### INTERNET


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Friday, 7 November 2003

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.00 a.m., and read prayers.

BUSINESS

Days and Hours of Meeting

The PRESIDENT (9.01 a.m.)—I present letters from the Leader of the Government in the Senate, Senator Hill, and the Leader of the Opposition in the Senate, Senator Faulkner, requesting me to summon the Senate to meet today to consider the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003.

COMMITTEES

Economics References Committee

Foreign Affairs, Defence and Trade Committee: Joint Meeting

Senator FERRIS (South Australia) (9.01 a.m.)—by leave—At the request of the Chair of the Economics References Committee, Senator Stephens, and the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Senator Ferguson, I move:

That the following committees be authorised to hold public meetings during the sitting of the Senate today:

(a) Economics References Committee to take evidence for the committee’s inquiry into whether the Trade Practices Act 1974 adequately protects small business; and

(b) Joint Standing Committee on Foreign Affairs, Defence and Trade to take evidence for the committee’s watching brief on the war on terrorism.

Question agreed to.

MIGRATION AMENDMENT REGULATIONS 2003 (No. 8)

Senator BROWN (Tasmania) (9.02 a.m.)—I seek leave to table Migration Amendment Regulations 2003 (No. 8).

Leave not granted.

Suspension of Standing Orders

Senator BROWN (Tasmania) (9.02 a.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent him moving that the document be tabled.

The document I wish to table is the Migration Amendment Regulations 2003 (No. 8), which the government has already tabled in the House of Representatives and which the government has in play at the moment to specifically prevent the 14 people aboard a boat at Melville Island from accessing Australia’s migration laws. I note that the opposition has said that it opposes the regulations. The Greens would this morning seek to have the regulations tabled—that is what I am in the process of doing—and then move for their disallowance. If the opposition is to be dinkum about disallowing these regulations, this is the time to do it. The boat has come within Australian waters. There is clear evidence that some of the occupants, the Kurds on that boat, have been on the Australian shore. There is legal action pending. But it is important that the regulations which were brought in by the government, retrospectively without the sitting of the parliament, be dealt with by the parliament expeditiously. The time to do that is this morning.

These regulations excise some 4,000 Australian islands. For those who are not aware of it, they extend the excision—which the government attempted before but which was rejected by the Senate—right down the eastern seaboard to Mackay. They exclude the Whitsundays, Brampton Island, Magnetic
Island and a whole range of other islands. This matter should be debated. This is the division of Australia into two areas—one which has legitimacy under the law, the other which does not—by a government acting in a cavalier fashion as if this parliament does not count. The opposition is opposed to that procedure by the government. The time for the opposition to move to block this abuse of the parliament by the government is now. I will talk about the recall of the Senate when we get to the other matter which the government has in hand. But this is the time—now that the Senate has been recalled—to deal with this matter.

The Greens are entirely opposed to the manoeuvre here by the government—which is a political one, of course—and so are the opposition and the Democrats. We can this morning disallow these regulations. I put it to the opposition that this is the time to do it. But what the opposition are doing if they do not support this course of action is simply saying, ‘We will leave it to another fortnight. We will wait until the people on this boat have been taken to Christmas Island and removed permanently from the reach of the law to which they should have access in a decent, democratic country like Australia.’ In fact, the opposition are being a hollow opposition in this respect.

This is a very serious opportunity for us to put things right in this place and for us to insist that the Senate does matter and that the Senate is the backstop when the government loses decency, when the government divides this country and when the government ceases to respect this parliament as it should. I would have thought that the opposition would get up and insist that the Senate be respected, that the parliament be respected, that these regulations be disallowed—as this Senate disallowed them before and as this parliament disallowed them before—and that we do not become part of the executive government using extraparliamentary mechanisms and treating the parliament in a cavalier fashion and as nonexistent. I challenge the opposition to support this matter being promulgated and moved through to its obvious conclusion. We have the numbers in the Senate. We should be disallowing these regulations this morning before we move on to the matter of proscribing certain organisations. That is the challenge to the opposition.

Senator HILL (South Australia—Leader of the Government in the Senate) (9.07 a.m.)—I oppose Senator Brown’s motion for the suspension of standing orders. This sitting today is a very unusual occurrence. It requires a special procedure, as you have indicated, Mr President. A majority of senators request you to recall the Senate for the purpose of particular business, and obviously such business must be both urgent and important, or else senators would not be recalled—some from various distant parts of Australia. In this instance, we sought the recall of the Senate because of the need for urgent passage of a critically important piece of legislation which would extend the powers of ASIO in relation to potential terrorist situations. There are possibly few matters of greater importance than that, and I think the urgency of that is self-evident.

In those circumstances, I approached the Leader of the Opposition in the Senate, Senator Faulkner, explained the government’s position and requested support in these circumstances from the Australian Labor Party for the recall of the Senate. I gave Senator Faulkner—and I do not mind saying this—an undertaking that the government would seek only to deal with this one piece of legislation. I explained to him why the government regarded it as being so important and so urgent. Special arrangements have been made. Because of the short notice of this sitting, some senators who may well have wanted to participate in debate on other
matters, such as immigration matters, are not here today. Of course, they would not have known of any suggestion that they would need to be here if they wanted to debate immigration matters, because there was to be just one matter on the Notice Paper. The red has in fact been issued on that basis.

In regard to the issue that Senator Brown has raised—that is, the Migration Amendment Regulations 2003 (No. 8)—under the Acts Interpretation Act, when the government makes regulations, it has to table those regulations in the chamber within 15 days and then, within another 15 sitting days, a notice of dissolution could be moved. That is the normal process. The government will table the regulations in this place within the time required by the Acts Interpretation Act, and then, subsequent to that, there will be the opportunity for any senator to move the normal motion and have the regulations debated.

There is no attempt here to avoid debate on the immigration issue. All I am saying is that this is not the time and place, when special arrangements have been made for dealing with one particularly critical and urgent issue and when we have asked all senators to return to the Senate today to deal with just that one issue. Whilst I am not surprised Senator Brown would seek to hijack the business of the Senate in his usual way for what he sees as his own personal political objectives—he does this quite often—I do, however, suggest it would be a major mistake if the Senate were to fall into his trap in this instance. The Senate should stand by the program that is on the red and the undertakings that we have given to individual senators, debate the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 and conclude that important matter as promptly as possible. Under those circumstances, I oppose the suspension motion.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.11 a.m.)—I also rise to speak on Senator Brown’s motion for the suspension of standing orders. I indicate to the Senate that I think on this occasion Senator Hill has faithfully reported the background to the recall of the Senate. On Wednesday morning Senator Hill rang me and indicated that the government was requesting the cooperation of the opposition to recall the Senate to deal with the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003. The approach the opposition took on this matter was to consult with the federal parliamentary Labor Party, and I did that. On behalf of the opposition, I indicated to my colleagues that I had received an approach from Senator Hill in relation to a recall of the Senate to deal with this matter and this matter only. Given the circumstances, the opposition agreed to that request.

I think it is important for all senators to understand that the recall of the Senate today is an unusual procedure. This is only the third time this has happened using these provisions. It happened in 1967, I have been informed, to deal with postal regulations. It happened over the loans affair in 1975. Now it has happened again, in November 2003, to deal with the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003. It is a very unusual matter, and I think it is important to note the commitments that were given in relation to the Senate dealing with only one item of business. It is true that many of our colleagues cannot be here. Some have left Canberra. I think one of the difficulties in these circumstances, when important matters are proposed to be dealt with outside of the previously agreed sittings pattern of the Senate, is that it places many senators—not only major party senators but many senators around the chamber—at a disadvantage.
Today’s sitting is to deal with terrorism and terrorism threats. It has not been proposed to sit the Senate to deal with the issue of asylum seekers. As far as the opposition is concerned, that is true. We have made it clear that we disagree with the government on its regulations to excise thousands of Australian islands. Labor will be moving to disallow and vote against those regulations. Labor has twice already opposed these moves by the government and will do so again when the government tables the regulations and it is competent for us to take that action. I want to say this and be very clear for the record: the harsh reality for I think it is 14 people currently affected by this government regulation is that disallowance on any date—today or in the future—will not affect their individual claims.

The situation here is that the Senate has been recalled to deal with one item of business. That is the position that has been put by the government and it has been agreed to by the opposition. There is no alternative here, but it is in the interests of all concerned and also in the interests of proper process for us not to deal with the other matter. Of course there are many urgent matters that could be dealt with, but in this exceptional circumstance it is proper that the Senate’s consideration be limited to that matter on which the government has proposed to sit the Senate.

Senator STOTT DESPOJA (South Australia) (9.17 a.m.)—First of all, I would like to put on record the fact that, according to our leader and the whip’s office, the Australian Democrats were not consulted about the decision to recall the Senate today. We accept that it is well and good the Senate has been recalled, and that has happened with the support of a majority of the Senate and we are here and willing to debate what the government has described as an issue of national importance in relation to national security, but that does not preclude other senators in this place, one or any others, from putting on the record today the issues they think are of interest or importance. This is not a willy-nilly issue. This is not something, as the Leader of the Government in the Senate has indicated, that can simply be dealt with in two weeks time—that somehow it will not make a difference.

What is proposed for debate this morning—and hence the suspension of standing orders debate we are having now—is that we look into these migration regulations that are effectively in force now. They are a matter of national urgency and national interest and, yes, they may affect the lives of up to only 14 individuals, which perhaps is comparative to other larger numbers of people that have been affected when we have had comparable debates, but nonetheless it is an important issue that is under way now. Those regulations were gazetted on 4 November—that was Tuesday—and they are in force now. That means a group of people are having their rights affected, their rights infringed on and their rights impinged on now.

If this issue is so important that the government rushes through regulations, tables regulations—or at least seeks to by gazetting them—if that is such an important issue that we have to excise part of the Australian territory, namely Melville Island, then why not have the debate now? Or was that just a stunt by the government to engender some sort of political capital by, once again, using the issue of refugees and asylum seekers? If it is such a big deal in the national interest, then let us have the debate now. This is not just a political matter; it is a legal matter. While I will not debate or comment on the specifics of Senator Faulkner’s comments about the legal status of the claims of those particular individuals, what I will say is that in a broad sense these regulations are in effect until they are disallowed by the Senate. So let us have the decision today.
The Australian Democrats have said that it is fine to sit today to deal with government business as proposed by the government, but we also have the right to put on the record what we believe is urgent business of the Senate. I think there are many in the community who would argue that the recalling of the Senate today is in many respects the politics of panic by this government. There is a similar argument that in two weeks time we could be addressing the issue of prescription powers that we as a chamber have debated previously. However, in the case of these asylum seekers, two weeks could be too late. Let us remember too the retrospective nature of such regulations. The Democrats are not big fans of retrospectivity in legislation or, in this case, delegated legislation. So let us decide today the will of the Senate and the will of the Australian people in relation to asylum seekers.

People would know that in early 2002 the Australian Democrats opposed the attempt by this government to excise islands by regulation, and then again by legislation later in 2002 and 2003. We are of the view that the Australian government’s attempts to do this clearly violate our international obligations. We are not fooled. We may welcome yesterday’s decision on Ibrahim Sammaki and his children—something we have been fighting for for a long time—but we recognise that that is not a change of heart by this government on asylum seekers and refugees. But let us deal with the legalities today. Let us deal with the regulations. We all know, Odgers tells us, from precedent that we can table the regulations now and we can disallow them or have a disallowance debate immediately. We are glad to see that this debate has come on this morning. I am sorry that the government and others have denied leave. If people feel so strongly about the Melville Island issue, then let us have the debate now.

Question put:
Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.30 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

BUSINESS

Consideration of Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.30 a.m.)—by leave—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to this bill, allowing it to be considered during this period of sittings.

I table a statement of reasons justifying the need for the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Purpose of the Bill

The Bill will create the mechanism to list Hamas and Lashkar-e-Tayyiba as ‘terrorist organisations’, for the purpose of Part 5.3 of the Criminal Code Act 1995.

Reasons for Urgency

The Bill creates the mechanism by which the Attorney-General, if satisfied that strict criteria have been met, can list Hamas and Lashkar-e-Tayyiba (LeT) as terrorist organisations for the purposes of the Criminal Code Act 1995.

In light of the current security environment and given the nature of ongoing investigations the passage of this Bill is a matter of priority.

The military wing of Hamas has been responsible for a series of suicide bomb attacks, shootings and kidnappings of Israeli / Jewish soldiers and civilians in Israel and Occupied Territories and does not discriminate between military personnel and civilians. Citizens from a number of countries have been killed in such attacks. Hamas has claimed responsibility for over 500 deaths and 3000 injuries perpetrated in their attacks. Hamas has recruited British muslims to carry out suicide bombings and recently in Tel Aviv four people were killed and over 60 injured in one such attack.

Hamas has been responsible for a number of atrocities, including suicide bombings in highly populated places, drive-by shootings and abductions and murders of Israeli civilians and soldiers. Although such attacks have been geographically removed from Australia, Australian intelligence agencies feel that this group is gaining momentum, and need to put the arrangements in place to deter such acts from happening in Australia, or to Australians.

LeT has also been involved in a number of terrorist attacks including suicide attacks in Kashmir and India. Again, our intelligence sources assess the threat from LeT to be very real in that LeT is continuing to prepare, plan and foster the commission of acts involving threats to human life and serious damage to property. In the course of pursuing its objective of creating an Islamic state covering Pakistan and Kashmir, the LeT is known to have engaged in actions that have killed many persons in attacks on both civilians and military personnel.

Recent and ongoing investigations reveal that LeT has links into the Australian community.

Senator BROWN (Tasmania) (9.31 a.m.)—This question of urgency is going to be an important matter for the Senate to hear about from the government this morning. The minister has moved that the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 be exempted from the usual forms which would allow senators to look into the bill and consult with the community about the matters that are in the bill. The bill is to proscribe the Lashkar-e-Taiba and Hamas organisations, respectively in Pakistan and in Palestine, which have terrorist components. The Greens will have no opposition to these or other terrorist organisations being proscribed, and in particular
any assistance that can be given to terrorism from this country in the form of money or other matters being tracked down and prohibited, because we have no truck with terrorism.

But the question that arises here is: why has the Senate been recalled today urgently to deal with the proscription of these two organisations which were proscribed in the UK and the United States, for example, two years ago? Why has the government been so dilatory that it is has been unable to bring before the Senate in any of the last 24 months the legislation we have today to proscribe these organisations? What is it that has changed in those last two years since the organisations were proscribed in other similar countries that has now made this an urgent matter for the government? There has been nothing in the public debate about this matter that will give an answer to those questions, but it is right and proper that the Senate get an answer. To put it another way, why is it that the government could not wait until Monday fortnight, when the Senate is sitting, and save taxpayers the many thousands of dollars involved in this recall of the Senate today—as we have heard from the government, only the third such recall in history—by then having the matter dealt with on Monday fortnight?

Remember, Mr President, that we have already had these two organisations listed under United Nations provisions so that fund-raising in Australia is prohibited for both of them. So that must mean there is some other function which is supporting these organisations which is going on in this country which must be stopped. It is not for us to be dealing here with this matter in an absence of information. The Senate is debating whether or not these organisations should be proscribed as a matter of urgency, and the government has to give reasons for that. Whatever it is to do with these two organisations and their terrorist arms, I repeat that the Greens have no worry with that. What I want to establish is why this government has recalled the Senate today to deal with it. Why didn’t you do it in any of the Senate sittings over the last two years? I ask the opposition ditto. You have, with the government, brought the Senate back, with no consultation with the crossbenches. I hear from Senator Stott Despoja that there was no consultation with the Democrats and there was certainly none with the Greens. When the big parties get together and ignore the crossbench, you have to wonder what is afoot. We are worrying about the safety of the Senate itself a little further down the line, with reform in the air and on the Prime Minister’s agenda and the opposition being nowhere near as opposed to that as the Greens and others on the crossbench.

To see the Senate abused in this fashion is not going to pass lightly with me or Senator Nettle. It is an abuse of process unless the government can say that something has happened since the Senate sat two weeks ago which has demanded that immediately Lashkar-e-Taiba and the military wing of Hamas be proscribed. What is it, Minister? Make your case. Let the people of Australia know why the Howard government, together with the Crean opposition, is prepared to spend tens of thousands, if not hundreds of thousands, of dollars of taxpayers’ money recalling the Senate, this extraordinarily important house of the Australian democratic system, to deal with this matter.

So far you have completely failed to do that. So far not one shred of argument has come from the government or the opposition as to why we are recalled today and as to why this was not done two weeks ago, two months ago or two years ago. I will tell you what is left in the absence of an argument from the government, and that is that we have been recalled for political purposes by the Howard government, and the opposition
have been suckers in falling into line with that.

We have, we know, a new Attorney-General, the Hon. Philip Ruddock, and this bill comes under his auspices. This bill is the first. We can expect serial bills coming down the line which are going to proscribe other organisations already proscribed by other countries. Right through to the next election we are going to have this parade of terrorist organisations being proscribed serially under a political agenda, with fear being the driving force as we move to the next election. In the absence of argument about the time-tableing of this proscription we are dealing with today, it is manufactured fear.

The best that can be said about the government is that it did not care about these organisations over the last two years and it did not move on them. It saw the UK proscribe these organisations and it saw the United States do it—what was its worry about these organisations? —yet it did not proscribe them in this parliament. Fundraising for these organisations has been proscribed. So you move to the failure of the government to proscribe the organisations themselves and ask: why now? I will be interested to hear the government explain to the Senate, having removed the fundraising potential—money being siphoned out of this country legally to Pakistan or to Hamas in Palestine—what this proscription is going to do except drive these organisations underground, if in fact they are functioning in the country. We need to know from the government how they are functioning in Australia, how they are set up, who is involved and what the immediate threat to the country is that has suddenly brought on this legislation. We have not had that in the public domain, so I doubt we are going to get it today.

We are left—it is as plain as the nose on our faces—with the fact that this government has recalled this Senate for cynical political purposes in the run to the next election, and I object to that. The government cannot have it both ways: it cannot say that this is serious now and the Senate has got to act on it but apologise for not having acted for the last two years—that just does not wash. This is concocted by the government, and it is not acceptable to the Greens that the Senate be used as a political tool by the government. I cannot believe that the opposition fell for that and have accepted it. How weak kneed of the opposition not to say, ‘We will not be part of the manipulation of parliament by this government for these ends. We won’t be part of that.’ But no, the opposition meekly say, ‘Yes, we’ll send the same letter to the President to recall the Senate for whatever reasons the government may have in mind.’

The opposition have not got those reasons. I challenge Senator Faulkner or anybody else in the opposition to get up and explain to this chamber what has changed in the last two weeks that has made this proscription, which was not on the books two weeks ago, important now. There is only one factor I can think of, and that is that the Rt Hon. Mr Ruddock has become Attorney-General and has decided that it is politically in his interests and the interests of the Prime Minister to beat this issue up. What he is doing is saying that his predecessor failed—that the Rt Hon. Mr Williams as Attorney-General for two years sat on the information which should have proscribed these organisations and did nothing, and that the Rt Hon. John Howard, the Prime Minister, for the last two years, sat on the information about these organisations, proscribed elsewhere, and did nothing. I do not believe it. This is concocted. It is part of a process that is going to unfold over the next year to win an election through manufactured fear—and the opposition have fallen into line. That is a very poor state of affairs.
Let the government go out and make its case in the public arena. Let the government move legislation in this parliament according to schedule. But when you get the recall of the Senate for no good reason, no cogent reason—and no reason has been given in the public arena by either the government or the opposition—you have to wonder where it is going to end. This is the taxpayers paying for part of the government’s election campaign and the use of the Senate to do that, and we object. However, we are here, the bill must be debated and we are not going to refuse to grant leave, as the government just did to the Greens. But I will be interested to hear what the minister comes up with to excuse this deplorable abuse of the Senate, the parliamentary system and the taxpayers’ dollar.

The ACTING DEPUTY PRESIDENT
(Senator Watson)—Minister, you are closing the debate, I presume?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.44 a.m.)—I am closing the debate. I do not want to prolong things any longer than they have to be, but there are some matters that Senator Brown has raised which require some reply. Firstly, in relation to the lack of contact and consultation, I am advised that the Manager of Government Business in the Senate, Senator Ian Campbell, attempted to contact Senator Brown. He spoke to Ben Oquist in Senator Brown’s office and provided information on this matter. I also understand that the Attorney-General offered a briefing to the Greens on the bill and there was no answer forthcoming on that offer. I think it is very important that that be placed on the record.

Senator Brown has asked why we did not deal with this two years ago. In fact, in relation to the Lashkar-e-Taiba organisation, recent and ongoing investigations suggest that that organisation has links into Australia, so we had to move quickly to make sure that our criminal laws could be applied to that organisation’s activities. I will expand on this more during the course of the debate on this bill when we get to that. By anyone’s estimation the military wing of Hamas is a security concern. Whilst we have no direct evidence of links into Australia, this organisation is renowned internationally for being involved in terrorism and atrocities and it would require good governance to act swiftly and appropriately against it.

Senator Brown has made much of the recall of the Senate. Of course we have had senators in Canberra this week for estimates hearings and the government was of a view that it would be appropriate for those senators to stay on for today’s debate, in view of the urgency of this matter. For all those reasons it is appropriate that the Senate be recalled and that we debate this bill today as a matter of urgency. I reject Senator Brown’s statement that this is some sort of stunt. It is a matter that goes directly to the security interests of this country.

Question agreed to.

CRIMINAL CODE AMENDMENT
(HAMAS AND LASHKAR-E-TAYYIBA)
BILL 2003

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.47 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—
The terrorist attacks on the United States on September the 11th, 2001 signalled a terrifying new phase in international terrorism. And they marked the beginning of what has become known as the War Against Terrorism.

Just 13 months later, the terrible reality of this war was brought home to Australia with a bomb attack on Bali, a favourite destination of Australian holiday-makers.

Recent bomb blasts in Jakarta and Baghdad have killed many innocent people.

Disturbingly, we have witnessed a trend of terrorist bombings targeting humanitarian organisations.

The war on terrorism is vastly different to traditional military engagements.

It is proving difficult to adapt to a new type of war and a new type of enemy. Terrorist organisations are extremely difficult to penetrate because of the ever-changing structures in such organisations.

And the enemy we confront is not only the bombers, it is the infrastructure that supports this type of warfare; the financiers, and others who provide material support.

In recent months we have witnessed major developments in the war against terrorism.

Key Al Qaida and Jemaah Islamiyah figures have been captured and prosecuted.

In fact the FBI estimates more than 3000 Al-Qaida suspects and 200 members of Jemaah Islamiyah have been detained in 90 countries.

It is estimated that over $220 million in terrorist assets have been frozen.

It is also estimated that 20 attacks in the US and a further 80 worldwide have been uncovered.

There is no doubt that the war against terrorism is ongoing, but these successes indicate that the war against terrorism is winnable.

Terrorism is a very real threat to world peace and it is a real threat to Australia’s national security.

Individual countries have a responsibility to protect their own security and to deter and prevent terrorist activity through a range of measures including strong criminal laws.

It is a responsibility this Government takes very seriously.

Our response to the threat of terrorism has been comprehensive and wide ranging.

And it is a task which is ongoing.

In the current environment, complacency is not an option.

As part of our comprehensive approach to the new security environment, the Government developed a package of strong counter-terrorism legislation, the bulk of which was passed by the Parliament in July last year.

Included in that legislation were amendments to the Criminal Code allowing the listing of terrorist organisations, subject to certain strict conditions, including the requirement that the terrorist organisation be identified as such by the United Nations’ Security Council.

The requirement that Australia wait for the UN Security Council to agree with our own assessment of what constitutes a threat to Australians, and Australian interests, before we can act was an amendment insisted upon by the Opposition.

The Government argued at the time that this potentially created problems because it puts Australia in the unsatisfactory position that we can not act independently of the United Nations to list a terrorist organisation posing a threat to Australia and Australian interests.

Other countries can decide for themselves which terrorist organisations pose a threat to their citizens and to their interests and act accordingly.

In fact we know of no other country whose power to list terrorist organisations is linked to the United Nations.

But, thanks to the Opposition, Australia can not act independently of the United Nations’ Security Council.

We can not list the military wing of Hamas or the Lashkar-e-Tayyiba organisation because neither has been formally identified as terrorist organisations by the UN Security Council.

Yet we have advice from ASIO that there is evidence that both organisations engage in terrorist activity.
If this legislation is passed, it will provide the basis for the Attorney-General to make regulations specifying either or both organisations to be terrorist organisations if the organisations meet the strict criteria in the legislation.

Matters that could be relevant in making that decision is the fact that the military wing of Hamas has been responsible for a series of suicide bomb attacks, shootings and kidnappings. In fact the military wing has been involved in over 100 terrorist incidents resulting in the death of over 500 people and injuries to more than 3000.

In the case of LeT, it has been implicated in attacks in New Delhi and is alleged to have used hit and run tactics as well as suicide squads to target Indian security forces and police stations. I understand that it has cooperated with al-Qaida and other Islamic terrorist groups in training and undertaking operations.

It should be noted that both organisations have been listed by the Minister for Foreign Affairs under the Charter of the United Nations Act as terrorist entities, the assets of which must be frozen in Australia.

We are introducing this Bill because we recognise the need to take swift action.

The simple fact is that we cannot wait for the Opposition to wake up to the problems they created and support our Terrorist Organisations Bill.

Under this Bill, the military wing of Hamas and the Lashkar-e-Tayyiba organisation will be listed as terrorist organisations for the purpose of the Criminal Code provided that the Attorney-General is satisfied that each organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the terrorist act has occurred or will occur.

If the Attorney-General is so satisfied, a public statement to that effect will be issued.

Appropriate regulations will be made and gazetted with effect from the date of that announcement.

Any such announcement will be widely publicised in both print and electronic media.

And that announcement will only be made after consideration of available, relevant intelligence that satisfies the Attorney-General that the criteria for listing an organisation as a terrorist organisation have been met.

The Opposition has admitted previously that their UN listing process is flawed by acknowledging the inability to list the terrorist wing of Hizballah and now the military wing of Hamas and the Lashkar-e-Tayyiba organisation.

This is a serious matter of national security.

The Government will not allow the Opposition’s obstinance to paralyse us and prevent what must be done to ensure the safety and security of Australia and Australia’s interests.

We trust that the Opposition will wake up to the problems they created and support both Government Bills in the interests of the security of Australia.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.47 a.m.)—The opposition supports the Criminal Code Amendment (Hamas and Lashkar-e-Taiba) Bill 2003 and has cooperated to facilitate its passage through the parliament. This bill would empower the Attorney-General to make regulations listing as terrorist organisations in Australia the terrorist wing of the Hamas organisation and the Lashkar-e-Taiba organisation.

Australia’s security agencies have advised that these organisations should be proscribed. Previously, when advised that the Hezbollah external security organisation was a threat to Australia’s interests, Labor initiated a private member’s bill to list that organisation. The government later responded with its own bill, which was quickly passed with Labor’s full cooperation. The current bill employs the same listing mechanism as was used in the earlier Hezbollah legislation. The terrorist wing of Hamas, known as the Hamas Izz al-Din al Qassam brigades, is well known for hundreds of terrorist attacks.
It is acknowledged that Hamas also has a charitable apparatus, which provides a wide range of social services to Palestinians, including hospitals, clinics, kindergartens and schools, a blood bank, and welfare services such as the provision of food and other basic commodities for the needy. It is for this reason the legislation targets the terrorist wing of Hamas.

Lashkar-e-Taiba—or LeT—is a radical Islamist group based in Pakistan, which primarily operates in the Jammu and Kashmir regions. LeT is known for its terrorist attacks on Indian politicians as well as other authority figures, civilians and Israeli tourists. It is reported to be the armed wing of Markaz-ud-Dawa-wal-Irshad. I am pleased it is better known as MDI; it is often better to try and use these acronyms. MDI is a Pakistani religious organisation of Wahabi sects and LeT is reported to be an armed wing of MDI. Importantly, LeT has links with the Taliban and al-Qaeda, having shared training in camps in Afghanistan against the Soviet invasion. It was founded with the support of Osama bin Laden, who remains one of its leading financiers. Given this association with the Taliban and al-Qaeda, it is legitimate to ask whether the Australian government has sought to have LeT listed by the United Nations Security Council. The answer is: they have not. This failure to seek a UN listing undermines the government’s claims to be acting swiftly to deal with LeT.

On a matter closely related to this bill, Labor has made clear that we do not believe that the government’s model of secret, unaccountable executive proscription contains appropriate safeguards against error or misuse. In June 2002, following justified community outrage at the proposal to give the Attorney-General power to secretly ban organisations, the government’s executive proscription model was rejected by the parliament. No-one should forget that, at the National Press Club on 11 September 2002, the Prime Minister said of the final package of legislation passed by the parliament:

We have, of necessity, tightened our security laws. I believe through the great parliamentary processes that this country has I believe that we have got the balance right.

It is also worth remembering that it was the Labor Party and the Senate who corrected the imbalance in the proposed laws. Since 11 September 2001, Labor has worked with the government on these issues. After all, Australia has been engaged in a war against terror. Labor has attempted at all times to reach a bipartisan position on the security legislation that has been brought before the parliament. These issues are about protecting Australia and Australians, and should be beyond political point scoring.

In 2002 the opposition engaged with the government on the security bills, to get the balance right. In 2002 and 2003 we again engaged with the government to get the balance right on the ASIO bill. It was Labor who first introduced legislation into this parliament to list the terrorist wing of Hezbollah under the Criminal Code. In addition, in June this year the opposition presented the government with an alternative proposal to enable the Attorney-General to apply to a court for a listing of an international terrorist organisation not listed by the United Nations Security Council. Regrettably, almost five months later the opposition has not even received the courtesy of a reply from the government. It took a question to the Attorney-General in question time this week to elicit any response at all. Such tardiness and discourtesy justify the perception that the government is more interested in politicising the issue of proscription than in seeking a genuine outcome through the parliament.
sations are well founded in Australia. Without proper safeguards, executive proscription presents real risks. These risks are not limited to the rights of those individuals who might be associated with organisations identified as being of concern. We have already seen how public confidence can be shaken by slipshod decisions in this area. After the Minister for Foreign Affairs froze the assets of a Peruvian terrorist group, Shining Path, the bank account of a Melbourne record store called Shining Path was frozen, just because it happened to have the same name as a group of Peruvian terrorists. So you have to be careful about these sorts of issues.

Strong safeguards will protect the fundamental rights and freedoms that Australians cherish. They will also protect the integrity of the decision maker and of the system as a whole. We are now witnessing an international debate over the accuracy of security advice on the existence of Iraq’s weapons of mass destruction. Serious errors have been made, and evidence has shown competing assessments and agendas, both within and between agencies. Any conclusion from such security assessments ultimately results from a complex and labyrinthine process within these agencies—within the Public Service as a whole. The debate about WMD has, rightly, shaken public confidence in the justification that was advanced for participation in the war in Iraq. No such weaknesses can be tolerated in a proscription regime.

A primary objective of proscription is public expression of revulsion for the activities of terrorists. In light of the extreme controversy that has historically accompanied the proscription debate in Australia, there is a risk that anything less than a process with fair and objective testing of security material will leave questions over any individual act of proscription. It is for these reasons that the Labor Party proposed a proper check on the power of the Attorney-General to proscribe organisations. Having sat mute on this proposal for almost five months, the government should not be too dismissive of Labor’s desire to ensure fair and accurate testing of both the merits of the decision making process and the material relied upon to support proscription. I urge the government—and, particularly, the Prime Minister—to remember the balance that the Prime Minister himself extolled when the original security legislation was passed by the parliament. Balance is critical to any security laws, and Australia’s parliament has consistently been determined to get it right.

The Labor Party has brought constructive proposals to the government based on the principle that decisions to proscribe organisations must be accountable and not open to abuse. I reiterate that only with such strong safeguards can the fundamental rights and freedoms that Australians cherish and the integrity of the decision maker and their decision be protected. The opposition supports the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 that is before the Senate today. We call on the government to drop their political rhetoric and, in the national interest, work with the opposition, work with the parliament and work with the whole community to ensure a bipartisan, balanced approach to these crucial issues.

Senator GREIG (Western Australia) (10.00 a.m.)—We are debating the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 this morning because the government has claimed that there is an urgent need to proscribe two particular organisations. In fact, it has claimed that this is such a matter of urgency that it could not even wait for two weeks until the Senate sits again. We Democrats are not convinced. We think it looks a lot more like a cynical scare campaign by the new Attorney-General than any genuine emergency. What the Democrats have found is that when you delve through
the cloud of panic to the facts of this case a very different story emerges. I want to take a moment to explore some of those facts. Fact No. 1 is this: during question time on Monday, the Attorney-General referred to the military wing of Hamas and Lashkar-e-Taiba, or LeT, as:

... just two examples of organisations that we would consider listing but cannot because the United Nations Security Council has not listed them.

There was no suggestion of any urgent need to proscribe either of these organisations. On the contrary, the very opposite was implied, namely, that both of these organisations have been known terrorist organisations for a long time. The Attorney-General said:

... if you want to look for examples, they are not too hard to find.

Fact No. 2: the Attorney-General made these statements and announced his intention to list both organisations before he received any written briefing from ASIO. Fact No. 3: while the Attorney-General claims that the current legislation is inadequate because it requires a UN listing before an organisation can be proscribed, the government has never taken any steps to have LeT listed as a terrorist organisation by the United Nations. Fact No. 4: despite the claims of urgency, the Attorney-General admits that there is no evidence to suggest that either of these organisations poses an imminent threat to Australia. Fact No. 5: the Government has also admitted that there is no evidence to suggest that Hamas has any connections with Australia. The Attorney-General described the potential listing of Hamas as an example of ‘abundant caution’, which is far removed from the urgency implied by the recalling of the Senate. Finally, there is fact No. 6: according to the Attorney-General’s office, the possibility of Australian links with LeT was communicated to the Attorney-General as part of a routine briefing from ASIO last week. Given that this information was communicated in the context of a routine briefing, it would seem that ASIO did not perceive the need for any urgent action to proscribe the organisation. When you extract the truth from all the hype around this created by the government, it is very clear that the recalling of the Senate is nothing but a big, expensive political stunt.

In his second reading speech on the bill to the House of Representatives the Attorney-General said that the government takes seriously its responsibility to protect Australians. The farce surrounding the passage of this bill suggests quite the opposite. What the government has demonstrated this week is that it is prepared to play politics on really important issues relating to Australia’s security. This bill is not really about protecting Australians from terrorism because, as the Attorney-General has said, there is no evidence suggesting that either of these organisations poses an imminent threat to Australia’s security, and this has been backed up by at least one expert on terrorism. Despite the absence of any threat, the government has sought to create a false sense of urgency by recalling the Senate.

The problem with this approach is that when there is a real emergency in the future, when there really is an imminent threat to Australia’s security, it will be easy to view the government’s claims with some cynicism and to doubt whether they are true—whether they are a case of Philip Ruddock crying wolf. The threat of terrorism in Australia is real. Thanks in no small part to the government’s ill-considered decision to join an ill-conceived war in Iraq, that threat is more acute now than it has been in the past. Of course this parliament has a responsibility to ensure that Australia has an appropriate legislative regime to address this threat, but we must also recognise—as Professor George
Williams recently argued—that legislation alone will not prevent terrorism.

We Democrats have considered each one of the government’s antiterrorism proposals very carefully. On almost all occasions we have formed the view that they were misconceived and poorly targeted. This bill and the original proscription legislation are no exception. We Democrats believe that the very concept of proscription itself is flawed. It does not enhance Australia’s security and it deviates radically from the way in which our community has traditionally defined criminal behaviour. As a community we should certainly seek to punish criminal behaviour—but not thought or association. Obviously, we want those who plan terrorist attacks and those who commit them to face the full force of the criminal law. But we do not want a regime that criminalises membership of an organisation, particularly when the penalties are so high and when the government wants the sole power to decide what constitutes a terrorist organisation and what does not.

Interestingly, it appears that at least some members of the government share our grave concerns regarding proscription. I note, for example, Senator George Brandis said in an opinion piece in the Courier-Mail on 21 May 2002:

There are two simple reasons why the proscription of organisations provision is a bad idea. First, it is wrong in principle and, second, because it would be useless. It is not the role of the criminal law to ban organisations but to prevent crime. Organisations do not commit crimes—criminals do. That elementary proposition applies just as much to terrorism as it does to any other grave crime.

To put it bluntly, it would be much more effective to prosecute an individual, such as Mr Willie Brigitte, for actually planning to commit a terrorist attack rather than because he has some association with a terrorist organisation. Of course, in the case of Mr Brigitte, the government was not aware of either of those facts at the relevant time and is now trying to divert attention by introducing legislation which is not really urgent at all.

The Attorney-General argues that it is impractical to have to recall the parliament each and every time an organisation that has not been listed by the United Nations needs to be urgently proscribed. In this instance, it appears that it was not necessary to recall the Senate at all. In any event, we Democrats believe that the government should stop its relentless pursuit of more powers and start putting more effort into working with the United Nations and with other countries, such as France, to combat terrorism. The threat of terrorism is a global threat which can only be effectively addressed, and re-dressed, with a global response.

The requirement for a UN listing before an organisation can be proscribed is an important safeguard against the abuse of the proscription power. If the government feels strongly that an organisation should be proscribed then it should take steps to have that organisation listed by the UN. However, if there is an overwhelming case for the proscription of an organisation that is not listed by the UN, this parliament has demonstrated in the case of the Hezbollah bill—and will demonstrate again today—that it is prepared to pass legislation to facilitate such proscription.

During debate on this bill in the House of Representatives the Attorney-General argued that, given that both legislation and regulations can be disallowed by the parliament, he did not see why proscribing an organisation by regulations would represent any derogation of the parliament’s power to review the proscription. Actually, there is a crucial difference between these two processes—the difference being that with respect to legisla-
tion the parliament must allow the proscription, whereas with regulations it can only disallow the proscription. What this means is that, with legislation, the government needs to mount a case for the proscription in the first place and must therefore provide compelling evidence that the organisation is a terrorist organisation.

Even in this context, the government has been reluctant to provide the relevant information to anyone other than the opposition. While Hezbollah, Hamas and LeT are clearly all terrorist organisations, or have wings thereof, in each case the Democrats have been forced to rely on the government’s assessment regarding the threat, if any, that they pose to Australia or Australian interests. We have not had the opportunity to assess the intelligence leading to these assessments for ourselves and, in the present case, we have not been provided with any information to suggest that there is any urgent need to proscribe either Hamas or LeT. If this is the situation in relation to legislation, it is scary to think about how little information we would be likely to get to help us determine whether or not to disallow regulations which the government did not want disallowed. I suspect that the opposition might get a whole lot less information in those circumstances too.

The Democrats accept that both the military wing of Hamas and LeT are terrorist organisations. Each of these organisations has a long history of committing terrorist attacks in their respective parts of the world—Hamas in Israel and Palestine, and LeT in India and Pakistan. We abhor the violence from those organisations and condemn in particular the recent spate of suicide bombings. We take this opportunity to reiterate our opposition to the concept of proscription; however, we also accept that, despite voting against it, the proscription regime is now law within Australia. In this context, we acknowledge that the military wing of Hamas and LeT are the types of organisations that were intended to be outlawed by the proscription regime now in place. However, these organisations should not be proscribed retrospectively, even if that retrospectivity spans just a couple of days and even if the proscription has been publicly announced by the Attorney-General.

We Democrats have always had a strong antipathy towards retrospective legislation, particularly retrospective criminal legislation. However, we have from time to time been prepared to support limited retrospective provisions where there is clear justification for such provisions and where they do not substantially affect the rights and liberties of individuals. That is not the case with the bill before us which could lead to the imposition of extremely heavy criminal penalties of up to 25 years in prison. The government has not provided any evidence whatsoever to support the retrospective proscription of Hamas or LeT. For these reasons, I indicate that the Democrats will be moving an amendment to remove the retrospective provisions from this bill.

In closing, I reiterate that the Democrats are appalled by the actions of the Attorney-General this week which have led to the recalling of the Senate today despite the government’s admission that there is no imminent threat to Australia’s security. This is a political stunt at great expense to the taxpayer. If calls to Democrat offices are anything to go by, the Australian community are not anxious or alarmed or frightened about the legislation before us, as the government perhaps intended, but they are concerned and they are angry about the cynical way in which this legislation has been presented to the parliament today.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate)
(10.14 a.m.)—Today we are debating the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003, and this parliament has been recalled to pass this very important piece of legislation. The Nationals fully support this legislation and the timing of this legislation going before the parliament today. Everyone would agree that our world has changed during the last two years. As Australians, we have been asked to consider for the first time in many years that we may not be safe. Our beliefs, our way of life and our open welcome to the world’s citizens who want to become Australians have been shattered by the events of September 11 and, closer to home, the Bali bombings. Lost innocence was the common theme as we remembered only a couple of weeks ago in this place the loss and suffering of all those involved in the Bali tragedy.

The bill before us today has been made necessary by the post September 11 and Bali bombings reality that terrorism is a threat to all of us. Once it was something that we only thought about or gave consideration to when visiting war-torn countries or the Middle East. Now, every Australian at home or overseas must think about the reality of terrorism. Terrorism is global and the activities of terrorists are not restricted by our borders or by our citizenship. The government has the responsibility to help protect its citizens from terrorism by ensuring there are tight security laws and by having strong criminal laws. The government has developed a package of strong counter-terrorism legislation, the bulk of which was passed in July last year.

Labor has said that it wants the United Nations to proscribe the criminal organisations Hamas and LeT. The Labor Party is giving its support to this urgent legislation, and its decision is one of the main reasons that we are back in this place today debating the inclusion of these two organisations in the Criminal Code. Hamas and LeT have not been formally nominated by the United Nations Security Council; therefore, a separate bill has to go forward today because of the Labor Party’s decision on the United Nations proscription. The military wing of Hamas and LeT pose a real threat to our world; we are banning the activities of these two organisations in Australia for the safety of Australians.

The military wing of Hamas has been responsible for suicide bombings in Tel Aviv and Jerusalem, and it has caused much pain and suffering in the name of its cause. LeT has been implicated in attacks in New Delhi, and is alleged to have used hit-and-run tactics and suicide bombs to attack security forces and police in India. So, in the opinion of The Nationals, we have to proscribe these organisations under the Criminal Code. This government, which The Nationals are part of, will do everything in its power to protect its citizens against organisations such as these and against terrorism. The Nationals support the bill and call on the opposition to give its support and to allow fast and effective measures to be taken against organisations who threaten the security of our nation.

Senator BROWN (Tasmania) (10.19 a.m.)—I will not reiterate my earlier speech, but I will say that the government has completely failed in the task of explaining to the Senate why it has been recalled to deal with the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 or to give evidence as to why this proscription should not have taken place a fortnight ago or indeed two years ago, when the United States, the UK and a good number of other countries proscribed LeT and Hamas. In fact, Lashkar-e-Taiba, which is from Pakistan, is currently proscribed by Canada, the UK, the US, the EU and Pakistan. It is not a new organisation; it was set up in association with Osama bin Laden in 1989—14 years ago. It has been under the direction of two academics in La-
hore, one of whom was killed in an explosion in 1989; the other, Mr Saeed, has maintained supremacy in this organisation right up until recent years and probably still does. It is under a military commander subject to Mr Saeed, who wants to establish a caliphate—that is, Islamic domination not just in Pakistan but everywhere—and who believes that anywhere that is not under Islamic rule is open to attack.

None of this will have escaped the government and the intelligence organisations over the last 14 years, as this organisation, while containing its terrorist activities to Kashmir, Pakistan and India, has become more devastating in its impact, including in the attack on the Indian parliament in 2001, with the deaths of a good many people there. This organisation is responsible for many terrorist attacks in Kashmir—and what express agony for the people of Kashmir, who ought to be left to determine their own future, as an independent country if necessary. But they are caught between India and Pakistan, both wanting sovereignty, and then there is this awesome interplay of terrorist organisations, leading to the deaths of tens of thousands of innocent people—the terrorism of that populace. Indeed, people are fleeing death, destruction and summary execution, some of whom have made it by boat to Australia. I have spoken to some of them at refugee camps, including a young man who watched his father get shot and then escaped with his brother, who has not been seen since. When I last spoke to him, he was in a refugee camp in Australia with the potential of being sent home. As far as that unfortunate individual is concerned, we have a government apparently at odds with the very move it is making today.

The same is true of the military wing of Hamas. As has been explained here earlier, Hamas is an organisation which has been operating for many years in Palestine. It has political, military and social wings. It is thought that over 90 per cent of the funding it receives—which largely comes from wealthy individuals in Saudi Arabia and other oil-rich states in the Middle East but also from fundraising in Europe, the US and wherever else it can get it—has gone into social benefits for the poor in Palestine, and therein is its strength. It provides schools, hospitals, blood banks and so on. But it has this vicious military component which has been behind many of the suicide bombings that we have seen in recent years, much to the horror of the whole world.

I will stop for a moment here to add a word of honour to Hanan Ashrawi, who has been in the country over the last couple of days receiving the Sydney Peace Prize—an extraordinary individual, to be able to stand up in the thick of this horror, with operations like Hamas terrorising and blowing up not only their own young people through these suicide bombs but hundreds of other people. In fact, Hamas has been responsible for 104 of these terrorist outrages against innocent civilians in Palestine and Israel. Nobody, I believe, can countenance such activity.

The question must arise as to why the government did not proscribe these organisations years ago. If I were the Prime Minister standing here today, I would be accusing the people on the benches opposite of being soft on terror, because that is the political nature of the Prime Minister. The government has been soft on terror by not proscribing these organisations earlier. In the committee stages, I will come up with a list of other organisations which are proscribed elsewhere that this government has done nothing about. What we are seeing today is not an exercise in precipitate response to information that has come to the government in the last 10 days or so since the Senate last sat; it is a political exercise based on the lowest of po-
political motivators, and that is fear—manufactured fear.

This government has manifestly failed to proscribe these dangerous, deadly, lethal, disgusting terrorist organisations for the last two years. It has done nothing about it. Now it calls the Senate back to do something because we have a new Attorney-General who, with the Prime Minister, is saying: ‘Let’s bring fear onto the agenda because we are getting close to an election.’ What a rotten politic from this government! It fails to do its job and then, catching up on that failure, says, ‘We’ll get a political spin out of this. What’s more, we’ll spend tens of thousands of taxpayers’ dollars bringing back this Senate to promulgate this political exercise.’ It is absolutely disgusting politics from the Howard government. It cannot have it both ways. It has failed, in respect of these organisations, to do what other countries have done. Now it has in mind serial political theatre to do the job it should have done years ago.

I remind the Senate that the freezing of funds for these organisations—which is the real way to stop complicity from people in Australia who are beguiled enough to put money into fundraising efforts which can be channelled into terrorism—occurred quite some time ago. I would like to hear from the minister opposite how the safety of Australians will be materially improved by listing these organisations now. The government has not done it for two years. What is now going to change things? I do not know the answer to this question, but has the government considered whether sending organisations underground, if they are extant in Australia—and I want to hear from the government about that—is effective, or in fact makes it more difficult to keep them under surveillance?

Proscribing their funding is of course the key matter. After that we need to know what has motivated the government today. Is it related to the Brigitte affair and, if so, why was this move not made weeks ago? Indeed, why wasn’t this organisation proscribed two years ago, which may have brought this matter into clearer play in the government’s mind when that man was applying to enter the country—a man who would have then been associated with a proscribed organisation, Lashkar-e-Taiba. The questions are greater than the answers we are getting today.

In the committee stage, I will be pressing the government as to why it has left it so late and what it is going to do about other terrorist organisations which are on the proscribed list, for example, in the United States and Europe. Let me make this absolutely clear: the Greens will have no truck with terrorist organisations whose aim is to kill innocent people as leverage for some political or religious purpose. They should be banned. They should be proscribed. The question here today is: why is the government recalling the Senate on this occasion to do the work it should have done a long time ago?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.30 a.m.)—A number of issues have arisen in the speeches during the second reading debate on this very important bill, the Criminal Code Amendment (Hamas and Lashkar-e-Ta’iyyiba) Bill 2003. Firstly, in relation to the issue raised by Senator Faulkner as to there being no reply to the proposal put by the opposition, the Attorney-General, Mr Ruddock, has replied to the shadow Attorney-General’s letter, which I think was written on 13 October this year. The Attorney-General has answered the points raised by the shadow Attorney-General, Mr McClelland. I do understand that the former Attorney-General, Mr Williams, did discuss proposals which had been put to the government by Mr McClelland and they were addressed in that
discussion. So the government would state very clearly that it has not ignored proposals put to it by the opposition. Certainly, the government would reject any allegation by the opposition—or the Greens or the Democrats, for that matter—that we have been slow to act on Lashkar-e-Taiba.

I draw the Senate’s attention to the fact that the Minister for Foreign Affairs, Mr Downer, listed LeT as a terrorist organisation on 20 March last year under the Charter of the United Nations Act 1945. This made it a criminal offence for persons to hold assets that are owned or controlled by LeT within Australia. That action was taken to meet Australia’s international obligations in the fight against terrorism that are set out in the United Nations Security Council resolutions. Of course, that deals with the very question that Senator Brown has raised about assets and finances. You have to remember that the power to go down the path which we are going down today—that is, providing for the proscription of a terrorist organisation through legislation—was provided for only in July last year. And that defeats Senator Brown’s statement that we could have done this two years ago.

Let us go to the more important aspect—that is, that recent and ongoing investigations have revealed that LeT has links with Australia. That really is the reason for the urgency for the action that the government are taking. The government have said that they would like a streamlined process. We stand by that statement and we have always said it. That has been denied to us by those opposite. It is interesting that Senator Brown says that there are other countries which have proscribed LeT. Those countries he mentioned do not have to rely on a listing by the United Nations Security Council. They, in fact, are able to do their proscription by a much more streamlined method—something the government are attempting to do but have been stopped thus far by those opposite.

Senator Greig mentioned as well that we had failed to act earlier on LeT. I would point to those comments that I made earlier that, as a result of recent and ongoing investigations, we have discovered that LeT has links with Australia and, therefore, we must act in Australia’s interests. Senator Faulkner himself said that LeT was a terrorist organisation that was fighting in Pakistan, in the Kashmir region, against India. It would seem that it is an organisation which was somewhat contained geographically but, of course, recent investigations, as I have said, have revealed that LeT could well have links with Australia. It would be irresponsible of the government, therefore, not to take immediate action.

Senator Brown has also mentioned that there is the expense of bringing back the Senate today and that this is a stunt. Of course, senators have been in Canberra this week for estimates committees. I do not know whether Senator Brown has been, but certainly I have and I know those in the opposition have. Not only did the situation present itself conveniently but also it was a course that was essential for the government to take. We could not have stood by and done nothing until parliament resumed on 24 November. One of the questions asked during the second reading debate was: why is the legislation needed? What can you do that you otherwise could not do if you do not have it? Of course, the proscription of these organisations, the military wing of Hamas and LeT, makes it an offence to be a member of those organisations and it gives more strength to the arm of our intelligence agencies and law enforcement agencies in the prosecution of anyone who is involved with these terrorist organisations. As a responsible government, as a responsible Senate, we need to give our authorities in Australia the
power to act in relation to terrorist organisations. I think we all agree that the military wing of Hamas is an organisation which has involved itself in bloody acts of terrorism, and that has been recognised internationally. Again, it would be irresponsible for us not to include the military wing of Hamas in this legislation.

The path the government would take is that we not have to go through this process every time we want to list a terrorist organisation. Other countries, such as Canada, the United Kingdom and the United States, do not have to have reference to the United Nations Security Council. We have seen that, unless an organisation does have direct links to al-Qaeda or the Taliban, it is a lengthy and difficult process to have it listed by the United Nations Security Council. That is something we envisage with LeT, and that is why we are embarking upon this course of action—but we should not have to. As a responsible government governing this country and particularly its national security interests, we should be able to act in a speedy fashion without any reference to the United Nations Security Council. What we propose—and there is legislation in the Senate which does just that—is that the government have the power with the necessary checks and balances to be able to proscribe terrorist organisations which pose a threat to this country’s security.

The other question was that of Shining Path, an example which Senator Faulkner raised. He said that the assets of a business were inappropriately frozen as a result of its being incorrectly listed under the charter of the United Nations regulations. Of course, we do not want that to occur. We want only to attack terrorist organisations, and what we want to do is give our law enforcement agencies the appropriate powers to do just that. Certainly we are not intending to bring in any entity or organisation which is not involved in any way in a terrorist act or which is an innocent party. We have sufficient checks and balances in our proposal for dealing with this. We believe that the Senate, at an appropriate time, should give this government the necessary power for the proscription of terrorist organisations. The recalling of the Senate in this instance is appropriate and necessary for the security of this country, and that is the result of advice that we have received from our intelligence authorities.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia) (10.40 a.m.)—I move the Australian Democrat amendment on sheet 3166:

(1) Clause 2, page 1 (lines 9 and 10), omit the clause, substitute:

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

The Australian Democrats oppose schedule 1, item 8, in the following terms:

(2) Schedule 1, item 8, page 5 (line 17) to page 6 (line 18), TO BE OPPOSED.

The amendment goes to the heart of the question of retrospectivity, which I spoke of in my speech in the second reading debate on the Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003. The amendment would remove the retrospective commencement of the bill and the government’s ability to retrospectively proscribe the two organisations. Certainly we acknowledge that, in this case, the potential retrospective proscription was publicly announced and that it extends for only two days, so there might be some who would argue that this is only a very minor issue and one which can on this occasion be overlooked. But, despite our
strong opposition to retrospectivity, we might have been more inclined to accept that argument if it were not for the increasing practice of the government to introduce retrospective legislation. This is a practice which we Democrats strongly oppose. We put the government on notice that we will be seeking to amend all retrospective provisions which significantly affect the rights and liberties of individuals, as this bill does.

The bill imposes extremely heavy penalties of up to 25 years in prison, and we believe the government has not provided any evidence whatsoever to support the retrospective proscriptions of Hamas or LeT. I cannot help noting that the report of the Senate Standing Committee for the Scrutiny of Bills was tabled just this morning. I want to criticise not the scrutiny of bills committee but the process whereby important information, transparency and scrutiny of this legislation is being committed at the very last moment. We saw it again this morning, with the minister tabling in the chamber the government’s arguments for urgency. That is an incredibly important part of this debate but, nonetheless, it is information which senators were denied access to or briefing of until the very minute that this bill was introduced into the parliament.

The scrutiny of bills committee noted in its report of its investigation of this legislation tabled this morning, ‘It is difficult to see the reason for this retrospectivity.’ The committee went on to say in part ‘the bill will therefore create criminal liability by public announcement’. It was suggested by the committee that the ‘provisions may be regarded as trespassing on personal rights and liberties’. The committee was strongly critical of the question of retrospectivity and the fact that the announcement of retrospectivity—the fact, as the government saw it, of retrospectivity—was made by press release. I reiterate the concerns of the Democrats of legislation by press release, if you like, or fact by press release from the government—an other increasing trend.

Our strong and consistent position on the question of retrospectivity is that there must be a very strong case made for it. That case is not made in this instance, even if the retrospectivity is only a matter of days. It is our belief that people involved in organisations ought not to be placed in a situation where the work, activity, behaviour and communication that they are involved in at one point in time, and which is lawful, is deemed unlawful by the retrospective application of legislation. It is not appropriate. By all means, if this parliament is to proscribe the organisations as recommended today then let that law be prospective and let those people who have lawfully been involved in aspects of these organisations not be deemed to be criminals retrospectively. That is the heart of the amendment. It is consistent with comparable amendments we have moved to similar legislation—antiterrorism laws and other laws—and simply goes back to the heart of the concerns of the Democrats that legislation, particularly with criminal law, must always be prospective. That is an ethos that we are keen to commit to in this and in future legislation.

Senator BROWN (Tasmania) (10.45 a.m.)—In speaking to the amendment—and I really appreciate Senator Greig’s argument—we are in the great difficulty of dealing with terror and terrorist organisations rather than such areas as corporate and criminal law and so on which very often include retrospectivity. They are in different category. The problem here is that the government has been dilatory and, as a means of catching up, now wants to make this legislation retrospective. The Greens can support that, but we expect the government to be able to give due reason. Firstly, I ask the government: how many organisations have been proscribed in Australia, including these two? Secondly, will the
government furnish the committee with a list of those? Thirdly, can the government give the committee the reasons for bringing forward proscription of the military wing of Hamas and Lashkar-e-Taiba which were not there a month ago? They certainly were not there when the government moved to freeze the funds of both these organisations.

In response to the Minister for Justice and Customs on the matter of proscription not being available to the government, of course it always has been and always will be expedited, but why should the parliament not be a check on that process? If you look at the proscriptions that have occurred in like countries, you will see little doubt that a domestic political component has not come into that, but it is a very healthy arrangement that the elected representatives of parliament be involved in this matter and that it not be left to outside of the parliament or a future government to proscribe organisations without reference to the parliament and without giving due argument. The process this morning is one of this committee seeking good argument from the government. I have asked about what the situation was a month ago and what has changed, and I would like to pursue that with the minister because he has not given that information in his second reading speech or in any other submission to the parliament this morning.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.48 a.m.)—I can only rely on what I have said repeatedly as to why we are seeking listing of the military wing of Hamas and LeT. I have gone over that in giving the reasons for the urgency for this bill and in the second reading debate, and there is nothing I can add to that. Regarding Senator Brown’s other question of how many organisations have been proscribed, I understand there are 16 organisations, including those two. As for the list, I can get a copy of that to Senator Brown shortly.

The government will be opposing the amendment of the Democrats. There is a precedent for this process in the proscribing of Hezbollah, which legislation we had before the parliament on another occasion. Generally, the fact is that retrospectivity is allowed where a minister makes an announcement relating to action that will be taken. The retrospective operation of the regulation in this case in no way pre-empts or diminishes the decision-making process of the minister, who still needs to be satisfied on reasonable grounds that the organisation is a terrorist organisation as defined in the act. We have provided express provisions in the legislation to ensure that the public is kept fully informed, particularly where a listing will operate retrospectively.

As we have always said, a ministerial announcement will put the public on notice that a particular organisation will be listed as a terrorist organisation and, from that day, individuals who support that organisation may be committing a criminal offence. The provisions ensure that the details of the listing will be widely promulgated through the Internet and print media. In this particular case, we envisage that the bill will receive assent before any announcement is made and that there would therefore not be any retrospectivity, but we had to include it because we could not bank on this going ahead. It is a mechanism which is there to safeguard this process. It is not one that flies in the face of conventions relating to retrospectivity. If we were to amend the bill, it would have to go to the House of Representatives and that would delay it even further. Delay is something we cannot countenance in the passage of this legislation.

This is a matter which goes directly to the security of Australia. It deals with two or-
ganisations which no-one in this chamber has yet disagreed are terrorist organisations. No-one is saying that these two organisations are not terrorist organisations. I think everyone has agreed that these are organisations which have to be proscribed. All I have heard thus far is that the Senate should not have been recalled and that there does not seem to be any urgency. Senator Greig has been consistent in his approach to retrospectivity. He raised this previously in relation to Hezbollah. The government’s stand on this matter is the same as it was then.

Senator BROWN (Tasmania) (10.52 a.m.)—The Minister for Justice and Customs has it back to front. What the chamber should hear about is why this urgency was not there a fortnight ago when the Senate was sitting. The minister is a blank when it comes to that; he is not giving any information at all. I ask again: will the minister furnish the committee with the information that has come through in the last fortnight which has precipitated this sitting of the Senate? What is the information that was not available a fortnight ago such that this matter could not be dealt with when the Senate was sitting then or which leads the government to believe it could not wait two weeks until the Senate sits next?

I remind the committee that the organisations we are talking about were proscribed two years ago by the US and the UK. The minister has said there are 16 organisations proscribed in Australia. Let me acquaint the committee with the fact that there are 36 proscribed in the United States, 38 proscribed in the United Kingdom and 31 proscribed in Canada. So there are double the number proscribed elsewhere. I ask the government why the other organisations that have been proscribed in similar jurisdictions have not been brought before the parliament through legislation. You can see from today’s process that there is going to be little difficulty with terrorist organisations being proscribed by the Senate—and certainly the same applies to the House. Why have these other organisations not been proscribed?

This theatre today is an abuse of the chamber and shows at least that the government has been dilatory, has been sitting on its hands, has not done its homework and did not care for the last two years when similar jurisdictions were moving ahead. Is there a program in Mr Ruddock’s office to pick off the other 16 or 20 organisations that are proscribed elsewhere and treat them as sudden, urgent matters to be dealt with by the parliament or in the public arena when parliament is not sitting? Is this government not going to manipulate the terrorist listings of other countries to say Australia is behind and is being held back by the parliament when that is not true?

I ask the minister: why is the list in Australia so far behind those in Canada and the United Kingdom? I will ask about specific organisations if the minister wants me to or, rather, I would ask him to give to the chamber a list of the organisations that are proscribed elsewhere—for example, in the United States—but not in Australia and why that is the case. Does the government disagree with the intelligence organisations in Canada, the US and the UK about the much longer lists that those countries have? As in the case of the United States, for example, does the government think that Kach, also called Kahane Hai, a Jewish terrorist organisation, should not be proscribed? Many other organisations listed in Uzbekistan, Colombia, Pakistan, India and the Middle East are not on this government’s proscribed list. Why not? Are we going to have this manufactured political process? It is degrading to the parliament, it is dishonest to the Australian people and it has to be revealed, as I am revealing it here today. When a government starts to manipulate a matter as serious as terrorism
for political advantage, people should know about it.

Besides the other questions I have put, I again ask the minister to please give this committee the reasons why this action was not taken a fortnight, two months or two years ago. Is he saying the former Attorney-General was incompetent and not up to it? Is that the reason? If so, why did the Prime Minister do nothing about it? This Prime Minister has been at the forefront of talking up the fear there should be abroad in the populace about terrorism. People are frightened by it, and rightly so. This fridge magnet Prime Minister has not been able to list organisations listed by countries similar to ours—more than a dozen of them.

Something is wrong here. This government has not been doing its job. It is too busy manipulating information against the interests of the parliament and the Australian people for its own purposes. It is obvious what this government intends to do in the next 12 months: serially bring on the listing of new terrorist organisations that may or may not be operative in Australia, regardless of the evidence or lack of it—catching up with elsewhere in the world while making it appear the government is ahead of the game when in fact it is behind. I ask again: can the minister get to his feet and explain what it is that brought the Senate back in discussions earlier this week that the government did not know 10 days earlier?

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (10.58 a.m.)—I have a list of 14 organisations that have been listed and, of course, it will be 16 with the two we are proposing. I seek leave to table the list of terrorist organisations.

**Senator Faulkner**—Sorry, what is leave being sought for?

**The Temporary Chairman (Senator McLucas)**—Leave is not required.
not to act on that advice. I am saying that I understand that two weeks ago that was not the situation. We now have a situation which requires this action and we are embarking on that, as we should be.

Senator BROWN (Tasmania) (11.01 a.m.)—That is not acceptable. We have got formal advice from the intelligence organisations. What is it—in general terms, if the minister does not want to be specific—that is occurring now that was not occurring a fortnight ago? That is the question. Is the minister going to recall the Senate seriatim over the next 11 or 12 weeks every time ASIO gives the government formal advice that it is worried about an organisation that it was not worried about the day before? Is this parliament going to be scheduled according to the information output of ASIO and the other intelligence organisations? Something has occurred, one would expect, that is extraordinarily significant that has required the recall of parliament precipitately. Some activity has been discovered in Australia which supports terrorism that ASIO knew nothing about three weeks ago. I do not believe it, nor should anybody else, unless the minister can at least in general terms explain to the Senate what that is. We should remember that these organisations were proscribed two years ago in similar jurisdictions.

The minister might go on about the Greens rubber-stamping whatever is said in America or alternatively been totally opposed, but that is nonsense. However, there is a reasonable question to be asked here. There is an interdependency between and an exchange of information between the US and Australian, Canadian and British intelligence organisations. I ask why it is that ASIO or other intelligence organisations did not advise the government that these organisations should be proscribed when that was the case in those other jurisdictions. It is a reasonable question. And I have not yet got that list of organisations which you tabled which I have asked for. It would be reasonable for me to ask why at least 20 organisations listed in the United States—I now have that list—which are not listed in Australia, and more in the UK and slightly less in Canada, are not listed. Sure, the minister can say, ‘We’ve got our own independent advice here.’ That is good to know, but a good many of these listed organisations are not a threat or not seen as terrorists by the assessors in our intelligence organisations. The minister should tell the committee why that is the case. That is exactly why we need this debate in the parliament, so that there can be a reasonable listing. What we are not seeing here is Australia running ahead of the pack; we are seeing the Australian intelligence organisations and government way behind equivalent intelligence gathering and legislative action in other countries. The argument that it has got to be brought before the parliament is specious. That can be done rapidly and effectively. We have had umpteen sittings of the parliament in the last two years to deal with this matter. What I am very concerned about is the manipulation the government can bring to bear in this matter.

When I look at the list the government has given here, I might ask why the Colombian terrorist organisations and those in Uzbekistan are not listed. Well, there is one in Uzbekistan that is listed here. I might think that the government of Uzbekistan should be listed at the same time.

Senator Faulkner—As a terrorist organisation?

Senator Ellison—He is saying to list the government.

Senator BROWN—Ask the people of that country who are opponents. Minister, have you read about opponents being boiled alive in the torture chambers of that government? It is no laughing matter.
If you are going to take on terrorism, you have to do so without fear or favour. I point out to the committee that it is not too long ago that the CIA was supporting Lashkar in Pakistan—the very organisation we are proscribing today—during the Russian occupation of Afghanistan. We have to be opposed to terrorism wherever it occurs and not be selective about it. That is one of the reasons, again, why this is a matter for parliament and not just for covert organisations which are beyond the reach of elected representatives.

I can see that we are simply not going to get justification for this recall of parliament from the minister. That is because there is no justification for the recall of parliament today. There is no reason why this should not have been done a fortnight ago. That being the case, I nevertheless ask the minister again: will the government review the proscription list of other countries similar to Australia? I forewarn the minister that, if we get serial proscriptions over the next 12 months, I will be reminding him of me standing here today saying, 'Why not list these organisations now?' I am not going to be one of those who stand aside while the government manipulates the electorate on this matter.

Senator GREIG (Western Australia) (11.08 a.m.)—I note that Minister Ellison in one of his earlier contributions spoke of his frustration, in his words, at the government not being able to streamline, or have a streamlining process for, proscription. He referred to the international jurisdictions of Canada, the UK and the USA, which, in his words, had a more streamlined process because they did not have to refer to the UN Security Council. I think the minister should have been more comprehensive and pointed out to those listening that what the government originally argued for in terms of proscription powers was complete, autonomous, individual power vested in the Attorney-General, giving the first law officer in the land—then Daryl Williams, Attorney-General, and now Mr Philip Ruddock, Attorney-General—absolute power of proscription without reference to parliament, scrutiny by the parliament or transparency through the parliament.

I think the Australian community is satisfied—indeed, relieved—that the process for proscription that we do have is one in which parliament plays not only a key role but a necessary role. I would ask the minister: for each of the comparable jurisdictions referred to—namely Canada, the UK and the USA—what, briefly, is the process of proscription in relation to parliamentary proscription or unilateral, autocratic proscription? Is it the case, for example, that in Canada, the UK and the USA proscription is determined solely by the first law officer of the land or by the President or by the Prime Minister? I understand that not to be the case, but I would be pleased to hear the minister. If it is the case that in each of those international jurisdictions it is a parliamentary process, then we are echoing that and we are doing that in a just way and in a way that has the support of the Australian community. If it were not for the Senate amending with community consent the original suite of antiterrorism bills to allow for this process, we would have the autocratic dictatorship of proscription that the government first argued for. So I ask the minister: is it the case that the international jurisdictions of Canada, the UK and the USA have a parliamentary process, as we do, for proscription?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.11 a.m.)—If I can put that in context, what we are proposing is that the Attorney-General have the power to proscribe by regulation a terrorist organisation. Of course, that would be subject to parliamentary scrutiny through the disallowance mechanism. As well as that,
the process would be subject to judicial re-
view both under section 75(v) of the Constitu-
tion and also section 39 of the Judiciary
Act. So under our proposal, although there is
executive action, there would be those
checks.

In relation to the countries which have
been mentioned, by comparison, under Ca-
nadian legislation, the Governor in Council
on the recommendation of the Solicitor Gen-
eral of Canada, who is the equivalent to our
Attorney-General, may list an entity by way
of regulation if both officers believe on rea-
sonable grounds that the entity is engaged in
terrorist activity. The listed entity may then
apply to the Solicitor General for removal
from the list. The situation there is very
much an executive act.

In the United Kingdom, the secretary of
state there may proscribe an organisation as a
terrorist organisation if the secretary of state
believes the organisation to be engaged in
terrorism. The secretary of state can remove
organisations from the list upon application
by either the organisation or any party af-
fected by the organisation’s proscription.

In the United States, the Secretary of State
in consultation with the Secretary of the
Treasury and the Attorney General may des-
ignate entities as foreign terrorist organisa-
tions. The legislation provides that a notifica-
tion must be made to congressional leaders in
relation to the intention to designate an
organisation as a terrorist organisation. Any
designation of a foreign terrorist organisation
in the United States may cease to take effect
following an act of congress. When a desig-
nation is made, the Secretary of State must
create an administrative record which is in
the form of a statement of reasons. Of
course, the Secretary of State may at any
time revoke the designation if the circum-
stances change. There is no apparent legisla-
tive provision which provides for review by
an aggrieved party.

So what we have in relation to those three
countries are very much independent execu-
tive acts in relation to proscription. When
you consider that against what we are pro-
posing—an executive act which is subject to
disallowance by way of the regulations being
disallowed and judicial review on two bases,
one under the Constitution and one under the
Judiciary Act—we believe that our proposal
compares favourably insofar as the checks
and balances are concerned.

Senator GREIG (Western Australia)
(11.14 a.m.)—I ask the minister: has the
government initiated any prosecutions for
offences associated with terrorist organisa-
tions since the proscription regime we have
here in Australia was originally enacted?

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (11.15
a.m.)—The answer is no.

Senator GREIG (Western Australia)
(11.15 a.m.)—I have another question for the
minister. I am advised that a spokesperson
from the Attorney-General’s office is re-
ported—as published in an article in the Age
newspaper on 5 November—as saying that
ASIO had informed the government of LeT’s
possible Australian links during a routine
oral briefing last week. Can the minister in-
dicate when that oral briefing occurred?

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (11.15
a.m.)—I understand that there has been on-
going advice to the government from ASIO
and I cannot pinpoint one particular briefing.
It would be inappropriate for me, in any
event, to go into the advice given to govern-
ment on any particular occasion by ASIO. In
our estimates committees we certainly do not
go into the advice given to government by
departments, nor do we in relation to our
security agencies. I can say to Senator Greig
that the advice we get from ASIO is ongoing—and in relation to LeT the advice has been ongoing.

Senator GREIG (Western Australia) (11.16 a.m.)—From that answer, I think it is fair to say that there is at least an 80 per cent chance that such a briefing would have occurred before Friday of last week and I think therefore that confirms the argument that the government could well have introduced the legislation last week while the Senate was sitting. I think that correctly picks up the point that Senator Brown raised in terms of more appropriate timing for the legislation and is another argument against the exceptional recall of the Senate today.

I refer to an earlier answer. I thank the minister for his answers on those comparable jurisdictions, but I made the point in my question that it was my recollection that the original intent of the suite of antiterror bills—going back some 12 to 18 months—was that the Attorney-General would have had autonomous power without reference to parliament and without retrospective scrutiny by parliament. It was through that process that we have now reached the situation where parliament is involved, albeit without reference to the UN Security Council. So my particular point was that the original ambit claim from the government would not have provided for the elements of scrutiny and oversight which we have in our current processes of proscription.

The TEMPORARY CHAIRMAN (Senator Watson)—I remind the Senate that the debate has been very wide ranging. The matter before the chair is about removing retrospectivity, so I ask that speakers confine their remarks to that issue. The question is that Senator Greig’s amendment be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 8, stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.20 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

NOTICES

Presentation

Senator Bartlett to move on the next day of sitting:

Contingent on the Migration Amendment Regulations 2003 (No. 8), as contained in Statutory Rules 2003 No. 283, being laid on the table.

That so much of the standing orders be suspended as would prevent the senator immediately moving a motion to disallow the regulations.

Senate adjourned at 11.21 a.m.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Gippsland Electorate: Program Funding
(Question Nos 1100 and 1107)

Senator O’Brien asked the Minister representing the Attorney-General and the Minister for Justice and Customs, upon notice, on 17 January 2003:

(1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Gippsland.

(2) When did the delivery of these programs and/or grants commence.

(3) What funding was provided through these programs and/or grants for the people of Gippsland in each of the following financial years: (a) 1999-2000; (b) 2000-01; and (c) 2001-02.

(4) What funding has been appropriated for these programs and/or grants in the 2002-03 financial year.

(5) What funding has been appropriated and/or approved under these programs and/or grants to assist organisations and individuals in the electorate of Gippsland in the 2002-03 financial year.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

Legal Aid

(1) The Commonwealth provides funding to Victoria Legal Aid to provide assistance for Commonwealth law matters to people who live in Victoria. The services provided by Victoria Legal Aid include a regional office located in Bairnsdale. The office provides a range of legal assistance services including legal information, advice and grants of legal aid to people who live in the federal electorate of Gippsland.

(2) Commonwealth funding was first provided to Victoria Legal Aid (then called the Legal Aid Commission of Victoria) in 1979-80.

(3) It is not possible to provide information on the level of Commonwealth legal aid funds which are used to provide assistance in the federal electorate of Gippsland. The information sought is only available on a State wide basis. Commonwealth funding for legal aid services in the State of Victoria in the financial years was as follows:

   (a) 1999-00 - $27.750m.
   (b) 2000-01 - $27.750m.
   (c) 2001-02 - $27.750m.

(4) The Commonwealth provided $120.570m to legal aid commissions in 2002-03.

(5) 2002-03 - $27.750m - see (3) above.

Community Legal Centres

(1) The Commonwealth provides funding to community legal centres in Victoria to provide legal services to socio-economically disadvantaged people in communities where services are located. The Commonwealth provides funding to the Gippsland Community Legal Service located in Morwell which provides assistance to people living in the immediate area and to outlying areas through its outreach services.

(2) Funding was first provided to the Gippsland Community Legal Service in 1999-00.
Friday, 7 November 2003

QUESTIONS ON NOTICE

(3) It is not possible to identify how much of the funding the Service receives goes to people living in the federal electorate of Gippsland. Commonwealth funding provided to the Service in the financial years was as follows:
   (a) 1999-00 - $200,000.
   (b) 2000-01 - $203,116.
   (c) 2001-02 - $207,097.

(4) The Commonwealth provided $24.2m for the Commonwealth Community Legal Services Program in 2002-03.

(5) The Gippsland Community Legal Service received $211,604 in funding through the program in 2002-03. A proportion of these funds would have been used to provide assistance to people living in the federal electorate of Gippsland.

Financial Assistance Schemes

(1) The Attorney-General’s Department administers schemes for the provision of financial assistance for legal and associated costs. These schemes exist to provide legal or financial assistance in cases where legal aid is not generally available from legal aid commissions and where the circumstances give rise to a special Commonwealth interest. People and organisations in the federal electorate of Gippsland can apply for assistance directly from the Commonwealth under these schemes.

(2) Financial assistance is provided under a variety of different schemes, which commenced on various dates.

(3) The Department’s electronic financial information systems record information about the people to whom payments of financial assistance are made. In some cases, payments are made to the person who applied for the grant of assistance (the applicant); in other cases, payments are made to the applicant’s solicitor. Determining the address (and, therefore, the electorate) of every applicant on whose behalf payments were made to a solicitor would require a manual cross-check of the Department’s paper files. This would be an expensive and time-consuming undertaking, which could not be performed within the resources available without adversely affecting the work of the Family Law and Legal Assistance Division. Furthermore, in accordance with the long standing practice, endorsed by successive Attorneys-General, to treat applications for financial assistance in confidence, it is not appropriate to provide information in relation to any individual application for financial assistance.

(4) The amount appropriated for the purposes of the schemes in the 2002-03 financial year was as follows:
   • Native Title - $12,338,844
   • Financial Assistance for Legal Costs before the Royal Commissions into HIH and the Building and Construction Industry - $10,587,000
   • All other schemes - $1,488,156

(5) See (3) above.

Crime Prevention Branch

(1) Improving Justice Outcomes for the Koori Community in La Trobe Valley. The project was intended to target young people who are at risk or potential risk of becoming involved in criminal activities.

(2) 2001-02

(3) (a) 1999-00 - nil.
   (b) 2000-01 - nil.
(c) 2001-02 - $45,980.
(4) $105,000.
(5) $105,000 was allocated for 2002-03, but due to service provision changes in the La Trobe Valley and the effects these had on the project, it was decided to terminate the contract.

Emergency Management Australia

(1) Emergency Management Australia administers the Emergency Management Australia Projects Program which is aimed at enhancing national emergency management capability. Individuals, community groups, businesses, non-government organisations and agencies at all levels of government and from all over Australia are encouraged to apply.
(3) (a) 1999-00 - not applicable
(b) 2000-01 - $20,000 - Community Participation Model for Flood Monitoring, Awareness and Response in rural areas, West Gippsland, Victoria.
(c) 2001-02 – nil.
(4) Nil.
(5) Nil.

Agriculture, Fisheries and Forestry: Quarantine Matters! Campaign

(Question No. 1212)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 February 2003:

With reference to the current Quarantine Matters! campaign:
(1) Is the total budget for the 2002-03 financial year $6.894 million.
(2) How much has been expended.
(3) Can a detailed breakdown be provided of the budget and expenditure figures including media, production, talent and non-media costs.
(4) What is the total proposed campaign budget for: (a) metropolitan television; (b) non-metropolitan television; (c) metropolitan radio; (d) non-metropolitan radio; (e) metropolitan newspapers; and (f) non-metropolitan newspapers.
(5) What amount has been expended to date on: (a) metropolitan television; (b) non-metropolitan television; (c) metropolitan radio; (d) non-metropolitan radio; (e) metropolitan newspapers; and (f) non-metropolitan newspapers.
(6) Can a copy of the complete media schedule for the campaign, including that for international in-flight television, be provided; if not, why not.
(7) Is it the case that the campaign began on 14 December 2002; if not, when did it commence.
(8) Has the campaign concluded; if so, when did it conclude; if not, when will it conclude.
(9) What is the campaign’s target audience.
(10) What percentage of the budget has been allocated to communication with overseas audiences.
(11) What assessment was made of the need for the campaign prior to its commencement.
(12) Was benchmark research undertaken prior to the commencement of the campaign.
(13) Assuming that focus group research was conducted into the advertising concept, can a copy of the report from the research company in relation to the outcomes of focus group testing be provided; if not, why not.
(14) Besides the *Quarantine Matters!* campaign, what other concepts were considered and developed.
(15) What performance indicators have been established to measure the effectiveness of this campaign.
(16) How has the effectiveness of the campaign been measured against these indicators.
(17) Is the department undertaking ongoing tracking research; if so, how often are reports received by the department and can copies of the reports received by the department be made available.
(18) When will the overall performance of the campaign be measured.
(19) How will the overall performance of the campaign be measured.
(20) What provision has the campaign made for audiences from non-English speaking backgrounds (NESB).
(21) Was an NESB consultant engaged to advise on the campaign.
(22) Was an advertising agency engaged in relation to the campaign; if so: (a) was the engagement subject to tender; if so, was the tender open or select; if not, why not; (b) which agency was engaged; (c) when was the agency engaged; (d) what is the value of the contract with the agency; (e) can a copy of the contract with the agency be provided; if not, why not.
(23) Was a production agency engaged to produce the television and/or radio advertisements; if so: (a) was the engagement direct or indirect; (b) was the engagement subject to tender; if so, was the tender open or select; if not, why not; (c) which agency was engaged; (d) when was the agency engaged; (e) what is the value of the contract with the agency; and (f) can a copy of the contract with the agency be provided; if not, why not.
(24) Did Mr Steve Irwin and/or a talent agency charge a fee for Mr Irwin’s participation in the campaign; if so, what was the fee.
(25) How many shooting days were required to film the television advertisements.
(26) With reference to the Minister’s media statement AFFA02/354WT, what ‘range of other targeted campaign activities including press and radio advertising, offshore internet activity and stakeholder relations’ does the campaign complement.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes.
(2) To the end of February 2003 $4.391 million had been expended.
(3) The detailed breakdown of the budget and expenditure for the *Quarantine Matters!* campaign for 2002-03 is:

<table>
<thead>
<tr>
<th>Category</th>
<th>Budget</th>
<th>Expenditure (at 28/2/03)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production (TV &amp; print)</td>
<td>425,000</td>
<td>428,000</td>
</tr>
<tr>
<td>Talent (TV)</td>
<td>175,000</td>
<td>175,000</td>
</tr>
<tr>
<td>Media (TV, print &amp; other)</td>
<td>4,100,000</td>
<td>2,464,000</td>
</tr>
<tr>
<td>Other wider-campaign costs (eg. distribution/storage, employees, displays, travel, accommodation, legal, information products, overheads)</td>
<td>2,194,000</td>
<td>1,324,000</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$6,894,000</strong></td>
<td><strong>$4,391,000</strong></td>
</tr>
</tbody>
</table>

(4) For the financial year 2002-03:
(a) $1.876 million
(b) $0.700 million
(c) $0.012 million
(d) nil
(e) $0.330 million
(f) $0.035 million.

(5) For the financial year 2002-03:
   (a) $1.376 million
   (b) $0.483 million
   (c) $0.012 million
   (d) nil
   (e) $0.197 million
   (f) $0.017 million.

(6) Yes. However, in-bound in-flight television announcements are not paid advertising and therefore no schedule exists.

(7) Quarantine Matters! television advertising began on 15 December 2002.

(8) No. No decision yet taken.

(9) The campaign targets a range of audiences, including broadly:
   - Australians travelling overseas, or planning to travel overseas
   - International visitors or likely visitors to Australia
   - Senders or recipients of international mail to Australia
   - Cargo importers, or industries involved with import.

(10) It is not possible to specifically quantify a monetary allocation for overseas audiences.

(11) The Quarantine Matters! campaign was developed in response to recommendations of the 1996 Australian Quarantine Review, chaired by Professor Malcolm Nairn. In relation to the introduction of television to the campaign on a trial basis in December 2002, research undertaken for Phase I indicated that many Australian residents obtained their information on quarantine through television reports, suggesting that television advertising could benefit the campaign.

(12) Yes.

(13) Focus group research has been undertaken on advertising creative concepts. Decisions about the release of research results will be made at the conclusion of the campaign.

(14) None.

(15) The Quarantine Matters! campaign is being measured for effectiveness against a range of criteria including: the level of awareness of quarantine among key audience groups; the level of awareness and understanding of items which must be declared for quarantine purposes; target groups’ intention to declare; and the level of compliance at the border.

(16) Quantitative tracking research among key audience groups has been undertaken during Phase I and Phase II of the campaign.

(17) Yes. Current campaign tracking research is being undertaken on a monthly basis during periods of high advertising activity, and less frequently during other periods.

(18) The performance of the campaign is being monitored on an on-going basis, however an end-of-campaign report will be prepared in 2004-05.
(19) See points (16), (17) and (18).

(20) A specific sub-strategy of the Quarantine Matters! campaign has been developed for audiences from non-English speaking backgrounds.

(21) Yes.

(22) Yes.

(a) Yes. By select tender.

(b) Killey Withy Punshon (KWP!) Advertising Pty Ltd was engaged for the campaign.

(c) Killey Withy Punshon was engaged in November 2002.

(d) The current contract with Killey Withy Punshon allows for billings of up to $600,100 to 30 June 2003. The amount includes some sub-contracting and the supply of some information products.

(e) Yes.

(23) Yes.

(a) Indirect.

(b) No. The engagement was a contractual matter for which KWP! was responsible.

(c) The Best Picture Show Company Pty Ltd.

(d) November 2002.

(e) The contract with the campaign creative agency KWP! allowed for the payment of up to $250,000 for the production of the television commercial.

(f) No. The contract is between KWP! and The Best Picture Show Pty Ltd and is therefore not held by the Commonwealth.

(24) No contract exists between the Commonwealth and Mr Irwin, although it is understood that a contract exists between KWP! and Mr Irwin. The Commonwealth’s contract with KWP! includes provision for $175,000 for talent. It is understood that $175,000 was paid by KWP! to the Steve Irwin Wildlife Park, an environmental trust established by Mr Irwin for the purchase of conservation land as a wildlife refuge for threatened and endangered species.

(25) One.

(26) The Quarantine Matters! campaign includes, among other activities: advertising on ethnic community radio; print advertising in a range of languages for ethnic press; off-shore internet advertising on travel sites frequented by people seeking travel information on Australia; quarantine information brochures in English and 13 other languages made available to all Australian travel agents, Australian posts overseas, in-bound tour operators; quarantine displays at key travel shows and other suitable events nationally; a comprehensive CDROM schools kit tailored to the curriculum of each State and Territory; signage at major Australian international airports; print advertising in newspapers and magazines likely to be read by people planning travel, or involved in travel, including airline in-flight magazines; quarantine information flyers distributed at passport checkpoints at airports as travellers depart for overseas; information kits for prospective international students; brochures outlining quarantine requirements for international mail senders and recipients; letters to the overseas senders of international mail from which items have been confiscated for quarantine reasons; various quarantine pest and disease identification products; brochures and posters targeting the cargo importing community; the annual Quarantine Awards; engaging with industry and commercial stakeholders to promote the importance of quarantine; significant use of promotional opportunities to gain news media coverage of quarantine seizures, penalties and upgraded quarantine facilities.
Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 1 August 2003:

(1) What consideration has been given since the 1999 report into military compensation, to shifting the funding from below the line to above the line, together with a premium-based system.

(2) For fiscal planning purposes, what consideration has the department given to the proper calculation of future liabilities under the Military Compensation Scheme and the Veterans’ Entitlements Act 1986.

(3) What was the last available estimate of each liability.

(4) Will funding for the proposed new military compensation scheme be below the line or above the line, and will it be a premium-based model.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) Military Compensation has been funded through Defence Departmental Appropriations (effectively ‘above the line’) since the 1999-2000 financial year when the output budgeting framework was introduced. Under these arrangements, Defence is appropriated on the basis of Departmental Appropriations (price of outputs), Administered Appropriations and Departmental Equity Injection. As part of this new framework, Military Compensation became part of Departmental Appropriations.

After the review of Military Compensation (the Tanzer review), the Government decided not to adopt a premium-based model in developing the new Military Compensation Scheme.

A premium-based model involves a number of organisations paying a specific amount into a common pool to cover their compensation costs. The amount is adjusted in accordance with the claims experience of the organisations relative to each other. The costs of the more expensive compensation cases are smoothed out by sharing among all the participants in the pool. In other words, a premium-based model operates as a form of insurance.

In Defence’s case, sufficient incentive is provided by Defence, or the Commonwealth, effectively, self-insuring in respect of its military compensation liability.

Moreover, an important element of military compensation liability relates to operational service (warlike and non-warlike service). In a typical service year, operational service accounts for about half the compensation liability. In operational service conditions it is not possible to simply improve occupational health and safety standards in response to increases in the premium, something which is integral to a premium-based model.

Operational service is highly unpredictable, making it difficult to judge trends relating to the incidence of service deaths, injuries and illnesses – essential in a premium-based model. Estimation of the premium would also be difficult because of the extensive time lag before members and veterans may seek compensation. It is not unusual for compensation claims for former military personnel to be ongoing some 40-50 years after the injury occurred.

(2) The Department of Defence engages the Australian Government Actuary each year to examine the liabilities arising under the Safety, Rehabilitation and Compensation Act 1988 (SRCA).

The Department of Veterans’ Affairs prepares and monitors forward estimates for Budget purposes. The forward estimates are an accurate estimate of emerging cash payments and take into account expected changes in recipient numbers, forecast rate changes and injuries or diseases for which benefits will be granted during the forward estimates period.
The accrued liability to 30 June 2003 arising under the SRCA is estimated at $1,595.4m and is based on the Australian Government Actuary's assessment of 7 July 2003. The estimate comprises two elements. The first is Outstanding Claims Liability of $1,463.6m, and the second element, which has been included for the first time in Defence’s financial statements for 2002-03, is for Administrative costs of $131.8m which covers future costs expected to be incurred in processing these claims. This latter element is consistent with the normal accounting practice for general insurers.

The Department of Veterans’ Affairs engaged the Australian Government Actuary in 2000 to examine liabilities arising under certain sections of the Veterans' Entitlements Act 1986 (VEA). The outstanding liability as at 28 September 1999 arising under certain sections of the VEA (excluding medical treatment and other benefits including service pension and income support for war widow(er)s) was $31,892m.

(4) Funding for the proposed new scheme is intended to be above the line in the sense that the funding will be appropriated to the Department of Veterans’ Affairs.

Howard Government: Corporate Branding
(Question Nos 1705 to 1722)

Senator Faulkner asked portfolio Ministers, upon notice, on 4 August 2003:

With reference to each separate agency within the Minister’s responsibility:

(1) How was the agency advised of the Government's revised requirements regarding corporate branding, logos, stationery design etc.

(2) When was that advice provided.

(3) Does the agency propose to adopt the revised requirements, or will the agency be seeking an exemption from these requirements; if the latter, from whom will the agency seek the exemption.

(4) Will the agency be seeking the advice of the Government Communications Unit in the Department of the Prime Minister and Cabinet in relation to these requirements.

(5) What is the expected time frame for the implementation of these revised requirements, if appropriate.

(6) What does this implementation entail.

(7) What is the expected cost of the implementation of these revised requirements, in terms of: (a) expendables, such as stationery; (b) consultancies; (c) software redesign; (d) capital items, such as signage; and (e) any other expected costs.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

I am replying on behalf of all Ministers.

(1) and (2) The Government’s decision on the new design was distributed electronically to all Portfolio Secretaries on 11 June 2003. On 11 July 2003 the Secretary of the Department of the Prime Minister and Cabinet also wrote to all Portfolio Secretaries.

(3) I have considered a number of requests for exemption and at this stage have agreed to 39 exemptions and for 10 agencies to co-brand or use the Australian Coat of Arms with their agency’s logo. I have declined to agree to exemption requests from 59 agencies.

(4) The Government Communications Unit is providing advice as required on the implementation of the new branding requirements.

(5) In general terms the new design will be implemented by the end of 2003. Some exceptions, such as building signage have extended timeframes.

QUESTIONS ON NOTICE
(6) The implementation requires replacing all existing logos with the new Australian Government design and acknowledging the Australian Government’s financial contribution in funding agreements and Special Purpose Payments.

(7) Significant savings will be achieved as departments and agencies will no longer require frequent refreshing of corporate logos, stationery etc.

(a) The transition costs will be minimal as the phased implementation allows existing stocks to be used with the new design being applied subsequently.

(b) The consultant cost to prepare Design Guidelines and styles for all departments and agencies is approximately $150,000. This will result in savings across government as noted above.

(c) Replacement of logos on home pages will be handled in the context of ongoing site maintenance.

(d) Replacement of building signage will be handled in the context of ongoing building maintenance.

(e) Replacement of uniforms, insignia etc will be handled in accordance with normal replacement cycles.

Howard Government: Corporate Branding
(Question Nos 1724 to 1741)
Senator Faulkner asked portfolio Ministers, upon notice, on 4 August 2003:
In relation to each separate agency within the Minister’s responsibility:

(1) On how many occasions since March 1996 has the agency entered into a consultancy contract in relation to the provision of services related to: (a) corporate branding; (b) logo design; (c) stationery design; and/or (d) related or associated services.

(2) (a) What was the date of each contract entered into; (b) who was the consultant thereby engaged; and (c) when was each of the contracts completed.

(3) (a) What was the outcome of each of those consultancies; and (b) can a copy be provided of the design or designs, logo, brand etc provided to the agency as a result of each consultancy referred to in paragraph (2) above, together with advice as to whether these designs etc were adopted and implemented by the agency.

(4) What was the cost of each of the separate contracts specified in paragraph (2) above.

(5) What was the cost of implementing the designs, logos etc specified in paragraph (3) above as being adopted by the agency.

(6) How are these designs, logos etc implemented by the agency.

(7) In relation to each design, logo etc adopted by the agency, what advice was provided by the consultant and accepted by the agency as to the reason why that design, logo etc was appropriate and recommended.

(8) If, during the period March 1996 to the present, the agency developed its own: (a) corporate branding; (b) logo design; (c) stationery design; and/or (d) related or associated services: how many staff were employed to develop (a) to (d).

(9) If, during the period March 1996 to the present, the agency developed its own: (a) corporate branding; (b) logo design; (c) stationery design; and/or (d) related or associated services: what was the cost to the agency to develop (a) to (d).

(10) If, during the period March 1996 to the present, the agency developed its own: (a) corporate branding; (b) logo design; (c) stationery design; and/or (d) related or associated services: what was the cost of implementing (a) to (d).
(11) If, during the period March 1996 to the present, the agency developed its own: (a) corporate branding; (b) logo design; (c) stationery design; and/or (d) related or associated services: how did the agency implement (a) to (d).

(12) (a) What arrangements has the agency made, or will the agency make, to protect the intellectual copyright of the logos, designs etc adopted by the agency; and (b) what is the cost, or the expected cost, of undertaking these arrangements.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

I am replying on behalf of all Ministers.

I am advised by my Department that the information sought by the Honourable Senator is not held centrally. The work required to answer the Honourable Senator would involve a significant diversion of resources within agencies and I am not prepared to authorise the use of those resources.

Shipping: Shipwrecks
(Question No. 1856)

Senator Bartlett asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 3 September 2003:

(1) With reference to all vessels sunk in Australian waters between 1936 and 1946, that the Commonwealth is aware of, can the following details be provided

(a) the location;
(b) the name of the vessel;
(c) the cargo the vessel was carrying at the time; and
(d) the flag state of the vessel.

(2) How does the Commonwealth propose to address the environmental risks posed by these shipwrecks.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

These matters are the responsibility of the Minister for the Environment and Heritage. In relation to ship-sourced marine pollution, Australia’s National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances provides a cooperative framework for preparedness and response to actual or threatened pollution incidents.

Aviation: Economy Class Seating
(Question No. 1922)

Senator Murray asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 8 September 2003:

(1) Does the department know how Australia’s national air carriers’ seating comfort, i.e. width of seat and legroom, compares with airlines elsewhere in the world for similar types of aircraft.

(2) Does the Minister recognise that Qantas, seating comfort in economy is extremely poor, and possibly unhealthy, particularly on long flights.

(3) Does the Minister intend to regulate to require much better economy class seating comfort; if not, why not.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

QUESTIONS ON NOTICE
(1) and (2) The Government does not involve itself in matters such as seating comfort, nor does my Department benchmark seating comfort conditions between carriers that service Australia. Matters of seating comfort are essentially commercial issues for the airlines and ultimately market forces will determine which carriers are best placed to meet the needs of the travelling public.

(3) The Government does regulate aircraft safety. The Civil Aviation Safety Authority (CASA) continues to be responsible for the safety aspects of airline seating.

**Agriculture: Wheat Streak Mosaic Virus**

(Question No. 1948)

**Senator Brown** asked the Minister Representing the Minister for Agriculture, Fisheries and Forestry on 9 September 2003:

In relation to wheat streak mosaic virus:

(1) Has the Commonwealth Scientific Industrial Research Office (CSIRO) or any other Australian research organisation ever obtained: (a) the agreement of the Genetic Manipulation Advisory Committee (GMAC); and/or (b) a licence from the Office of Gene Technology Regulator (OGTR), for the use of genetically modified viruses and/or plants in a genetic engineering research project entitled ‘the use of virus vectors for gene silencing in plants (virus induced gene silencing)’.

(2) Does the deemed licence issued by the OGTR, identified by the GMAC number 1507 and appearing on the OGTR’s public register as GMO Dealing Not Involving Release (DNIR) OGTR 5607, licence the use of various genetically-engineered viruses.

(3) Does the deemed licence, issued to the CSIRO, include approval for the use of ‘GMO5 Wheat Streak Mosaic Virus’.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following response to the honourable senator’s question:

(1) The Commonwealth Scientific Industrial Research Office (CSIRO) was issued an approval from the Genetic Manipulation Advisory Committee (Reference number 5607) for a proposal entitled ‘The use of virus vectors for gene silencing in plants (Virus induced gene silencing)’ on 20 June 2001. This deemed licence expired on 20 June 2003 and was replaced by licence Dealing Not Involving Release (DNIR) 185/2003 issued by the Gene Technology Regulator on 16 June 2003, in respect of a project entitled ‘The use of virus vectors for gene silencing in plants (Virus induced gene silencing)’.

(2) Genetic Manipulation Advisory Committee (GMAC) approval number 5607 has no relationship to approval number 1507. With regard to GMAC approval number 5607, both the GMAC approval and the subsequent OGTR licence (DNIR 185/2003) approve the use of a number of genetically engineered plant viruses.

(3) The deemed licence, GMAC number 5607, included approval for the use of Wheat Streak Mosaic Virus. However, the CSIRO has indicated that neither the virus nor its DNA was ever imported. The current licence, DNIR 185/2003, does not include approval for the use of Wheat Streak Mosaic Virus.

**Indigenous Affairs: Aboriginal Legal Rights Movement**

(Question No. 1993)

**Senator Lees** asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 10 September 2003:

With reference to the tendering process currently underway for Aboriginal Legal Rights Movement (South Australia) services:
(1) Given that the timeline provided by the Aboriginal and Torres Strait Islander Service (ATSIS) to the Aboriginal Legal Rights Movement (ALRM) has already been compromised by a delay in calling for tenders, will the deadline be extended to 3 months from the date tenders are called, or will the September deadline for tenders stand.

(2) Will ALRM be offered a further grant for the remainder of 2003-04 financial year.

(3) (a) Has ALRM been informed in writing by ATSIS officials that the tendering timetable also states that the new contracts would be awarded in late November 2003 and a contract would come into effect in January 2004.

(4) Can the Minister explain why that timetable has not been kept, and what timetable will now apply to the tendering of Aboriginal legal services in South Australia.

(5) Is the Minister aware of correspondence from the Chief Executive Officer of ALRM, dated 22 August 2003, which expresses great concerns about that timetable.

(6) (a) Is the Minister concerned about a tendering process in May 2003, during which ATSIS officials told ALRM that ‘this is a timetable that may be achieved. It must be understood that any of the above projected dates could change; and the part or all of the process described might not eventuate’; (b) given that the livelihood of staff and the legal outcomes for clients are likely to be affected by the tendering process and any changes it produces, how does the Minister intend to ensure that a more appropriate, clear and reasonable description will be forthcoming from ATSIC and/or ATSIS in its tendering process of this service in the future.

(7) What provision does the Minister intend to make regarding ALRM’s accrued liabilities, including staff entitlements to long-service and other leave which amount to at least $412 000, for which ATSIS and ATSIIC have been unable to make proper provision in the past.

(8) (a) Is the Minister aware that ALRM has expressed concerns to ATSIS (letter dated 4 July 2003) that its accrued and unprovided for liabilities have the potential to severely jeopardise its ability to take part in the tendering process; and (b) will the Minister take to ensure that ALRM is not severely jeopardised; if so, what will that action be.

(9) (a) Given the amount of grant funding provided by ATSIS to ALRM for the period 1 July to 31 December 2003 and the amount of those accrued liabilities, is the Minister aware that ALRM has warned ATSIS that it may have to cease trading at the end of October 2003 in order to meet these accrued liabilities; and (b) is the Minister prepared to allow this process to force ALRM to cease trading as a result of these unmet liabilities.

(10) Given that ALRM has warned ATSIS that it would require at least 8 weeks prior to that time to arrange for proper transfer of all client matters and legal files of some 7 000 matters to alternative legal providers: (a) Has ATSIS advised the Minister of this correspondence; and (b) has ATSIS or the Minister proposed any solutions as to how these issues of transition will be dealt with.

(11) Does the Minister agree with ALRM that the process of tendering should be deferred at least until the end of the 2003-04 financial year, in order that it may be undertaken in a measured and prudent manner, thus avoiding risk of harm to clients and ALRM’s employees; if not: (a) why not; and (b) how will this timeline pressure, without disadvantaging ALRM staff and clients, be addressed.

(12) Given that ATSIS and ATSIIC have described themselves to the Aboriginal Legal Rights Movement Inc. as a ‘supplementary funder of legal services’: (a) can an explanation of this relationship be provided; and (b) what, if any, consultation has the Minister had with the State Government of South Australia about its view that this is an area of Commonwealth responsibility.

(13) How does the Minister intend to ensure that the tendering process, in future, will provide adequate funding to ALRM.
(14) What steps are being considered to secure funding from other sources for ALRM in South Australia.

(15) Given that the staff and management of ALRM have chosen to maintain existing staffing levels, as far as possible, and to maintain service delivery, and that since 1992, other than slight safety net increases from 1998, staff wages have not increased: Will the Minister now ensure sufficient funding for wage parity between equivalent legal officers and para-legal officers at the Legal Services Commission of South Australia and those employed by ALRM.

(16) Did the strategic National State Directions Strategy of the ATSIS Law and Justice Branch state that the Office of Evaluation and Audit within ATSIC has estimated that the gap between the funding of the Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the funding required to make them commensurate with mainstream legal services, is in the order of $22 million.

(17) Does the Minister agree with ATSIS that ‘these funds are not likely to be made available; if they are not likely to be made available, why.

(18) What is the Minister’s response to the recommendations of ALRM (through review processes, workshops and meetings with ATSIC and through direct submissions to ATSIC since May 2001), for the creation of a National Professional Indemnity Insurance Scheme for ATSILS throughout Australia in the interests of prudent financial management, in the provision of Aboriginal Legal Services nationwide.

(19) (a) Does the Minister agree that under the ‘Enterprise Bargaining Agreement’ covering employees of ATSIC, now transferred to ATSIS, the equivalent wages and conditions for employees are to be maintained.

(20) Given that, as an ATSIS funded organisation, ALRM is not able to provide an enterprise bargaining agreement or wage increases to its staff because ATSIC and/or ATSIS does not provide the necessary funding increase to allow for such wage increases: how will the Minister ensure provision is made to rectify this inequity.

(21) (a) Is the Minister satisfied with ATSIC’s response to requests for further funding to cover the cost of an enterprise bargaining agreement, that in comparison to other under-funded ATSILS throughout Australia, ALRM is in no worse or better position than any other; and (b) does this mean that the funding provided to ATSILS across the country similarly impairs the enterprise bargaining processes these organisations.

(22) (a) Has the Minister initiated any studies to be undertaken of the effectiveness of the contestability policy of ATSIC and/or ATSIS in relation to Aboriginal Legal Services; if so:
   (i) what studies were initiated,
   (ii) when were they undertaken, and
   (iii) what do these they show.

(23) Given that the Indigenous people of South Australia are among the most disadvantaged, distressed, over-imprisoned and stressed communities in this State: what consideration has been given to the question of whether managed competition, through quasi internal markets, is a suitable response to the provision of legal services to Indigenous people.

(24) Has the Minister recognised the particular expertise and experience of the existing staff of ALRM to provide specialised legal assistance to the Indigenous client group.

(25) Has the Minister appraised whether the private legal profession of South Australia is in a position to provide such specialist services at a cost equivalent to that provided by ALRM: if so, what is the Minister’s appraisal and in regard to this, will the Minister consider the view of the office of Evaluation and Audit within ATSIC, that ALRM provides approximately $9.2 million worth of legal services per annum, at an aggregate cost of $3.4 million.

QUESTIONS ON NOTICE
(26) (a) Does the Minister favour the implementation of the Royal Commission in Aboriginal Deaths in Custody, recommendation no. 195, ‘that, subject to appropriate provision to ensure accountability to government for funds received, payments by Government to Aboriginal organisations and communities be made on the basis of triennial or quarterly funding’; (b) does the Minister recognise the advantages for Aboriginal organisations of triennial rather than annual funding cycles; and (c) what is the Minister’s intention in his oversight of ATSIS with respect to the provision of triennial funding, and the implementation of the Royal Commission’s recommendation no. 195, particularly as it applies to ATSILS.

(27) Given that the 1998 amendments of the Native Title Act 1993 provided for detailed and specific laws governing the transfer of business between Native Title representative bodies, in the circumstance that one representative body was deregistered and another one was to take its place for a particular area [see section 203FC of the Act, which allows the Commonwealth Minister to issue directions by written instrument] and in the event that the existing ATSILS do not win a contract for the provision of legal services, and in relation to the ATSIL’s contestability policy of the Commonwealth: What consideration has been given to the passing of similar legislation to that quoted above, in relation to the ongoing files held by solicitors employed or retained by the existing ATSILS.

(28) Does the Minister recognise the primary obligation and duty of solicitors employed or retained by existing ATSILS to their clients and their need to safeguard the interest of their clients in the event that ATSILS, which employ or retain them, do not obtain a contract for the provision of services.

(29) What provision has the Minister, through ATSIS, made for this scenario, having regard to the existing obligations of solicitors to their clients.

(30) What specific consideration has the Minister given to the question of allowing for the incorporation, or creation by statute, of specific corporations to carry out ATSILS functions in the states and territories.

(31) What consideration has been given, and what negotiations have occurred, for cooperation with the states on the question of creation by statute of such bodies within the states and territories.

(32) Have any studies or research been initiated on the desirability of incorporated legal practices being established by state, Commonwealth or territory law to provide for the efficient running of community controlled ATSILS.

(33) What consideration has been given to the incorporation of not-for-profit legal practices in the current Standing Committee of Attorneys-General project on incorporated legal practices.

Senator Vanstone—Aboriginal and Torres Strait Islander Services (ATSIS) has provided the following information in response to the honourable senator’s question:

(1) The decision to proceed to tender for Indigenous Legal Aid delivery was determined on a national basis, rather than targeting any specific State or Zone. The ATSIC Board of Commissioners decided on 17 June 2003 to adopt a policy direction to tender for the provision of Indigenous Legal Aid service delivery. This decision built on a previous decision by the Board, in April 2001, to adopt a funding allocation framework and a contestability policy for all Aboriginal and Torres Strait Islander Legal Services. The original proposed timetable was for tenders to be called on a State by State basis commencing during the 2003-04 financial year. This decision was made prior to the separation of ATSIC and ATSIS on 1 July 2003. Since that date, although the decision of the ATSIC Board of Commissioners has been taken into account, ATSIS has reviewed the proposed timetable to ensure that the tender process is conducted properly and is based on best practice, including outcome based funding, performance based contracts for service delivery, market testing and competitive tendering where appropriate. These circumstances will, of necessity, mean that the timetable will be extended into the 2004-05 financial year and that, consequently, full year funding
will be available for the current financial year. No decision has yet been made on when specific areas will go to tender, but if a present grantee is not the successful tenderer ATSIS will ensure that all ATSIS related legal obligations are met.

(2) See (1)
(3) See (1)
(4) See (1)
(5) See (1)
(6) See (1)
(7) See (1)
(8) See (1)
(9) See (1)
(10) See (1)
(11) See (1)

(12) ATSIC provided $43.053 million from its appropriation of $1.104 billion in 2002-03 for the provision of legal aid services through a national network of 25 Aboriginal and Torres Strait Islander Legal Services of which ALRM is the grantee service provider for South Australia. In June 2003 the ATSIC Board of Commissioners approved the expedition of tendering for the provision of legal aid services as part of the ongoing process of legal aid services reforms. The reforms have involved a progressive shift from funding legal services on an historical basis to a new basis of funding on client need and organisational performance. One of the principle strategies for advancing these reforms has been the State Directions Strategy which aims to ensure that Aboriginal and Torres Strait Islander Legal Services achieve optimum efficiency and effectiveness in client service delivery through contestability and tendering processes. ATSIS, in recognising the ATSIC Board of Commissioners decision and in compliance with the former Minister’s Directions to its Chief Executive Officer will progress the tendering process to ensure, amongst other things, that the choice of and relationship with, individual service providers will be based on best practice. This will include, as well as those processes mentioned in (1), assessments based on comparative efficiency and effectiveness, including demonstrated capacity to deliver and management structures that reflect principles of sound governance and leadership by fit and proper individuals with a record of effective management.

(13) See (12)
(14) See (12)
(15) See (12)
(16) See (12)
(17) See (12)

(18) I am advised that each Aboriginal and Torres Strait Islander Legal Service is funded to provide a service within a budget. It is incumbent on those organisations to manage their existing budgets. Under current grant funding conditions it is their responsibility to address such issues.

(19) See (18)
(20) See (18)
(21) See (18)

(22) Neither I nor the former Minister have initiated any studies of the effectiveness of ATSIC’s contestability policy in regard to Aboriginal Legal Services.
(23) The competition generated by the tendering process is intended to ensure that the best service provider is contracted to address the needs of Indigenous people within the limits of available funds.

(24) See (23)

(25) See (23)

(26) I understand that ATSIS will be giving consideration to longer term funding commitments.

(27) ATSIS has established that the transfer of client files and client personal information is governed by a range of Rules and Regulations, including the Legal Practitioners Act 1981 (SA).

(28) The obligation and standard duty of care owed by solicitors to clients is regulated by the Legal Practitioners Act 1981 in South Australia.

(29) See (27) and (28).

(30) My predecessor, the Honourable Philip Ruddock MP, issued Ministerial Directions to the Chief Executive Officer of ATSIS on the separation of powers on 1 July 2003. These Directions stated, amongst other things, that “Having appropriate regard to functional priorities and strategies for addressing relative need determined by the ATSIC Board, the CEO will take all reasonable steps to ensure that resources are apportioned between regions and communities according to demonstrable relative need, taking account of the availability of alternative services in those areas and the supplementary intent of Indigenous specific services. The choice of and relationship with individual service providers should be based on best practice, including outcome-based funding and performance-based contracts for service delivery; market testing and competitive tendering wherever appropriate; assessments based on comparative efficiency and effectiveness, including demonstrated capacity to deliver; and management structures that reflect principles of sound governance and leadership by fit and proper individuals with a record of effective management.”

(31) See (30).

(32) See (30)

(33) This is an issue which should be directed to the Commonwealth Attorney-General.

Indigenous Affairs: Mr Darryl Summer

(Question Nos 1994 and 1995)

Senator Lees asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 10 September 2003:

With regard to the current action to recover legal costs from Mr Darryl Sumner:

(1) Given the attitude of the nineteen other parties, all of whom have waived their right to costs in this matter, as well as the desirability of achieving closure on the longstanding and acrimonious Hindmarsh Island dispute: will the Minister demonstrate a practical approach to reconciliation by waiving Mr Sumner’s debt; if not, why does the Commonwealth of Australia continue to pursue Mr Sumner.

(2) Why did the Minister for Immigration and Multicultural and Indigenous Affairs not support Mr Sumner’s submission for the waiver of costs in this case.

(3) Has the Minister provided Mr Sumner a copy of his letter on this matter to the Hon Peter Slipper of 13 May 2003; if so, when; if not, does the Minister intend to do so.

(4) Can the Minister for Finance and Administration table a copy of the letter of 13 May 2003 to the Hon Peter Slipper regarding the waiver request.

(5) Has the Minister informed Mr Sumner of the reason or reasons why he did not support the waiver.
(6) Does the Minister consider, given the circumstances and the process of reconciliation, that pursuing Mr Sumner to the point of bankruptcy will achieve little other than acrimony between the Minister, the Ngarrindjerri people and Mr Sumner.

(7) Given its potential damage to these relationships and the reconciliation process: will the Minister explain the reasons for the pursuit of Mr Sumner.

(8) In the interests of furthering the process of reconciliation in Australia, will the Ministers reconsider the decision not to assist Mr Sumner, by ensuring his costs debt is waived in this case.

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

(1) (a) The Minister for Finance and Administration draws your attention to the answer to part (8) and has confirmed that the debt was not waived as, generally, waiver of debt is only given where there is a moral obligation on the Australian Government to do so. As Mr Sumner’s court costs were incurred in an action that was found to be without merit, the Australian Government is legally obliged to recover costs, and as such, there is a moral obligation on the Australian Government to recover costs.

(b) Mr Sumner owes the Commonwealth a debt of approximately $23,000 arising out of an application by him in the Supreme Court of South Australia, Action 1257 of 1999, against a total of 20 defendants comprising of various government bodies and officers in person, as well as private companies and the United Kingdom of Great Britain, all allegedly parties to genocide by construction of the Hindmarsh Island Bridge.

(c) Mr Sumner pursued this claim, although it was without merit, first before a single judge of the Supreme Court who, on 16 October 1999, refused to grant Mr Sumner the injunction he sought; then in an appeal to the Full Court of the Supreme Court of South Australia, which dismissed the appeal on 2 November 1999; and then in an appeal to the High Court, which on 15 November 1999 refused leave to hear the appeal. The courts found that there was no merit and no public interest in any of these actions.

(d) The Australian Government decided to seek costs against Mr Sumner on the basis that his litigation never disclosed a reasonable cause of action, and also on the basis that the Australian Government is under an obligation from this Parliament under the Financial Management and Accountability Act 1997 to recover debts owed to it.

(e) Mr Sumner then contested a costs order against him despite being unsuccessful in all three actions. This resulted in further hearings before the original Supreme Court judge on 13 and 19 April 2000, and on 19 May 2000, all for submissions on costs, before Justice Nyland awarded costs against Mr Sumner on 4 July 2000 on behalf of all 20 defendants. These further hearings caused additional costs for the Australian Government.

(f) Mr Sumner had legal representation throughout, and had a lawyer present submissions on why he should not have to pay costs. He therefore would have been informed throughout of the risks involved in pursuing such unmeritorious and large-scale court action.

(g) Mr Sumner’s circumstances were examined by the Supreme Court of South Australia, on 14 October 2002, and he was assessed as capable of paying $25 per week for this debt. There had earlier been negotiations in which the commonwealth offered to accept a lesser amount than the total debt. However, Mr Sumner has refused to pay anything at all. The Australian government would be prepared to review its requirements if Mr Sumner’s circumstances were to change.

(2) The former Minister did not support the submission for waiver of the debt because of the history of this matter.

(3) The former Minister was not inclined to provide a copy of his letter of 13 May 2003, which was written to the Honourable Peter Slipper in relation to Mr Sumner’s debt. I support that approach.
Such communications are internal government business, containing information that is part of the deliberative processes involved in the functions of Ministers and the Australian Government. This is the usual practice. It must be noted that the decision to decline the waiver request under the Financial Management and Accountability Act 1997 was made at the discretion of the Parliamentary Secretary to the Minister for Finance and Administration.

(4) The Minister for Finance and Administration has informed me that he will not table the letter. This document contains information that occurred as part of the deliberative processes involved in the functions of Ministers and the Australian Government.

(5) No. These reasons comprise internal Government business.

(6) I have no desire to cause any hardship, or impose any harm, on Mr Sumner and I am not aware of any damage to the relationship with the Ngarrindjeri people. As Mr Sumner’s court costs were incurred in an action that was found to be without merit, the Australian Government is legally obliged to recover costs. There is also a moral obligation on the Australian Government to recover costs, as there is a public interest in ensuring that people take responsibility for initiating and pursuing litigation found to be without merit.

(7) I am not aware of damage to the relationship between the former Minister and the Ngarrindjeri people caused by having Mr Sumner contribute some of the costs of his action. The Australian Government’s reasons for pursuing recovery of the debt are outlined above.

(8) No. The request is unable to be reconsidered by the Minister for Finance and Administration or his or her delegate unless new information is provided that reveals that there is a moral obligation on the part of the Australian Government to waive Mr Sumner’s debt.

Health: Hepatitis C

(Question No. 2005)

Senator Hutchins asked the Minister representing the Minister for Health and Ageing, upon notice, on 11 September 2003:


(1) How much unlabelled hepatitis C positive plasma from this episode was sent to the Commonwealth Serum Laboratories (CSL) and used for manufacture into plasma products.

(2) (a) Which plasma product, or products, were manufactured from hepatitis C positive plasma from this episode; and (b) how much of each product was manufactured and distributed.

(3) Was any quantity of the plasma product Prothrombinex (Factor IX) manufactured from hepatitis C positive plasma from the ‘Gosford incident’; if so: (a) would the contaminated Prothrombinex (Factor IX) have been heat-treated; (b) at what temperature would the contaminated Prothrombinex (Factor IX) have been heat-treated; and (c) would this temperature have been adequate to ensure the heat treatment completely removed any traces of the Hepatitis C virus from the plasma product Prothrombinex (Factor IX).

(4) (a) When, exactly, was CSL informed of this problem in 1992; (b) who informed CSL of the problem; and (c) how was CSL informed of the problem.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question as follows:

(1) CSL Limited (CSL) has advised that it received 37 unlabelled units of plasma from this episode, 14 of which were advised by the Australian Red Cross Blood Service (ARCBS) to be hepatitis C virus positive units.
(2) (a) CSL has advised that Prothrombinex, AHF (High Purity), immunoglobulins and albumin were manufactured from the unlabelled units of plasma.

(b) CSL has provided the following information:
Prothrombinex: 3 batches (2053 bottles), subject to recall (the ARCBS advised that 1,873 bottles were distributed). Another 266 bottles were held by CSL as part of a National Reserve. This reserve was not issued, and was also subject to recall.

AHF (High Purity): 17 individual batches. These were considered virally safe due to dry heat inactivation at 80 degrees C.

Albumin and immunoglobulin (amounts not known). Albumin and immunoglobulins were considered virally safe due to inactivation and/or purification processes.

(3) CSL has provided the following advice:
(a) Yes. See answer to question 2(b).

(b) 60 degrees C for 72 hours.

(c) Heating Prothrombinex at 60 degrees C for 72 hours was initially introduced to inactivate the AIDS (HIV) virus. It was shown to prevent the transmission of non-A, non-B hepatitis in chimpanzees, but subsequent studies showed that it was not always effective in preventing transmission in humans. Heating at 60 degrees C, together with separation due to fractionation steps, could be expected to have reduced the infectivity of any virus that may have been present though probably not to have removed it completely. CSL notes that it received no reports on non-A, non-B hepatitis associated with the use of the 60 degrees C heated product in Australia.

(4) CSL has provided the following advice:
(a) 18 May 1992.

(b) Dr. Brenton Wylie, Director, NSW Blood Transfusion Service.

(c) By letter dated 14 May 1992, received at CSL on 18 May 1992.

Agriculture: Philippines
(Question No. 2029)

Senator O’Brien asked the Minister representing the Prime Minister, upon notice, on 15 September 2003:

With reference to statements made by the Prime Minister at a press conference with Australian journalists at the Makati Shangri-la Hotel, Manila, on 14 July 2003:

(1) What are the terms of the agreement reached between the Prime Minister and the President of the Philippines on the establishment of a standing forum to resolve agricultural trade disputes between Australia and the Philippines.

(2) (a) Which country initiated the standing forum proposal; and (b) how was the proposal initiated.

(3) Were officers of the Department of Agriculture, Fisheries and Forestry present during the Prime Minister’s negotiations on the standing forum; if so, which officers.

(4) Did the Prime Minister consult with: (a) the Minister for Agriculture, Fisheries and Forestry; (b) the Department of Agriculture, Fisheries and Forestry; (c) the Minister for Trade; (d) the Department of Foreign Affairs and Trade; (e) the National Farmers’ Federation; or (d) any Australian commodity or industry group, before he agreed to establish a standing forum to resolve agricultural trade disputes with the Philippines; if so, when did he engage in such consultation.

(5) If the forum was not first discussed by representatives of the two countries during the Prime Minister’s meeting with the President of the Philippines on 14 July 2003: (a) when was the
(6) With regard to negotiations about the standing forum since the Prime Minister’s meeting with the President of the Philippines on 14 July 2003: (a) if negotiations have taken place; (i) what form have they taken, (ii) where were these held, (iii) when did they take place, (iv) which officials from which departments have been involved, (v) what has been the total cost of these negotiations, (vi) what proportion of the costs has Australia met, (vii) what outcomes can be attributed to the negotiations, (viii) what future negotiations are planned, (ix) when are negotiations anticipated to conclude; and (b) if no negotiations have taken place: (i) why not, (ii) when will they commence, (iii) what form will they take, (iv) which officials from which departments will be involved, (v) what will the negotiations cost, (vi) what proportion of these costs will Australia meet, and (vii) when will the negotiations conclude.

(7) Has the forum been established; if so: (a) when; (b) what was its establishment cost and what will be its ongoing operations cost; (c) can a breakdown of these costs be provided; (d) what is its membership; (e) how are matters brought before the forum; (f) what matters can be brought before the forum; (g) how are disputes resolved in the forum; (h) what matters have been discussed by the forum; (i) when have those discussions occurred; (j) what has been the outcome of those discussions; if the forum has not been established: (a) why not; and (b) when will the forum be established.

(8) Is the standing forum consistent with Australia’s World Trade Organisation (WTO) obligations.

(9) Have other countries made any representations to the Government in connection with the standing forum proposal; if so, (a) what countries have made representations; (b) what was their nature; (c) when were they made; and (d) what response has the Government provided.

(10) Has the Government considered establishing standing fora with other countries as a means to settle trade disputes.

(11) What implications does the standing forum proposal have for the settlement of current trade disputes with the Philippines concerning the proposed importation of bananas and pineapples.

(12) (a) What are the details of the proposal put by the President of the Philippines to the Prime Minister in relation to the importation of pineapples; (b) does the proposal involve a change to the conditions of entry for pineapples; (c) what consideration has the Government given to the proposal; and (d) what is the timeframe for the conclusion of that consideration.

(13) (a) Did the Prime Minister raise the Philippines’ recent WTO challenge against Australian quarantine in only a ‘very, very cursory way’ during his meeting with the President of the Philippines; if so, why; and (b) did the Prime Minister adopt this course of action pursuant to departmental advice; if so, which departments provided this advice.

(14) (a) What other agricultural trade matters were discussed at the meeting between the Prime Minister and the President of the Philippines on 14 July 2003; and (b) what agreements were reached.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) Agreement was reached to establish a joint agricultural forum to discuss further cooperation on agricultural issues including quarantine.

(2) (a) Australia; (b) A proposal for a senior officials level bilateral Agriculture Forum was raised in February 2002 by Minister Truss with former Philippines Secretary for Agriculture Montemayor. Philippines Agriculture Secretary Lorenzo subsequently raised with the Prime Minister during the Prime Minister’s discussions with President Arroyo in the Philippines in July 2003 a proposal for a Ministerial-level forum.
(3) No.

(4) No (the Prime Minister did not plan to raise the issue during his July visit to the Philippines. It was raised with him during the visit by the Philippine side).

(5) (a-b) See 2(b); (c-e) No other negotiations on this issue took place prior to 14 July 2003.

(6) (a) No negotiations have taken place; (b) (i-ii) it is anticipated the Forum will be discussed during Philippines Agriculture Secretary Lorenzo’s proposed visit to Australia later this year, (iii) it is anticipated that a meeting will be held involving Secretary Lorenzo and Minister Truss, (iv) still to be determined, (v-vi) costs for Australian officials, which will be met by the Government, (vii) still to be determined.

(7) No, the Forum has not been established; arrangements for its establishment are still under discussion and the timing of its establishment will be determined as an outcome of these discussions.

(8) When the Forum is established it will be consistent with Australia’s WTO obligations.

(9) No.

(10) Mechanisms are in place for consultations on bilateral trade issues with a range of trading partners. No mechanisms have been established for the sole purpose of settling trade disputes.

(11) The Forum would provide an additional mechanism for consultations on plant quarantine issues.

(12) (a) President Arroyo did not put a proposal to the Prime Minister. Secretary for Agriculture Lorenzo raised, however, the earlier Philippines proposal that Australia accept fumigation of Philippine pineapples in Australia using hydrogen cyanide as opposed to fumigating Philippine pineapples in the Philippines using methyl bromide; (b) Depending on the outcome of the registration process in Australia and equivalence of the efficacy of the fumigation process (HCN), the proposal could involve a change in conditions of entry for pineapples; (c) The Prime Minister advised the Philippines that he could not give an immediate response on the proposal but that Australia would examine the proposal. Australia’s current position is that Philippine pineapples can be fumigated in Australia rather than in the Philippines using methyl bromide. Biosecurity Australia is willing to consider alternative measures subject to scientific evidence of their efficacy; (d) Technical discussions are ongoing.

(13) (a) The Prime Minister said that Australia understood the Philippines wished to pursue the matter of differences on quarantine with Australia through the WTO, and noted that Australia’s quarantine system is science-based; (b) In line with longstanding practice, the nature of policy advice from officials is not disclosed.

(14) (a) The Prime Minister discussed the outlook for agricultural liberalisation in the WTO Doha Round in the context of Australia and the Philippines’ shared membership of the Cairns Group; (b) No further agreements on agricultural trade matters were reached.

Prime Minister and Cabinet: Institute of Public Affairs (Question Nos 2034 and 2064)

Senator O’Brien asked the ministers listed below, 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.

*2034 Minister representing the Prime Minister
*2064 Minister Assisting the Prime Minister for the Status of Women

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

The Department of the Prime Minister and Cabinet (PM&C)
(1) Nil.
(2) N/A.

The Public Service and Merit Protection Commission (PSMPC)
(1) In response to the question the Australian Public Service Commission has had no financial dealings with the Institute of Public Affairs (IPA)
(2) Not applicable

The Office of National Assessments (ONA)
(1) ONA has no record of any payments to IPA during the timeframe 1996 – 2003.
(2) Not applicable

The Office of the Commonwealth Ombudsman
(1) The Office has made no payments to the Institute of Public Affairs in any manner whatsoever over the period in question.
(2) Not applicable

The Office of the Inspector-General of Intelligence and Security (OIGIS)
(1) (2) Nil

The Office of the Official Secretary to the Governor-General (OOSGG)
(1) (a) Nil  
(b) Nil  
(c) Nil  
(d) (i) $20.70  
(ii) July 1999, November 1999  
(iii) training on accrual budgeting  
(e) Nil  
(f) Nil  
(g) Nil  
(2) Not applicable.

The Australian National Audit Office (ANAO)

The financial system previously maintained by the ANAO was decommissioned from 30 June 1998. It is therefore not possible to definitively state that no payments were made to the IPA in the 1996-1997 and 1997-1998 financial years. However, in view of the ANAO business activities and out records since 30 June 1998, it is unlikely that any services would have been obtained from the IPA before 30 June 1998.

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(2) The ANAO has no record of engaging the IPA on any research project or for consultancy services.

**Transport and Regional Services: Institute of Public Affairs**

(Question Nos 2035 and 2056)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services and the Minister for Local Government, Territories and Roads, 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 Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) and (2) There are no records of any payments being made to the Institute of Public Affairs by my Department or its agencies.

**Foreign Affairs and Trade: Paper and Paper Products**

(Question Nos 2246 and 2248)

Senator O’Brien asked the Minister representing the Ministers for Foreign Affairs and Trade, upon notice, on 14 October 2003:

For each of the financial years 2001-02 and 2002-03 can the following details be provided in relation to paper and paper products:

(1) How much has been spent by the department on these products.
(2) From which countries of origin has the department sourced these products.
(3) From which companies has the department sourced these products.
(4) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by country.
(5) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by company.
(6) What steps has the department taken to ensure that paper and paper products sourced by the department from other countries comply with the ISO 14001 environmental management system standard.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs on behalf of the Minister for Trade and himself to the honourable member’s question:

Expenses on paper products is not an identifiable item in the Department of Foreign Affairs and Trade’s financial management information system, but rather is recorded as a portion of stationery expenses. The current contracted supplier for office consumables in Australia is Boise. Canprint was also a supplier until 13 August 2003. The Department sources products in all the countries where it has diplo-
matic missions. Further discovery and provision of greater detail than that provided would cause a significant diversion of resources, which I am not prepared to authorise.

**Trade: Gambling and Betting**  
(Question No. 2312)

**Senator Harris** asked the Minister representing the Minister for Trade, upon notice, on 16 October:

1. Are gambling and betting services excluded from: (a) Australia’s commitments under the General Agreement on Trade in Services schedules in relation to "other recreational services"; and (b) the proposed free trade agreement with the United States of America.

2. What is the Government’s position in relation to the World Trade Organization’s establishment of a trade panel to investigate a complaint by Antigua and Barbuda against the United States of America in respect of the supply of cross-border online gambling and betting services.

**Senator Hill**—The following answer has been provided by the Minister for Trade to the honourable member’s question:

1. (a) Yes. (b) The negotiations for a free trade agreement with the United States include negotiations on trade in services. The negotiations have to date largely focused on the general structure of the commitments in the services areas, and key market access priorities for both sides. The negotiations have not to date advanced to the stage of detailed consideration of commitments in all areas of services trade, and there have been no detailed discussion of the way in which gambling and betting services may be dealt with in the agreement.

2. The Government decided that Australia would not become a party to the dispute initiated by Antigua and Barbuda against the United States in the World Trade Organisation (WTO), so we will not be presenting arguments on issues associated with the application of trade rules to the gambling industry in the United States.