time, the rigid hull inflatable boats, or RHIBs, of Parramatta (IV) will be named by the schoolchildren of Parramatta in a competition they are currently participating in. The winner will be announced at Parramatta’s foundation day celebrations on 2 November. The name of one of the RHIBs is to be related to Parramatta and the other must be an Indigenous name. I know the schoolchildren of Parramatta are heavily engaged in that process.

The history that was evident in the commissioning process itself was also extraordinarily impressive and in some cases quite moving. The ship’s lady was Mrs Jill Green, who comes from a naval family. Her father, Lieutenant Bill Langford, was the executive officer of HMAS Parramatta (II) and was one of those lost in 1941. Mrs Green gave a deeply moving and very affecting speech on the occasion of the commissioning, and I was very proud to be there to listen to that. Even more moving, in some ways, was the presence of four members of the crew of HMAS Parramatta (II) for an exchange of caps with the new crew of Parramatta (IV). One could not help but be moved by the emotion overwhelming that particular aspect of the ceremony.

For the first time ever, I observed the blessing of the ship’s caul, an old Navy tradition that requires the caul—a portion of a newborn baby’s amniotic sac—to be carried in the security of the CO’s safe as a guarantee of the safety of the ship and its crew. In olden times, sailors who carried a caul were said to have been immune from drowning at sea. The blessing of the caul on this occasion was made possible because of the birth of Commander Noonan’s own daughter, Jamie, 15 days before the commissioning, so she will have a small part of her travelling everywhere with her father in the vessel HMAS Parramatta. Her mother, Jan, is also a naval officer and it is obviously a very important event for the Noonan family. I understand Jamie was christened the next day on Parramatta, with two children of other members of the crew.

This was an inspiring and fascinating ceremony. It involved the most high-tech, modern example of military hardware that I suspect you could find in the RAN at the moment. It was mixed with the history and idiosyncrasies of naval tradition, which were revealed to some of us who had not previously had the opportunity to see such things. It was an enormous credit to the Royal Australian Navy. I was very honoured to be present, and I wish the Parramatta and her crew all the very best.

Telstra: Privatisation

Senator COOK (Western Australia) (7.13 p.m.)—I rise to again put on record in this chamber reasons why the full sale of Telstra should not go ahead. In my view and in my vote, T1 and T2 should not have occurred. They have transformed a service utility that provided enabling services to business and to regional, rural and urban Australia into a utility focused on profit, not service, which is inherently detrimental to the quality of the service it delivers. T3 is the subject of government legislation that will shortly be debated in this chamber and it should not go
ahead either. We know that an ideologically driven Howard government is selling out regional Australia by pushing for the full sale of Telstra. We also know that the Nationals rolled over on this question and agreed to the sale despite protests from rural and regional Australians everywhere and that the Leader of the Nationals keeps saying that Telstra will not be sold until services are up to scratch in the bush, despite the fact that he has already sealed the deal.

My electorate office in Western Australia is located in that great city of Kalgoorlie-Boulder. I know that the member for Kalgoorlie, Barry Haase, rolled over on the sale of Telstra rather than take the principled stand taken by his country colleague, Alby Schultz, in abstaining from the vote. Everyone knows that the Telstra sell-off will see services decline further in the bush, but let me also say that it will see services decline further in urban Australia. The fact that my office is located in Kalgoorlie means I focus on regional issues, but I am a senator for the whole of the state, and 70 per cent of Western Australians live in Perth. Their services base too will decline and is declining under the current arrangements.

Let me just talk for a moment about jobs in Telstra. Incredibly, jobs are being cut despite the fact that services are not up to scratch. Jobs are in fact not just being cut; they are being slashed. The submission the CEPU put to the ongoing Senate inquiry into Telstra brings to light some of the shocking facts about the cuts to Telstra’s work force.

Since Telstra’s privatisation process began, immediately after the election of the Howard government, Telstra’s work force has been cut by more than half. In June 1996 Telstra had 76,522 full-time staff members; in June this year Telstra had 37,169 full-time staff members. Of course, some of those jobs have been sent out to contract labour—and, where you see contract labour, read ‘lower wages for workers doing the same job full-time Telstra workers would have done had they been fully employed’.

It is important also to note that Telstra has announced its profit of $3.4 billion just recently, but it intends to spend $1 billion on a share buyback scheme—that is to say, Telstra wants to buy its own shares from shareholders. The impact of injecting $1 billion into the Telstra share owning group will mean that the price of Telstra’s shares will rise. Clearly one must see that against the efforts by the government to sell off the remaining 51 per cent of Telstra. By pumping up the share value through Telstra itself spending $1 billion buying shares, it will be able to put out a prospectus showing that the value of shares for T3, should it ever get to that point, will be higher.

It should be remembered that that $1 billion could be spent on improving services around Australia, because, incredibly, when Telstra announced the extra dollars for the share buyback scheme, they also downsized their work force even further and, at the same time, announced a profit of $3.4 billion for the last year. A profit of $3.4 billion should be considered against the market capitalisation of Telstra of $31 billion. In other words, if Telstra for the next 10 years produced the same profit of $3.4 billion, they would produce a return to the shareholders and to the public coffers of $34 billion, which is more than their total market capitalisation now, so the value to Australians would be much, much greater than simply a sell-off with no further returns to the public purse.

Let me go back to the question of jobs. The loss of jobs means that staff lose in-depth knowledge about the local network and the conditions under which that network service is delivered. This is, of course, a particular problem in regional Western Austra-
lia, where distances can be huge. However, even in major regional centres the lack of staff can cause problems. Recently in Kalgoorlie many residents were without phone services for days because of, unbelievably, a termite attack on a major cable. This was reported on 23 September in an excellent front-page article by Adrian Kwintowski in the *Kalgoorlie Miner*. The report says that residents in four streets were without phone services for more than a week. Let me quote from the *Kalgoorlie Miner*, under the front-page heading of ‘Phone lines white-anted’:

> TERMITES have taken a bite out of a main phone in Kalgoorlie-Boulder’s suburb of Lamington, causing major disruption to phone lines.

Residents in at least four streets have had their phones silenced, some for more than a week forcing Telstra to call in a specialist maintenance team from Perth.

Those in Lyall, Lewis, Ward and Cotter Streets including a Royal Flying Doctor Service pilot had been the hardest hit. A door knock in those streets by the *Kalgoorlie Miner* has revealed some residents were still waiting for their phones to ring as late as yesterday.

Lyall Street local Kathy Finlayson—a former candidate for the Nationals for the federal seat of Kalgoorlie—said her phone and data lines had been down since Friday, September 12.

Yesterday, she was told her phone should be reconnected by tonight.

But the Menzies Shire council president and Goldfields-Esperance Development Commission chair said it was a major inconvenience because she relied heavily on her phone for work.

And so the article continues. This incident raises two questions about Telstra’s staff training levels. In their submission the CEPU raised concerns that essential regular maintenance has not been completed across the Telstra network. Perhaps a shortage of staff able to carry out regular maintenance contributed to the failure of this phone line in Kalgoorlie.

In any case, it beggars belief that the staff and skills did not exist in Kalgoorlie to rectify the problem. This is not to criticise the Telstra staff—they are excellent workers. There are only 14 technical staff who have to cover a huge area stretching right to the South Australian border and the areas surrounding the eastern goldfields in Western Australia—an area bigger than the state of Victoria and perhaps rivalling the state of New South Wales in size. Rather, it is a criticism of the headcount management which has been seen over recent years, where Telstra staff have been laid off in great numbers since 1996.

Another possible cause of faults such as this is the decline in Telstra’s capital expenditure. Telstra’s projected capital expenditure for 2003-04 is $2.9 billion, which is 38 per cent below their expenditure in the years 1999-2000. The CEPU point to the Besley inquiry, which found significant problems with ‘ageing or degraded cables subject to recurrent faults’ and supposedly ‘temporary cabling solutions which have remained in place for many months or years’. These problems, I have to say, are symptomatic of a lack of expenditure on the Telstra network itself. If Telstra is serious about restoring reasonable levels of service in the bush and indeed in urban Australia, it needs to do more than a warm and fuzzy public relations campaign attached to its Telstra Country Wide brand. Instead, it needs to invest in the staff and the infrastructure which will enable it to deliver high-quality and reliable telecommunications services wherever Australians live.

In the Kalgoorlie region there are not only the problems that I have referred to; the biggest complaints are about the time it takes for maintenance crews to correct and repair telephone faults, the slow speed with which the computer services are provided and, indeed, in remote Aboriginal communities, the
almost absolute lack of telecommunications. I reiterate that these are not problems for the workers in Telstra—they are overburdened. It is Telstra’s decision to invest $1 billion in buying back its shares to artificially inflate the share price, it is Telstra’s dividend to private shareholders which does not go to improving the network and it is Telstra’s continuing laying off of workers that are creating the problems.

Immigration: Sex Industry

Senator GREIG (Western Australia) (7.23 p.m.)—I rise tonight to acknowledge and commend the federal government for finally recognising the importance of taking serious and immediate action to fight a most insidious trade in human misery. The government’s announcement this week that it has allocated more than $20 million over four years to combat the sex trafficking industry in Australia is welcome and long overdue news.

When Ms Puangthong Simaplee died in Villawood detention centre in September 2001, Australians were forced to sit up and take notice. Investigative journalists Natalie O’Brien and Elisabeth Wynhausen from the Australian newspaper are to be commended for their dogged pursuit of those responsible for the treatment and ultimate death of this poor young Thai woman and for bringing the issue of sexual servitude and trafficking to the notice of mainstream Australia.

At the time of Ms Simaplee’s death, columnists like Mr Piers Akerman were very quick to dismiss claims that she had been trafficked to Australia as a child to work in the sex industry, because they thought it was so ghastly, so un-Australian and so hard to imagine that it could happen in our country. But, according to anecdotes and evidence from those at the coalface of the sex industry, women are trafficked into this country at an alarming rate, hoodwinked with promises of respectable jobs and enviable lifestyles. In reality, they are held captive under threat of violence to themselves and their families and forced to work very long hours for little or no money, with no freedom and no hope of escape.

I was so appalled by the details which came to light about this thriving trade in human suffering, happening right under the noses of authorities, that I repeatedly questioned the Minister for Justice and Customs in question time as to what the government was doing to address this crisis. The justice minister claimed the issue was being adequately dealt with by the appropriate authorities and that the legislation passed earlier this year was working effectively, in spite of the fact that there had been no convictions at all at that stage.

Over time, and despite what we were hearing in the Senate during question time, it came to light that there was very little cooperation between the Department of Immigration and Multicultural and Indigenous Affairs and the Australian Federal Police in dealing with these issues of trafficking. I heard allegations that brothel owners were being tipped off about impending DIMIA raids, that suspicions of possible trafficking were not passed on from DIMIA to the AFP and that, in some instances, complaints made directly to the AFP were not being followed up. Until recently, only 13 trafficking cases—that is, since 1999—had been referred by the department of immigration for investigation by the Federal Police when, in just one year, 1998-99, some 237 women and six men found working in brothels were deported, most within days of being discovered.

The Minister for Justice and Customs, Senator Ellison, argued that we had a process for a criminal justice stay visa available for women who have been trafficked to allow
them to stay in the country and testify against their traffickers. He said witness protection programs were available to keep these women safe while they awaited their trials but no such visa or witness protection had ever been issued for that purpose.

Since the death of Ms Simaplee and all that came to light following that terrible event, the Australian Democrats have been calling for the government to establish and fund a trafficking task force and agree to a thorough inquiry into the nature and extent of trafficking in Australia. We finally succeeded in getting such an inquiry up through the Parliamentary Joint Committee on the Australian Crime Commission, and I am pleased that that process is now well under way.

We also strongly advocated that Australia should follow the practice of the United Kingdom, where victims are the prime consideration and are offered support and assistance to increase the likelihood of them testifying against their traffickers. Witness protection is offered, and a system designed to frustrate and interrupt the traffickers is implemented to deter people from this trade. We know that the Howard government is not averse to this form of crime deterrent, as we saw during the ‘Pacific solution’. No expense was spared to frustrate and deter people smugglers by ensuring that their cargoes did not reach Australian shores. It is a pity that the authorities are not as zealous in their treatment of sex slave traffickers as they are with refugees and asylum seekers.

The European Commission is also working on options to crack down on the people-trafficking trade. In 2000, the United Nations adopted the Convention against Transnational Organised Crime and the trafficking in persons protocol, TIPP. University of Wales professor of law Ryszard Piotrowicz says anti-trafficking laws are not new but must be developed to meet the contemporary nature of the trade today. Increased possibilities for international mobility, crushing poverty and the frequent breakdown of state order in some regions have all led to an increased incidence of people-trafficking.

After numerous initiatives from international, intergovernmental and non-government organisations, the European Commission implemented a short-term residence permit and a witness protection scheme to be issued to victims of trafficking who cooperate with the authorities. Unlike the Australian immigration department’s practice of deportation at the earliest possible moment, the European model allows the victim 30 days’ stay from the time of escaping the traffickers in which to decide whether to cooperate with authorities. They are given suitable accommodation, emergency medical and psychological treatment and medical care. It is to be hoped that this recent injection of funds and interest means that the Australian government is finally serious about cracking down on this vile trade.

**Senate adjourned at 7.30 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- Aged Care Standards and Accreditation Agency Limited—Report for 2002-03.
- Albury-Wodonga Development Corporation—Report for 2002-03.
- Australian Fisheries Management Authority—Report for 2002-03.
- Bureau of Meteorology—Report for 2002-03.
- Centrelink—Report for 2002-03.
- Commissioner for Complaints [Aged care]—Report for 2002-03.
Commonwealth Scientific and Industrial Research Organisation (CSIRO)—Report for 2002-03.

Department of Foreign Affairs and Trade—Reports for 2002-03—
   Volume 1—Foreign Affairs and Trade.
   Volume 2—Australian Agency for International Development (AusAID).


Public Service Commissioner—Report for 2003-03, incorporating the report of the Merit Protection Commissioner.

Repatriation Commission, Department of Veterans’ Affairs and the National Treatment Monitoring Committee—Reports for 2002-03, including reports pursuant to the Defence Service Homes Act 1918 and the War Graves Act 1980.

Safety, Rehabilitation and Compensation Commission—Report for 2002-03.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Natural Heritage Trust and National Action Plan for Salinity and Water Quality: Facilitator Positions**

(Question No. 1519)

Senator McLucas asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 17 June 2003:

1. (a) What is the total budget for the 91 Australian Government Natural Heritage Trust (NHT) and National Action Plan for Salinity and Water Quality facilitator positions recently advertised in national newspapers (and now listed on the department’s web site) and being recruited through Effective People Pty Ltd; and (b) from which program or programs is this funding coming.

2. (a) How much is Effective People Pty Ltd being paid to recruit these people; and (b) from which program or programs is this funding coming.

3. Can an organisational chart for the positions be provided showing how they will report to the department.

4. How is coordination of NHT activities managed with Department of Environment and Heritage.

5. How will these facilitators work with state department-employed NHT facilitators and project officers.

6. Can a copy be provided of all documentation which outlines the rationale for the employment of these facilitators, including how their effectiveness will be measured and/or evaluated.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

1. (a) 30 Australian Government Natural Resource Management Facilitator positions and 13 Indigenous Land Management Facilitator positions were advertised on 20 June 2003 in the national newspapers. Also advertised were 48 Regional NRM Facilitators. The total budget to support this network of 91 facilitators is $9.97 million. (b) The Australian Government NRM Facilitators and the Indigenous Land Management Facilitators will be fully funded by the Australian Government’s Natural Heritage Trust. The Regional NRM Facilitators will be jointly supported by the Australian Government and the States and Territories from both the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality.

2. (a) The consultant, Effective People, is being paid $80,000 to recruit 91 facilitators. (b) This contract is being paid from the Natural Heritage Trust.

3. An organisational chart has not yet been created, however facilitators will report to the Australian Government Department of the Environment and Heritage and Australian Government Department of Agriculture, Fisheries and Forestry on a regular basis. The 30 fully funded Australian Government NRM Facilitators will be employed directly by the Australian Government through the Department of the Environment and Heritage and will report directly to the Australian Government Regional NRM Team (a unit jointly staffed by both Departments). The 48 Regional NRM Facilitators and the 13 Indigenous Land Management Facilitators will be managed by their host organisations on a day to day basis, in accordance with work plans that will be developed and monitored by Australian Government and State representatives.

4. High level coordination of the NHT between the Department of the Environment and Heritage and Department of Agriculture, Fisheries and Forestry is achieved through the Natural Heritage Ministerial Board that comprises Ministers Kemp and Truss. At the operational level coordination for most Trust activities is through the Australian Government Regional Natural Resource
Management Team, a joint venture that operates with staff from both the Department of the Environment and Heritage and Department of Agriculture, Fisheries and Forestry.

(5) It is expected that the Australian Government NRM Facilitators will work closely with state-funded NRM Facilitators and project officers. The state NRM officers will contribute to the development of the work plans for Australian Government NRM Facilitators that will ultimately be signed off by the relevant Australian Government-State Joint NRM Steering Committee. It is anticipated that Australian Government and State facilitators will work as a team, in some states being co-located.

(6) A discussion paper ‘The Future of Facilitation and Coordination networks under Natural Resource Management Planning and Implementation’ focusing on the future arrangements for facilitators and coordinators that was prepared by the Department of the Environment and Heritage and Department of Agriculture, Fisheries and Forestry was released for public comment in October 2002. This discussion paper is available on the Department of Agriculture, Fisheries and Forestry website. The effectiveness of the network of NRM Facilitators will be measured as part of the Natural Heritage Trust and National Action Plan Monitoring and Evaluation framework.

**Defence: Depleted Uranium**

*(Question No. 1631)*

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 15 July 2003:

(1) Does the Australian Government have a position on the acquisition and use of munitions containing depleted uranium; if so, can an outline of this position be provided.

(2) Does the Australian Defence Force (ADF) have a position on the acquisition and use of munitions containing depleted uranium; if so, can an outline of this position be provided.

(3) Do members of the ADF receive training on the use and handling of munitions containing depleted uranium; if so, what is the nature of this training.

(4) What measures are in place to monitor and protect members of the ADF who may be exposed to munitions containing depleted uranium, such as in the recent conflict in Iraq.

(5) Have munitions containing depleted uranium ever been used in exercises within Australia; if so, can a list be provided of the occasions on which such munitions were used, including the nature of the exercises.

(6) (a) Does the ADF have a stock of munitions containing depleted uranium; and (b) has the ADF ever had a stock of depleted uranium munitions.

(7) What Australian weapons systems have in the past used, or still do use, munitions containing depleted uranium.

(8) Is the United States military permitted to transport munitions containing depleted uranium on Australian soil or within Australian waters.

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

(1) and (2) Yes. The Australian Defence Force (ADF) does not currently have, nor does it plan to acquire depleted uranium munitions.

(3) Yes.

Before agreeing to any military deployment, the Government carefully considers the range of potential risks and threats in the area of operations and ensures that all personnel deploying are properly trained and equipped for this environment.

The health risk from exposure to Depleted Uranium for Australian Defence Force personnel performing their normal operational duties is considered to be very low. Because of this assessment, no specific health briefing on DU was given prior to the initial deployment. Due to an increased in-
terest in DU, health briefings on DU commenced in March 2003. Health briefings for future deployments to Iraq will include detailed information about depleted uranium.

(4) The Government is aware that the United States (US) has deployed numerous military health physicists and radiation protection officers to Iraq as part of Operation Iraqi Freedom.

Recent scientific studies suggest that there may be a slight health risk associated with significant ingestion and inhalation of depleted uranium. Defence Health Service has been advised that no Australian personnel were involved in tasks where these high respiratory exposures could occur. As a precautionary measure under Defence’s duty of care to ADF personnel, Defence Health Service has developed its own testing protocols for ADF personnel who may have been exposed to depleted uranium and other agents. In view of the potentially wide range of operational, occupational and environmental hazards, ADF personnel deployed to the Middle East Area of Operations undergo a post-deployment medical screen in the area of Operation or as soon as practicable on return to Australia.

This will include an exposure assessment questionnaire and subsequent urinary uranium screening for persons assessed as having possible exposure to depleted uranium. The urinary uranium screening test will also be offered to non-exposed personnel who want the test performed. A small number of personnel have been voluntarily screened post deployment and results have been within the normal range for the Australian population. An updated Health Bulletin is at the final draft stage of preparations and will outline the specific additional post-deployment medical requirements for Operations SLIPPER/PALATE, BASTILLE, FALCONER and CATALYST.

(5) The ADF and its contractors have reviewed documents and data pertaining to the weapons used on Australian Training Areas and any requests from foreign forces for the use of depleted uranium munitions. No evidence of depleted uranium ammunition being used on Australian Training Areas was found. There are no available records of exact times and locations at which depleted uranium munitions were expended at sea.

(6) (a) No.
   (b) Yes.

(7) Ammunition containing depleted uranium was used in the Phalanx 20mm Close in Weapons System on Navy ships from 1981 until 1990.

(8) Yes.

**Defence: Winnellie Logistics Facility**
(Permanent Change, Question No. 1823)

Senator Chris Evans asked the Minister for Defence, upon notice, on 25 August 2003:

With reference to the sale and leaseback of the Logistics Facility at Winnellie:

(1) When was the Winnellie logistics facility sold.
(2) What was the sale price.
(3) When was this sale advertised.
(4) Who managed the sale process; and how much were the managers paid.
(5) How was the sale for this property conducted.
(6) Was the property valued prior to sale; if so; what was the result of that valuation.
(7) Has there been any valuation of the 2.7 hectares of Winnellie land the facility is situated on; if so, what was the result of this valuation.
(8) How many bids were received.
(9) Which organisations submitted bids.
(10) What was the range of bids for the property.
(11) For what reasons did Defence choose to accept the winning bid.
(12) (a) Who took the decision to accept the winning bid; and (b) was the decision taken within Defence or by the Minister.
(13) When was the decision taken.
(14) What rent will Defence pay for the Winnellie facility in the first, second and subsequent years of the lease.

Senator Hill—The answer to the honourable senator’s question is as follows:
(1) Public auction on 23 May 2003, with settlement on 31 July 2003.
(2) $3,350,000.00 (including GST).
(3) From 12 April 2003.
(4) Knight Frank, Northern Territory. $46,000 including GST (excluding advertising costs).
(5) By auction.
(6) and (7) The property was valued prior to sale. The Australian Valuation Office valued the property at $3,000,000 (excluding GST) on 28 March 2003.
(8) (9) and (10) Unknown due to the sale being conducted via auction.
(11) Defence chose to accept the highest bid, which was above the market valuation.
(12) (a) The decision to accept the winning bid was taken by a duly appointed Defence representative. (b) Within Defence.
(14) Defence will rent the Winnellie facility at a cost of $410,000 per annum (excluding GST) for the first and second years. A market rental review with a no ratchet clause will be undertaken every two years to determine the rental rate for the property.

Papua New Guinea and West Papua: Logging
(Question No. 1966)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 10 September 2003:
Are any Australian companies involved in logging in Papua New Guinea or West Papua; if so: (a) which companies; and (b) what is the involvement of the Australian Government.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable member’s question:
The Australian Government is not aware of any Australian companies involved in logging in Papua New Guinea or West Papua.

Science: Chief Scientist
(Question Nos 2008 and 2009)

Senator Brown asked the Minister representing the Prime Minister, and the Minister representing the Minister for Science, upon notice, on 11 September 2003:
What is the process through which the Chief Scientist is selected and appointed, and who makes the appointment.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s questions:
In 1999 the then Minister for Industry, Science and Resources proposed the name of Dr Robin Batterham for the position of Chief Scientist. Dr Batterham was selected following a thorough and comprehensive process including wide consultation with members of the Prime Minister’s Science, Engineering and Innovation Council, and with senior representatives of the interested communities. The appointment was made by the then Minister for Industry, Science and Resources, following Cabinet endorsement.

In 2002 the Minister for Science proposed the name of Dr Robin Batterham for reappointment as Chief Scientist. This reappointment was on the basis of Dr Batterham’s performance and demonstrated skills during his initial term. The reappointment was made by the Minister for Science, again following Cabinet endorsement.

**Foreign Affairs: Country Briefs**

(Question No. 2016)

Senator Bolkus asked the Minister representing the Minister for Foreign Affairs, upon notice, on 11 September 2003:

Can the Minister table the country briefs which were current in respect of the following countries in March 1996: Republic of Korea, China, Greece, Cyprus, the United States of America, Japan, Vietnam and Indonesia.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

The following documents are available from the Senate Table Office.

- Country Economic Brief KOREA 1996
- China Brief 1995
- Greece Bilateral Relations
- Cyprus Bilateral Relations
- United States of America—No brief was produced for that period.
- Country Economic Brief Japan 1995
- Country Economic Brief Vietnam 1995
- Country Economic Brief Indonesia 1996

**Education, Science and Training: Institute of Public Affairs**

(Question No. 2055)

Senator O’Brien asked the Minister representing the Minister for Science, upon notice, on 15 September 2003:

1. For each of the following financial years: (a) 1996 97; (b) 1997 98; (c) 1998 99; (d) 1999 2000; (e) 2000 01; (f) 2001 02; (g) 2002 03; and (h) 2003 04, has the department or any agency for which the Minister is responsible, including boards, councils, committees and advisory bodies, made payments to the Institute of Public Affairs (IPA) for research projects, consultancies, conferences, publications and/or other purposes; if so, (i) how much each payment, (ii) when was each payment made, and (iii) what services were provided.

2. In relation to each research project or consultancy: (a) when was the IPA engaged; (b) for what time period; (c) what were the terms of reference; (d) what role did the Minister and/or his office have in the engagement of the IPA; (e) was the contract subject to a tender process; if so, was it an open tender or a select tender; if not, why not.
Senator Vanstone—The Minister for Science has provided the following answer to the honourable Senator’s question:

Those aspects of the Department related to science and any agency for which the Science Minister is responsible for, including boards, councils, committees and advisory bodies have not made any payments during the financial years specified in the question, to the Institute of Public Affairs for research projects, consultancies, publications and/or other purposes.

**Education: Abuse in Schools**

(Question No. 2108)

Senator Allison asked the Minister representing the Minister for Education, Science and Training, upon notice, on 15 September 2003:

What progress has been made on developing a national framework for combating abuse in schools, as first raised by the Minister at the Ministerial Council on Education, Employment, Training and Youth Affairs meeting in July 2002.

Senator Vanstone—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

On 17 September 2003 I presented the following statement to Parliament outlining the Government’s significant achievements in relation to the establishment and implementation of the National Safe Schools Framework to combat all forms of physical and sexual abuse in schools.

Statement by the Minister for Education, Science and Training, the Hon Dr Brendan Nelson, MP

National Safe Schools Framework

17 September 2003

In March 2002, the Democrats proposed amendments to the States Grants (Primary and Secondary Education Assistance) Act 2002 relating to child abuse. In short, the Democrats’ amendments proposed to impose requirements on States and non-government education authorities to report to me on the administration of relevant State legislation pertaining to the protection of children and young persons in government and non-government schools, detailing the procedures and responsibilities of schools in dealing with the physical, sexual and emotional abuse of students. The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 received passage through the Parliament on 21 March 2002 without these amendments. However, I indicated to the House that the Government would consider this issue further in consultation with State governments and the non-government sector, which employ schools staff and which have the legal responsibility for the children in their care.

All school authorities, government and non-government, are committed to addressing this important issue and all have adopted a range of appropriate responses in their policies and practices. The Government’s responsibility therefore is to facilitate, in close cooperation with education authorities, parents and the broader community, the establishment of a framework that encourages the adoption of best practice approaches to establishing and maintaining safe school environments.

As all States and Territories are represented on the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), the Council was the appropriate forum for progressing this issue. I wrote to all of the State and Territory Ministers and gained their agreement to have the issue of child protection and safe schools discussed at the 13th MCEETYA meeting on 18-19 July 2002. The National Catholic Education Commission and the Independent Schools Council of Australia also expressed their support for a national collaborative effort to ensure the best possible procedures in child protection.

At the July 2002 MCEETYA meeting, I tabled a paper outlining a proposal for the development of a national safe schools framework. From the Commonwealth’s perspective, it was important that the
Council accepted the Government’s proposal, agreeing to the development by early 2003 of a national safe schools framework that acknowledges the work already being undertaken by education jurisdictions, in collaboration with other portfolios. Ministers also agreed that the framework, to be considered by them out of session, should be developed by the MCEETYA Taskforce on Student Learning and Support Services (SLSS).

I am pleased to inform the Parliament that the Government and the States and Territories have now agreed on a National Safe Schools Framework. The framework was developed by a Commonwealth-led Working Group of the SLSS Taskforce, following extensive national consultations with government and non-government school sectors, community groups and academics. It is succinct and written so as to be easily understood by the wider school community. The framework draws upon existing good practice and contains useful and practical pointers to guide schools in implementing appropriate policies and programmes.

The framework is based on a shared vision that every Australian school is a safe and supportive environment. In seeking to realise this aspiration, schools can refer to a set of guiding principles and related key elements/approaches that should inform all policies and programmes to prevent and address bullying, harassment, violence, and child abuse and neglect.

In making the decision to develop the framework, Ministers also agreed to the Government’s proposal that jurisdictions should report through MCEETYA’s annual National Report on Schooling in Australia on the extent to which they have aligned their strategies and initiatives with the framework. The development of appropriate reporting measures under the framework is to be undertaken by the Australian Education Systems Officials Committee (AESOC).

I am proud of the Government’s achievements in the last twelve months. The National Safe Schools Framework seeks to provide a common agenda on which all stakeholders can work jointly to achieve a common goal, and I intend for its implementation to be built on a foundation of strong Government support. To this end, I have committed up to $300,000 in Commonwealth funding to develop materials to help schools and jurisdictions implement the framework.

In addition to this, safe schools are a new priority area under the Commonwealth’s Quality Teacher Programme (CQTP) and school jurisdictions can apply to use their CQTP funding allocation to develop and deliver teacher professional learning activities in this area. A number of CQTP 2003 Project Plans received from school authorities in May have included proposals for activities in this area. The Commonwealth is providing $27 million for CQTP 2003 professional learning projects, which are being undertaken by government and non-government education authorities.

Implementation of the child protection aspects of the framework will also be supported by the establishment of teacher registration processes in jurisdictions and the preparation of model uniform legislation that provides for nationally consistent procedures and processes for the conduct of criminal record checks of persons seeking to work in educational settings with children, both of which are being progressed through MCEETYA.

Australians rightly expect school authorities to do everything possible to protect young people from bullying, violence and physical or sexual abuse.
The developments I have outlined today demonstrate that the Government believes the issue of safe schools deserves national action and is committed to exercising leadership in promoting the development and adoption of best practice in this area.

**Nuclear Energy: Waste Storage**

*(Question No. 2109)*

Senator Allison asked the Minister representing the Minister for Education, Science and Training, upon notice, on 15 September 2003:

1. Is the Government aware that British Nuclear Fuels Limited is currently exhuming waste and debris contaminated with plutonium buried at its repository at Drigg, Cumbria and repackaging it, with a view to disposal in concrete at its Sellafield site.

2. Will the Government now consider exhuming the plutonium contaminated debris currently buried in earth trenches at Maralinga for proper re-burial in concrete; if not, why not.

Senator Vanstone—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

1. British Nuclear Fuels Limited have advised that historical plutonium-contaminated wastes which are currently stored in above-ground structures at Drigg, not buried, are in the process of being retrieved and repackaged following a commitment to the local community and regulators.

2. No. The situation at Drigg is in no way comparable to that at Maralinga. Plutonium-contaminated waste is buried at Maralinga, not stored in above-ground structures. The disposal of waste at Maralinga followed a clean-up option proposed by experts and agreed by the Australian Government, the Maralinga Tjarujta traditional owners, and South Australia.

In its final report on the clean-up the Maralinga Rehabilitation Technical Advisory Committee (MARTAC), the independent scientific committee appointed to provide scientific advice on the Maralinga Rehabilitation Project, concluded that the project had been a success and that the result is of a world-class standard. MARTAC concluded that no further clean-ups of Maralinga should be required.

The Australian Government’s independent regulator, ARPANSA, has confirmed that the clean-up met the standards agreed in 1991 prior to the start of the project by the Australian Government, South Australia and the traditional owners; standards which are consistent with international guidelines.