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Thursday, 27 November 2003

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

DEPARTMENT OF PARLIAMENTARY SERVICES

The PRESIDENT (9.31 a.m.)—Order! Senators will recall that, by resolution of both houses in August, a new Department of Parliamentary Services will be established from 1 February 2004. The new department will fulfil the functions of the current Joint House Department, Department of the Parliamentary Library and Department of the Parliamentary Reporting Staff. The Speaker and I decided that the position of the secretary to the new department would be advertised nationally. A selection and interview process was subsequently conducted by the Parliamentary Service Commissioner, Mr Andrew Podger, and a former Parliamentary Service Commissioner, Ms Helen Williams. A report was provided to the Speaker and me in accordance with the relevant act.

A number of strong candidates were considered, and our decision as Presiding Officers was not easy. I advise the Senate that the Speaker and I have decided to appoint Ms Hilary Penfold as the secretary to the new department. Ms Penfold will be well known to many senators as she has held the position of First Parliamentary Counsel for the last 10 years, with great distinction. She is a Commonwealth Queen’s Counsel and was awarded the Public Service Medal in 2000. Ms Penfold will take up the substantive position of secretary on 1 February 2004, in accordance with the resolutions, but I expect that she may be working in the parliament earlier in the new year during the transitional period.

The abolition of the joint departments means that two significant servants of the Australian parliament will be leaving the Parliamentary Service early next year. Mr Mike Bolton has been Secretary of the Joint House Department since 1986 and has made a very significant contribution to the management of joint services. Mr Bolton’s efforts in moving the whole parliament from the provisional building to the new Parliament House in 1988 deserves particular mention. It was because of his dedication to the institution that this massive move took place so smoothly. Mr John Templeton has been Secretary of the Department of the Parliamentary Reporting Staff since 1990. He has also been successively Acting Parliamentary Librarian and Acting Secretary of the Department of the Parliamentary Library since 1991. Mr Templeton has done much to improve the efficiency of the Hansard, broadcasting and IT services, which are so vital to the functioning of the parliament, and significantly improved management practices in the Library.

I take this public opportunity of thanking Mr Bolton and Mr Templeton for their valuable service to the Australian parliament. I also take this opportunity to congratulate Ms Penfold on her appointment, and to invite all staff to work with her at their customary high professional standard in the new and streamlined administrative arrangements for our parliament.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.34 a.m.)—by leave—I move:

That the Senate take note of the statement.

Mr President, I thank you for reporting to the Senate about Ms Hilary Penfold’s appointment. On behalf of the opposition I congratulate Ms Penfold on her appointment to this important position as Secretary of the new Department of Parliamentary Services. It is, of course, a position where senators and members inevitably will have contact with
Ms Penfold. You are right to say that the experience that many senators have previously had with Ms Penfold in her position as First Parliamentary Counsel has been very positive. I think this is a very good appointment for the parliament.

I would also like to associate the opposition with the remarks that you have made in relation to the service of Mr Bolton and Mr Templeton. We had a brief opportunity, as you would be aware, to say some words about Mr Bolton’s impending retirement at the recent meeting of the Senate Finance and Public Administration Legislation Committee during the Senate estimates hearings. Can I reiterate our comments in relation to Mr Bolton and say that Mr Templeton has also given very long, distinguished and meritorious service to the Australian parliament. Certainly, both of these officials leave these posts with very best wishes for the future from opposition senators and, I am sure, all senators in the chamber.

**Senator Hill** (South Australia—Leader of the Government in the Senate) (9.37 a.m.)—I will be very brief. I am sorry I was tied up and missed your statement, Mr President. I actually heard your statement, but I was not in the chamber. On behalf of the government I congratulate Ms Penfold and thank Mr Templeton and Mr Bolton. It is quite a momentous day in the history of this institution and its structures. We are confident that the decisions that have been made will provide for not only efficiency but also the sort of support that the parliament needs for the decades to come. In congratulating Ms Penfold, I join with the sentiment of your statement in recognising the long and meritorious service of Mr Templeton and Mr Bolton. It is very much appreciated by the government side.

**Senator Robert Ray** (Victoria) (9.37 a.m.)—The appointment of a new secretary of the Department of Parliamentary Services is the preserve of the Presiding Officers, and I think they have done a very good job in appointing Ms Hilary Penfold. I think she will do the job fairly easily, as someone who has been chief parliamentary draftsman and had to deal with ministers from both sides over the last 10 years, who cannot usually understand legislation. She has jumped that hurdle, so this is going to be an absolute pushover. But there will be a challenge for the new secretary. In the next financial year, as you know, Mr President, savings of $6.2 million have to be found. That is a big challenge for any new departmental secretary. Given the nature of the department, it is not easy to find and drive savings. So I hope we will all cooperate in her endeavours, as supervised by the Presiding Officers, to achieve a balanced budget by the end of the following financial year.

This is my only opportunity to thank Mr Mike Bolton for his efforts. I do not think people here realise what a breath of fresh air Mr Bolton was when he came to the job in 1986. He brought about a lot of change and—I hesitate to use the word ‘reforms’; I think a better word is ‘improvements’—to the running of Joint House, and to Parliament House as a whole. He was a great activist in changing things for the better—not just change for change’s sake. As he comes to the end of his career, he can reflect that he has served this parliament well in his Joint House role for the last 17 years, and those years have seen immense changes for the better.

I will personally miss the other person who is going, John Templeton, a bright and breezy character who has also done an excellent job in this place and who always likes—in a limited way, because he is busy—to stop and have a word to senators as he beats a path from the Library to Hansard and back five to 10 times a day. He always has some
comment, as you would appreciate, Mr President, on Australian Rules football, which his son stars at. He went through that horrible bushfire period and was burnt out, but it was as though it did not happen. He did not morosely reflect on it; he got on with his life and rebuilt it.

We all sincerely wish Mr Bolton and Mr Templeton a very good future. They have put an enormous amount of work and effort into assisting this parliament.

Senator HARRADINE (Tasmania) (9.40 a.m.)—I would like to associate myself with the remarks that have just been made. The transfer of the combination of the departments is a key time. Nothing has been said by you here, Mr President—but it has been said before—about Hansard. It is going to be a sad day when Hansard loses its identity. I would like to wish Hilary Penfold all the best in the task that she has. As has been mentioned, she has the very important task of making those savings and ensuring that the staff are not thereby put under any more pressure than they are now. The staff of the Parliamentary Library are excellent. I have just had an example of that, overnight. The Joint House Department has been running quite smoothly under Mike Bolton. So my very best wishes to both John Templeton and Mike Bolton and to the new secretary of the expanded department.

Question agreed to.

COMMITTEES
Selection of Bills Committee
Report

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.43 a.m.)—by leave—I move:

That the order of the Senate of 26 November 2003 adopting the 15th report of 2003 of the Selection of Bills Committee be varied as follows:

In respect of the Financial Services Reform Amendment Bill 2003:

(a) the Corporations Amendment Regulations 2003 (No. 8), as contained in Statutory Rules 2003 No. 282, and Batch 6 of the Corporations Amendment Regulations (draft regulations), and any amendments proposed to the bill, also be referred to the committee; and

(b) the committee report on 2 December 2003.

Yesterday a Selection of Bills Committee report was tabled in the Senate which was relatively unique in that it referred to a very important bill, which amended the Financial Services Reform Act, to a committee but it did not have a reporting date. This motion seeks to give the committee that the legislation is referred to, the Economics Legislation Committee, a reporting date of early next week. The reporting date has been a matter of some contention. That is probably the reason why there was no reporting date in the Selection of Bills Committee report in the first place. We have sought to get an agreement on a reporting date but, as it is with these things, sometimes you cannot get agreement.

The ALP have made it clear in negotiations that they would like to have a reporting date of the first sitting week of next year, which is 10 February. The government has always indicated to the Australian Labor Party and to all other parties that this is one of the bills that we require the parliament to pass before Christmas. We did publish—as leaders and whips know—a list of bills, which were characterised in two ways. They were ‘high priority’ bills and ‘highly desirable’ bills. This bill has been on the high priority list since the inception of that list.

Leaders and whips were asked by me about a month ago to come back to the government to consult on this list. It was a list, as Senator Bartlett has said, that contained 56 individual bills. It was to some extent a list that we needed to negotiate and discuss.
and get feedback on. Senator Ludwig has taken a very constructive approach to negotiating that list and come back to the government in very good faith about a fortnight ago and said, ‘Here are some bills that the opposition will have a lot of difficulty dealing with this side of Christmas. Could you consider delaying them till next year?’ I think it is fair to say that at the request of the Australian Labor Party something like half a dozen bills at least have already been taken off the priority list and there are probably at least another half a dozen that will be taken off during the discussions as we get closer to the pointy end of these sittings. At no stage did the Australian Labor Party, through their manager, come to the coalition or to me as manager and say, ‘We’re going to have problems with that bill. The shadow minister might want to have an inquiry or a reference.’ That still has not happened, I might say.

Could I also say that I went to Senator Conroy, the shadow spokesman in this matter, at the time that the financial services amending legislation came in and I said to him, because he was my shadow at that stage, ‘Look, we’ve got to get this thing through before Christmas. If you want to have an inquiry, let’s get it on foot now. Let’s do it now.’ This was back in August when we brought through a package of amendments and the legislation. At no stage was any indication given to me when I was the—

Senator Conroy—I do not want you to misunderstand, Mr President. I am accusing Senator Ian Campbell of being a blatant liar.

The President—You have to withdraw that.

Senator Conroy—I will happily withdraw.

Senator IAN CAMPBELL—Senator Conroy now, in his subtle, gentlemanly way, wants to dispute this. There is now a dispute about whether I went to him when the Financial Services Reform Act amendments came forward and suggested that we needed it before Christmas, and if he wanted to have an inquiry have it early rather than come to us in the last week and say, ‘Let’s have an inquiry and report next year.’ He is now disputing that in his gentlemanly, subtle sort of way.

Let us put that dispute to one side. There were proper processes involving Senator Ludwig as the manager—and an exceptional manager, may I say, and I do not say that for any cheap divide and rule political reasons. He is an exceptional manager of a party which, quite frankly, is at the moment dysfunctional. How Senator Ludwig can manage what is effectively a rabble on the other side I am in awe at, but he does it; and he clearly does not do it when he has got shadow ministers like Senator Conroy, who will not even talk to him, to deal with. The breakdown in communication here is caused by the shadow minister, who sits next to Senator Ludwig, who clearly has given him no steer at all on this particular important piece of legislation.

Let us turn to this piece of legislation. This is a housekeeping bill that moves a series of amendments which affect the Financial Services Reform Act. Most senators who have taken an interest know that the financial services reforms which are the subject of this legislation and the subject of the act come into effect on 11 March 2004. There are
thousands of financial services organisations and individuals who are required by the law to be licensed by that date or they are out of business. There are thousands of accountants, life insurance people, general insurance people, banks, building societies and credit unions—anyone who wants to provide financial services in this country after midnight on 11 March needs a licence. I and the Treasurer have been encouraging people to get licensed and to have their application in before Christmas so it can be processed by the Australian Securities and Investments Commission. My successor in the portfolio, Ross Cameron, has recently reiterated that need for people to put their application to ASIC before Christmas. And, to be fair to them, those thousands of people across Australia need the certainty of the law.

These amendments, most of which have been lying on the table since June—the great bulk of amendments by August and one or two later than that—have been available for public scrutiny for that entire period. We could have had an inquiry back in June; we could have had an inquiry in August; we could have had an inquiry two weeks ago when Senator Ludwig got the list with the financial services reform bill on it, when he went to Senator Conroy and to all his shadow ministers and said, ‘Have you got any concerns about this?’ Three weeks ago Senator Conroy could have said, ‘Look, I think I’m going to have an inquiry into this. Let’s let the government know.’ I would have said, ‘Great, let’s do it.’ But what do we do? We come along here yesterday and we get told we are going to have an inquiry, almost within a week of the scheduled sittings ending.

Senator Conroy is going to get up in a minute and say that he has some deal done with Ross Cameron and that Mr Cameron agreed that we would have these hearings next year. Mr Cameron has told me that he was told by Senator Conroy that there is no practical chance of being able to deal with this legislation this year, that the sittings are concluding next Thursday and that the committee could not possibly come together. Mr Cameron was told very clearly that there was no practical chance to deal with them this year. I think Senator Brandis was part of those discussions. If you work on the basis that we are leaving here on Thursday afternoon next week and that you do not want to be bothered pulling the committee together, and if you work on the assumption that the people who Senator Conroy has listed are those he would like to come to the inquiry but who he could not be bothered bringing to the parliament, then it is reasonable for the Parliamentary Secretary to the Treasurer to assume that he is wasting his time pushing to get this done before Christmas. The reality is that all the leaders and whips have been told that we have this list of high-priority legislation, of which the Financial Services Reform Act amendments are a part, and that we have made it clear at all meetings that we have to deal with this legislation before Christmas, and if it needs an extra sitting week we will do that.

Senator Mackay, the opposition whip, said, ‘If we have to sit a third week or a fourth week, that’s fine, we’re ready to do it.’ So there is a general agreement that we are going to be here for some extra time. If we need some extra time to deal with the financial services reform legislation, to ensure that people get licensed and know what the law is going to be before they put their application in so that we can have a smooth transition to this new world-leading regulatory regime, then so be it. Each and every one of the organisations that Senator Conroy has listed that he wants to give evidence to the committee would be available to come to this parliament tonight, if they were asked. Most of them were in the building yesterday—I
have spoken to a number of them myself. Most of them are apoplectic about the possibility of Labor referring this to a committee and there not being certainty in the law until halfway through February—less than a month from the actual start-up date. Most of them regard it as absurd or that Senator Conroy has flipped, does not understand or has a base political motive and that this is some sort of act of political bastardry. They are the sorts of things that people are thinking. All of these people are very keen to come to the committee. They do not want a committee hearing but all of the people—

Senator Ludwig—Mr President, I rise on a point of order. You indicated earlier that Senator Conroy had used unparliamentary language. I am not entirely positive, but I am willing to take the lead from you, Mr President, as to whether the comments by Senator Campbell were in fact unparliamentary in relation to Senator Conroy. There was an imputation directed at Senator Conroy, and I ask you to at least consider that.

The President—I am going to rule on that. The fact is that the words used by Senator Campbell were not directed at anybody, but even so I believe they were unparliamentary and I would ask you to withdraw, Senator Campbell.

Senator Ian Campbell—I am very happy to withdraw. It certainly was not directed at Senator Conroy; I was referring to a particular act and giving it a term that was on the edge of parliamentary language. I agree that it was unparliamentary, and I withdraw. This is a matter that the parliament can deal with. It can be dealt with properly and diligently. We can have a committee inquiry.

For history’s sake, I remember in 1990 when Labor brought into this chamber the corporations legislation, establishing the whole new Corporations Law, the whole new national scheme, and establishing the Australian Securities Commission for the first time they came to us and said, ‘We need this before Christmas,’ because they wanted to establish the commission in 1991. The coalition said, ‘You will have our full support.’ This was to establish the Australian Securities Commission and everything that is now part of our Corporations Law. We said, ‘Yes, we would like to help you in that, but we think we should have a parliamentary inquiry,’ and it was referred to what was then known as the Cooney committee, which was probably the Standing Committee on Legal and Constitutional Affairs at that time. We had a hearing all Wednesday night. Tony Hartnell, the chairman elect of the ASC, came and gave evidence along with officers of the Attorney-General’s Department—the Business Law Division was in that fine department then—and we spent the entire evening going through all of the issues. We made a report back to the parliament a day later and the legislation went through with some vigorous debate. But it went through, and it was indeed through in time for Christmas.

The legislation we are now dealing with is but one section of the responsibilities of the Australian Securities and Investments Commission, as it is called now. It is a piece of housekeeping legislation which changes in some small respects the Financial Services Reform Act, and we are being told by Labor that we cannot deal with it in the next fortnight and that we will have to wait until we come back after a long recess. This is simply not acceptable. It is entirely practical and reasonable to have an inquiry in the next few days. It is entirely practical that we deal with this legislation before Christmas and it is entirely fair to all those good people across Australia who have put all the hard work into seeking to comply with this world-leading, new regulatory arrangement.
I urge my colleagues to support this proposition. I particularly urge Senator Andrew Murray, whom I congratulate for engaging with me yesterday constructively in discussions on this; and I thank Senator George Brandis and the parliamentary secretary for their efforts in trying to assist to get this government legislation through in a timely manner. I heard by way of interjection the opposition whip say that I had cancelled some meeting. Just for the record, Senator Ludwig and I had a private and informal discussion about possibly having another leaders and whips meeting at a time when we need one. Today was scheduled, but the reality from a management point of view is that we have a program that takes us right through today, tonight and tomorrow, and we will have another leaders and whips meeting at a time when we need it. If the Manager of Opposition Business thinks we need a leaders and whips meeting today, tomorrow or in the next half hour, we will call one, but there is no necessity to have one today and we will schedule one as soon as we need one. But we are not going to have meetings for meetings sake.

I welcome the cooperation and assistance that the Manager of Opposition Business has given to me and to the government with the program. I thank the cross-bench senators as well. I thank Senator Bob Brown for the constructive approach he has taken to managing the program, and I thank the Democrats. They have all been constructive in this process, and I look forward to working with them over coming hours and days to make sure that what is always a heavy couple of weeks at the end of the sitting period is managed effectively and efficiently.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate (10.00 a.m.)—I rise to speak to the motion. It is unusual to bring what are normally private discussions in relation to bills into the chamber to discuss, but it seems that Senator Ian Campbell has taken that initiative and that there now needs to be at least some clarification of how this process actually works for people to make sense of it. What happens in relation to the priority bills list about this time of year—and sometimes towards the end of June as well—is that the government provides, usually upon our instigation or request, some sense of what legislation is left on the program that is able to be dealt with. We do that outside of this chamber to ensure that we can at least see what bills the government may wish to deal with and to have at least a measure of understanding as to how many bills we can potentially deal with in the time available and what hours of business we may need to deal with the relevant bills. We may also indicate to the government those bills which could require a significant amount of time in debate or which could otherwise cause the program not to be dealt with in the available time.

That process takes a number of iterations. The first iteration is usually an extended list by the government—what I would call an undoable list. It is a long list; in fact you could almost call it a bit of a wish list. But it causes my office to then contact all our shadows and find out what stage the bill is at—whether it is in the House or whether it has been introduced into the Senate, where the shadow is up to with it as to whether it has been referred to a committee or the shadow intends to refer it to a committee, whether the shadow has spoken to it in the other place, whether the shadow has taken it to shadow cabinet or even to caucus or whether there has been an internal committee, a review or a number of other internal processes that I am careful not to discuss at length here. This allows us to at least form a view about the particular bill. It also requires the relevant advisers and the shadow to be familiar with the bill, which in fact they may
not have to be familiar with for some time because it could be a wish list. So we annoy, if that is the right word, the shadow and their advisers to get some response in relation to a particular bill for us to be able to respond reasonably to the government’s request to consider their priority bills list. But, as I have said, it provides a number of iterations. We then give an early indication of which bills we think are potentially doable and which bills are not.

We also indicate clearly which bills we think are on nothing short of a wish list of this government. We then go through a couple of iterations where we try to hone the list down to a reasonable level—which we may still think is not doable but which the government starts to say are priority bills. What we generally try to do is ask the government whether the bills have start-up dates—as in this instance where the government requires them before Christmas—or what urgency they might wish to attach to them. What the government tends to do in response is list them in order from most important to least important. Of course, there is always a bit of swapping about as well. We then try to go back to the shadows again. So you can see this process of going backwards and forwards becomes exhausting not only to my office but also to the shadow’s office and then back to the government.

We also clearly say to the government—and I think Senator Campbell loses this point sometimes—that it is an indicative list. The government usually writes that on its list because it sometimes finds bills it wants to add, as it has in this instance with the ASIO and the Criminal Code bills, which were not on earlier lists but which the government has indicated are urgent bills that need to be dealt with. So I have to go through the process I described earlier again. You can see that the shadows might get a bit annoyed when they find that bills were not on a list but are back on the list, but they take it in their stride.

I then also say in response that it is not an agreed list because we are not in a position to agree on a list. However, we can generally indicate—I will use the phrases I use because, although I did not want to bring them into this chamber and discuss the internal way I deal with a priority bills list, it seems to be the only way to put our approach on the record—the bills that are going to take a very long time to debate which, in a sense, means that we will be unable to deal with them in the legislative program available. For bills that I definitely know will be referred to a committee, because they have already been referred, I then go on to say what their out date is so that we have an idea of when they might be available for debate and whether the shadow might be ready to debate the particular bill. Of course, in this chamber it is also a matter of how many amendments are proposed, how long the committee stage will be and what the Greens, the Democrats and the Independents have to say on that. So we have to get a sense of how long the debate might be in relation to some of those factors in order to be able to reasonably inform the government of what the debate time will be from our perspective and whether or not it would be possible to debate it before Christmas. That is for that list.

There is also the second or third order, where we think they should not be dealt with before Christmas. We will then clearly indicate where the shadow has made that view known to me. Whether the government accepts that view is a matter for the government. In relation to a couple of bills they say, ‘No, they’re matters that we’re going to deal with before Christmas whether you like it or not because they’re a legislative priority for us.’ So, if I am giving you the impression that there is an agreed list, that is not correct. We have always said that we will deal with
them as best we can. That could also include adjourning them at the second reading stage. That has caused angst in the past. And, if I remember correctly, the government took issue with us doing that with the baby bonus bill, I think it was, just before Christmas. There was an amendment and it looked like it was going to be a long debate. Our side agreed—and I think the minors and other parties agreed with us—that in fact it was going to be a long debate and it was best to adjourn it. The government took issue with that because they said at that time that it was not part of the understanding they had to deal with it before Christmas. We did deal with it before Christmas. We adjourned it because it was going to be a long debate, so it went off the legislative program. If I recall correctly, I think Senator Ian Campbell took strong issue with that at the time. But it went.

What I have always been careful to say is that the list is not agreed to. The government have always indicated it is their priority, not the opposition's priority. It is an indicative list: bills can be added and bills can be removed at the government's prerogative. In fact, dealing with the legislation can include adjourning it at the second reading stage and sending it to a committee. The committee or the shadow will then tell us when the report date will be and when it will be available. Otherwise, there are a couple of things that people can do with legislation, but I will not air them in this chamber.

So, Senator Campbell, in relation to this particular piece of legislation I can say—and I normally would not bring it in here—that I think you have missed some of the steps in this process. My office had been advised that this bill was potentially one of those bills that could go to a committee. But there is no point in telling you about that because we are still dealing with the legislation. If I am advised that it will go to a committee, then of course, from my perspective, it is not then available for debate during the time that it spends in committee. As to when the committee might otherwise meet, how long the committee will be and when the committee will report they are not matters for me to determine. These issues are, I suspect, for this chamber, the shadows, the government and the minors to work out. They are certainly not matters in which I am going to intervene. I am open to correction but I am sure that the PLO had been advised that this bill was potentially going to a committee. As I understand it, that advice had been conveyed from my staff to the PLO. That is a minor point. It is still an issue that the bill could potentially be removed from the program. If the government want to have an argument about bringing it back, it is still a matter that is outside of my control. Our side need to ensure that the government understands that. I do not know whether Senator Ian Campbell quite understands that point.

We do indicate to Senator Campbell those bills that I know we clearly have a problem with. Whether he now wants me to tell him about how we might internally decide what we are going to do with other bills, I do not know, but this starts to get to the tactics of the opposition that I am not going to share with Senator Campbell. If I were to get to the point of saying that it potentially might go to a committee, and it does not, what would be the point of saying that? It is not a point that you have to flag in an overt way. In return, I ask the government to prioritise the bills, I ask them to tell me the ones that they essentially want before Christmas and Senator Campbell gives me a priority bills list, which is quite long and fulsome. Quite frankly, I do not believe that it is essential, from the government’s perspective, that all of those bills be dealt with before Christmas. It is a priority bills list. And we know from experience that when we get to Thursday morning at three, four, five, six, seven or eight o'clock—
or nine o’clock in some instances in the past—some bills just drop off the program. The government abandons them and decides that it is probably not worth keeping people much longer to deal with them or the minister decides that they are no longer that urgent.

I suspect that Senator Ian Campbell is only informed by his ministers as to the urgency or not of bills. I think it has been important to at least set all this out, although it is not a matter I really wanted to bring into this chamber and to tell the government about how I address this job. There has been very good discourse between Senator Ian Campbell and me to ensure that the program is reasonable and that the relevant bills that can be done that are urgent can be dealt with in the available time. But it seems that we have a different view of what ‘dealt with’ means. It is worth while at least—and I think I have made it clear in the past—to make it clear on the record what ‘dealt with’ means. It does include sending bills to committees, it does include adjourning them, it does include adjourning them at the second reading stage or the government withdrawing them because the shadow minister and the minister have had a talk and decided—outside of my area of influence—that they might want to do a deal and not deal with them. The government sometimes speaks to the Democrats or the Greens. I do not want to know why a bill suddenly disappears, but it might be because you have got a deal to deal with it next year. I might like to know that, but I am sure that I am not going to be told, and so they go off the list. That is how the list tends to move along. But let me make it clear that both of us know there is no agreement on any of this because it is fluid. If Senator Campbell thinks there is, it is worthwhile making the point absolutely clear and on the record. As I said, I do not think it is a matter that should be brought in here, but it seems Senator Campbell wants to.

Senator Campbell indicated as I walked into the chamber that, from his perspective, there was no need to have a leaders and whips meeting. If the program looked like it would run, I would not stand in the way if Senator Campbell did not want to have a meeting but, having had this debate, I think we need to have one. Otherwise we would have spent 45 minutes—and we will be spending a little longer—dealing with a matter that I do not think should have been dealt with in here. If we need a leaders and whips meeting to ensure that we do not do this again, it is important that we have one. We need to ensure we have a clear understanding of what these things mean.

Senator Murray (Western Australia) (10.16 a.m.)—I rise to speak to the motion. The Financial Services Reform Amendment Bill 2003 is part of a long process in which Senator Campbell, Senator Conroy and I have been intimately involved—in committee work, in consultation and in debate in this chamber. I have consistently said over the years that this package of legislation is one of the more gutsy things that the government has done, as its range and scope of change are such that they shake up the commercial lives of some of the government’s strongest constituencies. Nevertheless, it is a matter that has been advanced in the public interest.

Within that approach, as far as I am aware there has been very strong support not only from the coalition, the Labor Party and the Democrats but also from all the senators from other parties and from the Independents. It is wrong to verbal Senator Conroy over these matters with respect to the tranche of legislation we have seen passed before us. Labor have been amongst the strongest supporters of the principles and purpose that lie behind the government’s legislation. I have
fairly good senses in these matters and nei-
ther smell nor see any politics or malfea-
sance in these matters.

The original Financial Services Reform
Amendment Bill 2003 has been amended
extensively by the government, and the regu-
lations that fill out the bill and make it mean-
ingful have been produced and provided to
the Labor Party in a series running from
about August to about two weeks ago. Labor
have said that they believe that those
amendments and regulations are of such sub-
stance that they need to be examined at com-
mittee. The Democrats are extremely strong
supporters of the review process, and we
would never dream of opposing any review
of matters of this kind. So we support the
reference to committee.

The question then was the date that the
committee should report. It was Labor's
view that it was impossible to deal with the
matters in substance—to advertise the issues,
to get submissions in full and get a proper
inquiry going—in the short time available to
enable the bill to be passed by 4 December. I
must say that, when the government origi-
nally laid down the Senate program, I
thought it was a remarkably early date for
the Senate to close. For the record, I would
remind the media and the public that the leg-
islative program and the sitting pattern are
set by the government.

The issue always on my mind was the date
of 11 March 2004, which was the date that
Senator Campbell said that licence registra-
tion had to occur and compliance had to
commence. I recognise that there are still
very strong forces resisting some elements of
the bill and they are yet to make decisions on
these matters. When I was advised that the
bills were to be referred, and the various offi-
cers from the government and Labor sides
started to come to me, I said firstly that I
would not withdraw support for the reference
to committee. Secondly, I said that I did not
object to their going all the way through to
next year if that was what was necessary but
that I was extremely concerned about the
date of 11 March. I thought it might be best
if the original bill were debated and passed
and then the government amendments were
put as a subsequent bill. That would have
given some certainty, but I said that with the
distinct proviso that I had not examined in
full the interaction of those amendments with
the original bill and that judgment of whether
that outcome was a practical or a good one
was one that the government should make.

The government advised me that they did
not think it could be separated out on that
basis. They thought that the government
amendments and the original bill had to be
dealt with concurrently and that what I had
proposed was impractical. I was then asked
whether I would support a shorter inquiry
and reporting date. I said yes, I would, but I
could not guarantee a number of things out
of that—that that was a practical outcome
from the perspective of the secretariat and
the chair of the committee, that is, that the
witnesses could be reached in time and that
they would feel qualified and able to exam-
ine the matters in enough depth to be able to
appear or that they would be willing to ap-
pear. But I said that from my perspective, if
they wanted me to be available for a hearing
and if they wanted me to consider a report
next week, I would be willing to be helpful.
However, I made it clear that, if the report or
the process was found to be inadequate, I
would not object to an extension of time for
that report and, if that was to occur, I would
look for the guidance of the Chair of the
Senate Economics Legislation Committee,
Senator Brandis.

The earliest date I considered it possible
to conduct a short inquiry and produce a re-
port was at close of business Tuesday or
early Wednesday, which would then enable
the bill to be debated at some time later on Wednesday or on Thursday. Once again, I said I would give no guarantee as to Democrat support as to where the bill would be placed in the business on Wednesday and Thursday. I would not agree to any government proposal for a guillotine on that bill and I certainly would not interfere with the development of debate or the extent of that debate and I could not guarantee, as a result, that the bill would pass, because it would not be my intention to interfere with the Senate process.

So, where are we as a party on this matter? I met yesterday with the parliamentary secretary who has responsibility here, the shadow minister Senator Conroy, and the Chair of the Senate Economics Legislation Committee, Senator Brandis, in Senator Brandis’s office to discuss the mechanics of it. That was a private meeting and I do not intend to outline the circumstances of, or the discussion that went on in, that meeting. But it is my understanding that, following that meeting, there was a recognition that the Labor Party were sincere in their determination to have the legislation passed before 11 March 2004, and that they were committed to the legislation but that they were concerned that some of the amendments were of such substance that they needed strong consideration. Senator Brandis indicated that as chair of the committee he would facilitate and cooperate in ensuring that there was strong commitment to making sure that the committee process met the needs of the day, as it were. In other words, everybody has their eye on 11 March.

I am still prepared to support this motion. Senator Campbell might interpret that to mean that I will accept a report being tabled early Tuesday, but it does not mean that; I do not think that is feasible. I would expect that the earliest the report would be tabled, if the motion were to pass, would be towards the close of business Tuesday or early Wednesday. I would expect that, if the bill were to be put on, it would be put on sometime on Wednesday or Thursday. As I have made clear to you, if the nature of the debate is such that the bill is unable to be completed in the time available to us, I will not participate in the guillotine and I will not interfere with the due process of parliament.

I do think, and Senator Conroy will have to speak for himself, we should be cognisant that Labor have been a very strong supporter of this legislation and recognise therefore that their attitudes in this are likely to be genuine, even if they end up having different views from the government or the Democrats on the particular amendments at hand.

Senator CONROY (Victoria) (10.27 a.m.)—I seek clarification on the reporting date.

Senator Ian Campbell—Tuesday night.

Senator CONROY—I may possibly move an amendment. I indicate up front that, as Senator Murray has said, Labor have a very strong commitment to the Financial Services Reform Act. We believe that it is an important piece of legislation and we have supported the government almost without question on this bill. There will always be arguments about some of the technical issues—whether a two-year basic deposit product or a five-year basic deposit product is best. Those are issues of substance but not issues that go to the principles of the bill. We have consistently supported this bill. We have consistently recognised that there would be implementation difficulties with this bill but we have not sought at any stage to undermine the government on the substance of the bill.
We recognise, as ASIC, the new parliamentary secretary and, before him, Senator Campbell when he had charge of this have said, there will be an enormous last-minute rush to put licence applications in. As recently as yesterday it was indicated that it is unlikely that every individual or firm that applies even before mid December will get their licence by 11 March, simply because of the volume of work involved. To suggest that Labor is trying to create some sort of logjam to take political advantage of this logjam is untrue and does not reflect Labor’s support for this bill. ASIC will have a very tough time trying to manage these next few months. Labor stands ready to work with the government and interested parties to ensure the smooth facilitation of this bill. This government has not sought to assist the facilitation of this.

This is a unique bill, and Senator Murray would understand what I mean by that. We created in this bill a skeleton of legislation, with enormous responsibilities and powers passed down to the regulation-making process and the ASIC policy note process. So in truth there is more substance in the regulations and the ASIC policy notes about this bill than in the actual bill. The bill sets out the broad principles, but the application of those principles is determined by the regulations, so it is not a simple bill. You can vote for the bill and still find that the regulations do not quite do what you think the bill intended them to do, so you have to be able to look at the bill and the regulations together. That is a different style of legislative process than any that has been tried before. I think the government at the time said, ‘Look, this is a new process. We’ll be doing all these things by regulation.’ The problem with that is that you have to, to a degree, take on trust that the regulations will contain what you think they will contain when you vote for the bill. So, when you get a situation where the government are moving substantive amendments to the bill, then tabling substantive regulations and then tabling draft substantive regulations, you have to be able to look at them all together.

Because it is an enormous job, this government is having trouble getting all of those regulations out. We are already up to draft 6 of the regulations, which are underpinned by amendments that are going through at the same time. They are interlocked and intertwined. To try to represent that you can just separate them is not a fair or accurate way of describing how this legislation works. Even batch 6 of these regulations is only in its draft form at the moment. These are not even the final regulations. There are often substantive changes from the draft to the final regulations. Labor have always sought to facilitate the smooth implementation of this bill. We have publicly committed to it and we are still publicly committed to it, but that does not mean we are not going to take the time to have a look at the regulations and to have a look at the amendments.

The original bill has been looked at by the committee. The only problem is that, much later, the government moved a substantive set of amendments which in fact is thicker than the original amendment bill. Then, even more recently, they moved some further substantive amendments to the bill that the committee has not seen. And, given the parliamentary timetable and the Senate estimates process, it has not been possible to have these matters go before the Selection of Bills Committee, which refers them to the committee. That is the simple fact. Because the government keep moving substantive amendments and new draft regulations, the first available Selection of Bills Committee to send it off to the committee for discussion was this week. The government want to claim that there is some sort of conspiracy taking place and that Labor is just trying to
cause blockages, but this was the first available date in the parliamentary process.

I have some sympathy for Senator Murray’s view that this parliamentary sitting year has been a thin one. But I would have to say to you, Senator Murray, the only problem—and I agree in general with your view on this—is that this government keeps running out of legislation. This entire week has been a testimony to the incompetence of the government’s management of the Senate.

Senator Murray—We’ve got lots of private senators’ bills we’d like to have done!

Senator CONROY—I am sure I would love to hear you, and I am willing to bet that Senator Brown has more. In the last couple of weeks, this government has run out of legislation twice. This week the opposition has sought to accommodate this government by front-ending for the last couple of days all of its second reading speeches on all of the different bills that might come up this week. This government is so incompetent at managing this chamber that we have been helping to keep the place going. If we withdrew our second reading speeches, we would stop. You have the Manager of Government Business in the Senate talking about an extra week. As I said, I support you, Senator Murray, but in principle an extra week would be an embarrassment for him because he has got no legislation.

Senator Murray—We’ve got lots and lots!

Senator CONROY—I have to tell you, Senator Murray, that I am terrified by that prospect! This opposition—and, as Senator Ian Campbell has rightfully acknowledged—the Democrats, Senator Brown and Senator Ludwig have worked to try to keep the Senate going this week. It is a bit of an indictment that, in the last two weeks, the government has been so badly organised that we have had to move the agenda around so much to help the government keep the Senate chamber going. I would be embarrassed if I were the Manager of Government Business in the Senate, but we know he is pretty shameless.

To come to the substance of this motion, what we are supporting today, a Thursday, is this. For a piece of legislation with two sets of amendments and two sets of regulations which are thicker and more important than the original amendment bill that we have already looked at—there is more in them than in the original amendment bill—we are going to give any interested party notice in the paper on the weekend that they have to get their submission in to us for a hearing that will take place on Monday afternoon. This is not a fair dinkum process. It is not possible for every organisation that is interested and has a view on this to be here on Monday afternoon. We are okay because we are going to be here—other bills that might be moved and other parliamentary commitments aside—

Senator Ian Campbell—I’ve spoken to every single person on your list and they’re all happy to be here today. The ACA will be on the next plane—

Senator CONROY—Yeah, right!

Senator Ian Campbell—so will the STA and everybody else.

Senator CONROY—Unfortunately, Senator Campbell, when it comes to taking your word for something—as everybody in this chamber knows at the moment and as you have once again demonstrated—I will not deal with you except in writing. I actually will not deal with Senator Ian Campbell except in writing. I will write to him and say, ‘Here is my position; I would like your position in writing.’ There is a very good reason for that, Senator Campbell, and everybody in this chamber knows what it is. The only way you can be guaranteed to keep your word is

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in writing. It is the only way I would deal with you over the last 12 months—in writing—because you cannot be counted on to keep your word.

Senator Coonan—Madam Acting Deputy President, I raise a point of order. I would think, under the circumstances, that Senator Conroy might like to reconsider the implication of what he has said against a fellow senator. He should withdraw it unequivocally. I am sure, when he thinks about it, he would not put it in quite those terms.

Senator CONROY—I have actually toned that down substantially, if you don’t mind.

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Senator Conroy, I think your last statement may have been a reflection on another senator, so you should perhaps consider withdrawing it.

Senator CONROY—I accept that your interpretation is correct—that it is a reflection on Senator Ian Campbell. There is no question that it was a reflection, but I withdraw, as required. So, in writing is the only way I will deal with Senator Ian Campbell. It is the only way.

We have here a situation where people will not have time to present their submissions. I absolutely agree that those interests who support the amendments will be prepared to turn up—yesterday—because they want what is in this bill. That should send alarm bells ringing as to why we should have a proper process, because this is what is known as the bum’s rush. We are actually failing the parliament and the people of Australia by agreeing to this timetable. As this government well knows, there is no need for this to be rushed through next week. There is already a logjam. There is no possible way that this will make a difference to that logjam, and Senator Ian Campbell and the government know this.

Now, I know that Senator Murray has indicated he will support this. I would say to you, Senator Murray, I think the government are taking advantage of your goodwill and of the fact that you are a man of your word. They have sold you the bum’s rush, they have not given you all the information and, in good conscience, you have agreed to support this or perhaps a minor amendment to this. I think they are taking advantage of you, and you should not reward this sort of bad behaviour. As you well know, Senator Ian Campbell stood up here and said he approached me some months ago, but that is not possible because I was not here. Senator Ian Campbell knows why I was not here, so it is not possible for Senator Ian Campbell to maintain the fiction that he approached me on this.

More importantly, they have moved substantive amendments since. Even Senator Ian Campbell knows that they have substantially amended the bill since the time he is trying to pretend this event took place. Substantial amendments to the bill are what have already been referred, not the bill—the bill has already been dealt with. It is the amendments, the regulations and the draft regulations that we want to have a look at. We have already dealt with the bill and, if there were no amendments, we could have a debate about the bill. It is the government that have moved substantial amendments to the bill, not once but twice. They have released an enormous and important set of regulations since the amendment bill was tabled and then they released a second set of draft regulations. So do not sit here and try and pretend that nothing has changed. At least acknowledge that you have substantially changed the bill and the parliament is entitled to look at it.

As Senator Ludwig has said, some of Senator Ian Campbell’s earlier comments about Senator Ludwig were fanciful. We have not agreed to the government’s bills.
That has never been the process. The government says, ‘We want these bills,’ and we say, ‘Well, those ones are going to be a problem and we’ll have a debate about these other ones.’ Senator Ian Campbell knows that. To try and misrepresent his private discussions with Senator Ludwig reflects badly on him, but Senator Ludwig has already spoken about that.

I want to come to the discussions which Senator Ian Campbell and Senator Murray have alluded to. Yesterday, I, Senator Brandis, Senator Murray and the parliamentary secretary with responsibility for this sat down and had a discussion about timing and we reached an agreement. We did not do it once; we did it twice, because Senator Ian Campbell came riding in over the top of Parliamentary Secretary to the Treasurer, Mr Cameron, earlier in the day. Senator Ian Campbell tried to interfere in his old portfolio. We know why that is. It is because his new portfolio is so meaty! He has so many programs to administer as the minister for roads that he has time left on his hands, so he has taken to trying to do his old portfolio as well. He now has a portfolio where the National Party do not trust him and will not give him any responsibility for a single program inside his portfolio. It is a bit humiliating, because as soon as the announcement was made we saw John Anderson, the overarching minister, stand up and say, ‘Oh, by the way, just in case there is any confusion, I’m looking after these three programs,’ which are the only three programs in the roads portfolio. So I understand why he has plenty of time on his hands. We all understand that. Dealing with the National Party is never easy, but I am sure eventually they will give you a few blankets and strings of beads to keep you busy in your portfolio.

Yesterday, not only did Senator Ian Campbell try to override Parliamentary Secretary Cameron—he almost succeeded—but then, after his initial attempt to do so, we held the meeting that Senator Murray was referring to. In that meeting, Senator Brandis, Parliamentary Secretary Cameron, Senator Murray and I actually cut a deal. We reached an arrangement. Now, the first time I was made aware that Senator Ian Campbell was going to rat on the agreement was about 20 minutes before the parliament was due to sit, when we were told there would be a division and that Senator Ian Campbell would be moving his own resolution. We then sought some clarification, saying, ‘Why are we having a division when we have agreed what the resolution should be?’ So this government and this trumped up real estate agent over there have once again ratted on their word. It is really that simple.

I say again to Senator Murray: you should not let them take advantage of your good nature and your trustworthiness by rewarding this bad behaviour. You should not let them get away with it, because you are not doing justice to things you believe in. You are not doing justice to a proper parliamentary process. There is always an understanding that bills, amendments and regulations can be referred to a committee for a hearing. We normally send them to the Parliamentary Joint Committee on Corporations and Financial Services. That is where these things should have gone. It has always been understood that, if the government want to send a bill off, that is fine; if we want to send one off, that is fine, too.

To allow this bastardised process to be a pretence that we are dealing with these, simply because Senator Ian Campbell has rolled Parliamentary Secretary Cameron, is very disappointing. Senator Murray, I urge you to reconsider letting them take advantage of you. You have seen the performance and the behaviour of the Manager of Government Business in the Senate, and they do not deserve a reward. I indicated that I have an
amendment which, hopefully, will make this bastardisation of a process fractionally better—but not by much. I move:

Omit “2 December”, substitute “3 December”. I hope the amendment has the support of Senator Murray.

Senator Ian Campbell—Madam Acting Deputy President, I rise on a point of order. I do not want to be pedantic or churlish, but the President did rule on my use of the word ‘bastardry’, which I think was quite right. It was a bit of a try-on by me. But if we are going to be consistent, ‘bastardisation’ should probably be ruled unparliamentary as well.

The ACTING DEPUTY PRESIDENT (Senator Kirk)—I think that that is inappropriate language, Senator Conroy, so perhaps you will reconsider your words.

Senator CONROY—I am glad to see that we have such a tight definition.

Senator Coonan—It is consistent.

Senator CONROY—Consistent! Well, I would like to see some consistency. But I withdraw, as per your request, Madam Acting Deputy President. I will be forced to use the word ‘rort’.

Senator Murray—It is just that the word ‘illegitimatisation’ is so difficult to say.

Senator CONROY—I acknowledge that interjection, Senator Murray. I should have said ‘the rort that Senator Ian Campbell has pulled today’. As I indicated, I seek to amend Senator Ian Campbell’s motion on the reporting date to make that date lunchtime on the Wednesday. That will, perhaps, allow some of the organisations that are interested in this to participate. Despite Senator Ian Campbell trying to claim that they are all ready to jump on a plane and come up, a range of organisations need to be given the opportunity to participate in the discussion on this bill.

I do not for a moment want to pretend that this solves the problem, Senator Murray. I hope that you will support this, but I do not for a moment want to hold this out as a solution to those who will be disappointed at this process. I would hope that, if some of these witnesses who Senator Ian Campbell believes are so keen to queue up and jump on the plane today cannot turn up for perfectly legitimate reasons, because they have not been given time even to prepare for a hearing, Senator Murray would understand—

(Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.48 a.m.)—I would like very briefly to sum up the debate. There are just a couple of points that I would make. One is in relation to Senator Conroy’s proposed amendment. I think that Senator Murray has already dealt with this. He said that he would like to see the report by Tuesday night but, if for whatever practical reason that cannot happen, we would obviously roll over into the next day. For Senator Murray’s reassurance, I say that the understanding he outlined in his speech is clear in my mind as well. If there were some practical reason that the report could not be made on Tuesday evening, then the government would of course facilitate an extension—as we do quite regularly for reports.

Secondly, I thought it diligent and in the best interests of the witnesses that I should make contact with them. I received from the Selection of Bills Committee a list which Senator Conroy had prepared of witnesses that he thought would need to give evidence and I have sought to make contact with each of them. I do not think that we have been 100 per cent successful, but certainly we have contacted most of them. I did that in a constructive way because I thought that we would not stand in the way of an inquiry. If we have to have one, then let us have one.
Let us make sure that the witnesses can get here. I did that in a constructive effort to see whether it was possible to do it. All of the people on Senator Conroy’s list of potential witnesses with whom we were able to make contact indicated that they would like to see this progressed diligently and be passed before Christmas, and that they could attend an inquiry at short notice. So, Senator Murray, I was making the point that, if for practical reasons you said in your speech that we could not report by Tuesday afternoon, the government places on the record the fact that we would grant an extension. But we would prefer to keep to the reporting date of Tuesday evening and not support the amendment.

Question agreed to.

Original question, as amended, agreed to.

MINISTERIAL STATEMENTS
Comcover

Senator ABETZ (Tasmania—Special Minister of State) (10.50 a.m.)—by leave—I would like to make a statement in relation to Comcover’s reinsurance broker, Heath Lambert Australia Pty Ltd. Comcover is the Australian government’s self-managed insurance fund. It provides insurance services to Australian government departments and agencies. Comcover operates as an administrative unit of the Department of Finance and Administration. As part of its existing functions, Comcover arranges reinsurance policies to transfer some of its insurance risk to insurance and reinsurance companies.

Heath Lambert was originally appointed as Comcover’s reinsurance broker in 1999, following an open tender. It was reappointed until 30 June 2004, following a further open tender during 2002. As a result of information received in April 2003, Comcover has been investigating Heath Lambert’s performance of both the current and the previous contract. Comcover wrote to Heath Lambert in early May this year requesting specific information in relation to its compliance with relevant clauses of the contract; in particular, in relation to payments received in respect of reinsurance placements.

In mid-September 2003 Comcover briefed the Finance and Administration internal auditor, Ernst and Young, and subsequently engaged it to independently review and report on the issues raised in connection with Heath Lambert. As a result of detailed contractual compliance reviews by my department from May to early November 2003, Heath Lambert recently provided a range of information about the performance of the contract which my department is currently considering. Comcover is also awaiting further information requested from Heath Lambert concerning contractual performance in the early years of the previous contract.

Heath Lambert has indicated a desire to cooperate with Comcover to quickly resolve this issue. When that information is provided Comcover will consider its position in relation to the contract performance issues. Until these initiatives have run their course, it would be inappropriate for me to comment further in relation to the ongoing review. This government and my department will continue to demonstrate openness and accountability to the Australian public by being quick to act in relation to contract compliance by service providers to protect public moneys.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.54 a.m.)—by leave—I move:

That the Senate take note of the statement.

I thank the Special Minister of State for providing this statement to the Senate today. I do think it is appropriate that parliament be kept informed of important public administration matters such as the one the minister has reported on. Clearly, in light of the minister’s statement, there are some issues of
significant concern in relation to the reinsur-
ance contractor to Comcover, Heath Lambert
Australia Pty Ltd. I think we understand
from the minister’s statement that the De-
partment of Finance and Administration and
the department’s auditors, Ernst and Young,
have been investigating information received
earlier this year concerning extra contractual
payments received in respect of reinsurance
placements. Investigations of this type do
raise very serious issues of contractual com-
pliance and proper administration of con-
tracted-out services. I also understand that
the value of Comcover’s reinsurance con-
tractors is substantial, meaning that there is
considerable taxpayer interest in full and
transparent accounting for the expenditure of
these moneys.

The minister indicates that Heath Lambert
is fully cooperating with current investiga-
tions. That, of course, is the appropriate
course of action for Heath Lambert to take.
The minister has also indicated to the Senate
that it is inappropriate for him to comment
further at this stage. I think that it is appro-
priate in the circumstances to adopt that posi-
tion. We obviously would say to the minister
and the government, however, that it would
be appropriate to come back to the Senate
with further information at some date in the
future. We would expect the minister to do
that on behalf of the government and we
look forward to hearing progress on this im-
portant issue.

Senator BROWN (Tasmania) (10.57
a.m.)—I rise to speak on the same matter.
The Senate is now put in a very difficult po-
sition. The Special Minister of State is flag-
ging a review and investigation by the De-
partment of Finance and Administration into
the reinsurance placements and the contrac-
tual arrangements which Heath Lambert has
won for Comcover. It would have been help-
ful for the minister to at least outline the
value of that contract with Heath Lambert
and the contractual obligations that are part
of Heath Lambert’s obligations to Comcover.
After all, this was done in a tendering ar-
rangement. Heath Lambert won the contract.
It is a very big insurance and reinsurance
organisation. Presumably there is a very
large public interest at stake here. While
there may be matters that are under investi-
gation—and obviously the investigation is
proceeding and is not complete—I think it is
incumbent on the minister to lay out the mat-
ters, at least in broadest terms, that are caus-
ing the government concern.

At the bottom of this is concern for public
money and concern that the contractual ar-
rangements which were entered into with
Heath Lambert are being met. What the min-
ister has done is flag an investigation but not
said what it is about. That leaves the Senate
up in the air and the watchdogs in the Sen-
ate—those on the opposition benches and the
crossbench—in a disabled position. I think
the government here is covering its situation
by saying, ‘There is a problem; we’re inves-
tigating it.’ If it turns out that there has been
some default or mismanagement of the obli-
gations by Heath Lambert, we will hear
about that later. I think it should have been
spelt out. It is a difficult matter, but if the
minister is going to raise it here he should
have been specific about it. I call on the gov-
ernment to be more specific about it and to
inform the parliament and the people what
exactly is going on here.

Question agreed to.

PETITIONS

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

Trade: Live Animal Exports

To the Honourable President and Members of the
Senate in the Parliament assembled:
This petition of the undersigned citizens of Aus-
tralia draws to the attention of the Senate the
stress and extreme suffering caused to cattle,
sheep and goats during their assembly, land trans-
portation and loading in Australia, shipment over-
seas, and then unloading and local transportation,
feedlotting, handling, and finally slaughter with-
out stunning in importing countries.
Further, we ask the Senate to note that heat stress,
disease, injury, inadequate facilities, inadequate
supervision and care, and incidents such as on
board fires, ventilation breakdowns, storms and
rejection of shipments contribute to high death
rates each year, e.g. 73,700 sheep and 2,238 cattle
died on board export ships in 2002. Many thou-
sands more suffer cruel practices prior to sched-
uled slaughter.
We the undersigned therefore call upon the Senate
to establish an inquiry into all aspects of live
animal exports from Australia, with particular
reference to animal welfare, to be conducted by
the Senate’s References Committee on Rural and
Regional Affairs and Transport.

by Senator Brown (from 20 citizens).

Immigration: Asylum Seekers
To the Honourable the President and Members of
the Senate in the Parliament assembled:
The Petition of the undersigned citizens of Aus-
tralia draws attention of the Senate to the position
of Afghan asylum seekers in Australia whose
Temporary Protection Visas are expiring and who
are applying for Permanent Protection Visas.
We are deeply concerned to hear that such people,
as they apply for further protection, are being
refused it. There is therefore an expectation that
they will be returned to Afghanistan where condi-
tions are no better than when they were originally
granted protection.
Your petitioners therefore request the Senate to
urge the Australian Government to give sympa-
thetic consideration to all Afghan asylum seekers
who apply for further protection and to take into
consideration the parlous state of law and order in
Afghanistan where asylum seekers are likely to
be returned, at best, to further persecution, and
quite probably to their deaths.

by Senator Brown (from 1,143 citizens).

Education: Higher Education
To the President and Members of the Senate in
Parliament assembled:
We the undersigned oppose the Howard Govern-
ment plan to:
• Allow universities to increase the costs of
HECS fees by 30 per cent.
• Double the number of full fee paying places
costing up to $100,000 for a degree or even
more.
• Introduce a loans scheme with a 6 per cent
interest rate.
• Create; a divided system where country and
suburban universities struggle. to compete
with big city campuses who will better be
able to attract resources.
We call for our representatives to work for a fair
system of higher education that allows any stu-
dent from any background an equal opportunity
to study at university.

by Senator Crossin (from 194 citizens).

Petitions received.

BUSINESS
Rearrangement
Senator COONAN (New South Wales—
Minister for Revenue and Assistant Treas-
urer) (11.00 a.m.)—I move:
That the order of general business for con-
sideration today be as follows:
(1) general business order of the day no. 12
(Reconciliation Bill 2001 [2002]); and
(2) consideration of government documents.
Question agreed to.

NOTICES
Presentation
Senator Bartlett to move on the next day of
sitting:
That the Senate—
(a) notes:
(i) the numerous claims made by the
Prime Minister (Mr Howard) that Iraq
possessed weapons of mass destruction
as justification for the Government’s decision to commit Australia to war, including his statement to the Parliament on 4 February 2003 that, ‘The Australian Government knows that Iraq still has chemical and biological weapons and that Iraq wants to develop nuclear weapons’,

(ii) the lack of evidence to date of weapons of mass destruction in Iraq, that would support the Prime Minister’s claims, and

(iii) the establishment in June 2003 of an inquiry into intelligence on Iraq’s weapons of mass destruction by the Parliamentary Joint Committee on ASIO, ASIS and DSD, due to report on 2 December 2003, and that:

(A) the committee is comprised of 4 Government members and 3 Australian Labor Party members, and that no other parliamentary party is represented,

(b) in conducting the inquiry, the committee has been limited in its powers and has not been able to review information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information,

(c) the inquiry has been conducted in secret, with the exception of a single public hearing that did not hear evidence from any member of parliament or government agency,

(b) relevant government ministers were able to censor submissions from government agencies before they were submitted to the committee, and the final report will not be released without the approval of those ministers, and

(e) a similar inquiry in Britain has heard public testimony from senior members of parliament and public servants, and defence and foreign affairs experts and officials; and

(b) condemns the lack of transparency and accountability in relation to the Government’s claims of evidence concerning Iraq and weapons of mass destruction.

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

(a) congratulates Steve Waugh on his achievements and service to Australian cricket throughout his time as captain and player in the Australian team and notes his decision to retire from such service;

(b) further recognises the important role that Steve Waugh has played in fostering junior cricket in Australia, and the role of Commonwealth funding in supporting such cricket development in Australia; and

(c) notes the deep commitment held by Australians to cricket and supports the Commonwealth in its endeavours to support Australian cricket.

Senator Ian Campbell to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend legislation about fisheries, and for related purposes. Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003.

Senator Buckland to move on the next day of sitting:
That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 1 December 2003, from 4 pm to 9 pm, to take evidence for the committee’s inquiry into the administration of the Australian Transport Safety Bureau in relation to the crash of Whyalla Airlines aircraft VH-MZK on 31 May 2000.

Senator Brown to move on the next day of sitting:
Senator TCHEN (Victoria) (11.01 a.m.)—I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No.1 standing in my name for three sitting days after today for the disallowance of the Inclusion of Species in the List of Threatened Species, made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 and gazetted on 6 August 2003. I seek leave to incorporate in Hansard the committee’s correspondence concerning this instrument.

Leave granted.

The correspondence read as follows—

Inclusion of Species in the List of Threatened Species, made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 and gazetted on 6 August 2003

11 September 2003
The Hon David Kemp MP
Minister for Environment and Heritage
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Inclusion of Species in the List of Threatened Species, made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 and gazetted on 6 August 2003

11 September 2003
The Hon David Kemp MP
Minister for Environment and Heritage
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Inclusion of Species in the List of Threatened Species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (Lungfish).

The Committee notes that this instrument is dated 4 March 2002. It is not clear whether this is a typographical error, or whether there has been a delay of eighteen months between the making of the instrument and its gazetted. The Committee seeks clarification of this matter and, if the instrument is correctly dated, an explanation as to the reason for the lengthy delay in gazetted.

The Committee would appreciate your advice on the above matter as soon as possible, but before 7 October 2003, to enable it to finalise its consideration of this instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

The Secretary
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600

Dear Madam/Sir

I refer to the letter of 11 September 2003 from the Chairman of the Committee, Senator Tchen, to the Minister for the Environment and Heritage concerning an instrument for the listing of lungfish under Section 178 of the Environment Protection and Biodiversity Conservation Act 1999. The Minister has asked that I respond on his behalf.

The instrument you refer to has a typographical error. The date of signature was the 4th of March 2003. I trust this clarifies the matter.

Yours faithfully
Gerard Early
First Assistant Secretary
Approvals and Wildlife Division
19 September 2003

Mr Malcolm Forbes
Assistant Secretary
Environment Assessment and Approvals Branch
Environment Australia
King Edward Terrace
PARKES ACT 2600
7 November 2003

Dear Mr Forbes

Thank you for your email of 5 November 2003. I confirm that, at the next Committee meeting, on November 27, when the Committee discusses its disallowance notice on the ‘lungfish instrument’ I will draw members’ attention to:
• the letter of 19 September from Mr Early to me which responded to the letter of 11 September from the Chairman to the Minister;
• the series of phone calls made to the Department during September and October seeking to obtain a formal response to the Chairman’s letter from the Minister himself; and
• my recent conversations and emails with you concerning the Department’s apparent reluctance to ‘trouble’ the Minister simply to confirm the contents of Mr Early’s letter.

I note that it is not a question of convention, but of propriety, that a letter from the Chair of a Committee to a Minister should be responded to by that Minister. This is normal practice and ensures that any information or undertakings given to a Committee are given by the person with ultimate responsibility for the matter, and so carry some force. This applies even in relation to relatively minor matters such as typographical errors.

By way of example, on 14 March 2001 the Committee queried an apparent error in a date in an instrument made under the Native Title Act 1993. Minister Ruddock signed a response confirming that the error in the date of commencement “was inadvertent and a mistake” and subsequently provided a copy of legal advice to confirm that the apparent retrospective commencement of the instrument did not render it invalid.

On 21 June 2001, the Committee queried a drafting error in the date of Civil Aviation Amendment Order (No 5) 2001- the heading to the instrument referred to the year 2000 instead of 2001. Minister Anderson signed a response acknowledging the drafting error and advising the Committee that CASA was preparing an appropriate amendment to rectify it.

On 16 May 2002, the Committee queried an apparent drafting error in an amendment to the List of Exempt Native Specimens. This amendment concerned the spanner crab. The Committee drew the Minister’s attention to a typographical error in the Gazetted version of the instrument which was dated “200” rather than “2002”. The original amendment bore the correct date. Minister Kemp signed a response (dated 12 June 2002) in which he said “I also appreciate you bringing to my attention the typographical error in the instrument concerning the spanner crab. A draft instrument was initially prepared in late 2001, with the approval process to be completed some time later. The year component of the date was left for completion on signature. To avoid a repetition, I have instructed that in future such instruments include the intended year of signature before they are submitted for my signature”.

And on 20 June 2002, the Committee queried an apparent inconsistency in an instrument listing the Spectacled Flying-fox as a threatened species under the Environment Protection and Biodiversity Conservation Act 1999. The former Minister (Senator Hill) had signed the instrument on 2 August 2001, but the instrument was not gazetted until 14 May 2002. It was not clear whether there was a typographical error in the dates or there was a reason for the delay in gazettal. On 24 September 2002, Minister Kemp responded to the Committee providing an explanation for the delay in gazetting this instrument.

The Committee’s original letter on the ‘lungfish instrument’ concerned a discrepancy in dates which seemed to indicate a delay in gazettal—a subject on which the Committee has previously written to your Minister. The explanation in the case of this particular instrument seems to be a typographical error. The Committee simply seeks confirmation of this from the person with ultimate responsibility. The Minister has responded to all previous Committee correspondence. Could you please indicate whether the Committee can expect a response from the Minister on this occasion.

I note that the Committee tables relevant correspondence when it withdraws a disallowance motion. If the Committee withdraws this disallowance motion with no supporting Ministerial correspondence it may have to include a separate explanation for its actions.

In conclusion I must say that I find it odd that so much time has been devoted to such an apparently minor matter and to ensuring that its resolution is not brought to the attention of the Minister.

Yours sincerely
James Warmenhoven
Committee Secretary
I seek leave to make a short statement in relation to this withdrawal.

Leave granted.

Senator TCHEN—The committee gave a notice of motion to disallow this instrument because there was a discrepancy of more than a year between the date the instrument was signed and its gazettal. The committee wrote to the minister seeking clarification of this. We received a response from the department telling us it was simply a typographical error.

It is the committee’s practice, and is a matter of parliamentary propriety, that correspondence in relation to instruments should come from the minister. This ensures that any information or undertakings which are given to the committee are given by the person with ultimate responsibility for that matter. This applies even in relation to relatively minor matters such as typographical errors.

The committee is concerned, therefore, that the practice of ministerial correspondence should continue without interference. In this particular case, the committee accepts that the issue is minor, but it should be clearly understood that the bypassing of ministers should not become a practice. Such action is undesirable. In closing, I note that the committee has had an excellent working relationship with Minister David Kemp, who has promptly and personally responded to all previous committee correspondence.

Senator Brown to move on the next day of sitting:


BUSINESS

Rearrangement

Senator McGAURAN (Victoria) (11.05 a.m.)—by leave—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I move:

That business of the Senate order of the day no. 4, relating to the presentation of the report of the committee on the provisions of the Maritime Transport Security Bill 2003, be postponed till a later hour.

Question agreed to.

COMMITTEES

Community Affairs References Committee

Extension of Time

Senator HUTCHINS (New South Wales) (11.06 a.m.)—I move:

That the time for the presentation of reports of the Community Affairs References Committee be extended as follows:

(a) poverty and financial hardship—to 4 March 2004;
(b) children in institutional care—to 30 April 2004; and
(c) Hepatitis C in Australia—to 17 June 2004.

Question agreed to.

Foreign Affairs, Defence and Trade References Committee

Meeting

Senator COOK (Western Australia) (11.07 a.m.)—I move:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold public meetings during the sittings of the Senate to take evidence for the committee’s inquiry into the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002, on the following days:

Thursday, 27 November 2003, from 6.30 pm
Friday, 28 November 2003, from 9 am to 4.25 pm.

Question agreed to.
Extension of time

Senator CHERRY (Queensland) (11.07 a.m.)—I move:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on the Australian telecommunications network be extended to 12 February 2004.

Question agreed to.

SPORT: AUSTRALIAN RUGBY UNION

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.07 a.m.)—I move:

That the Senate:
(a) congratulates the Australian Rugby Union on staging the most successful Rugby World Cup since its inception in 1987;
(b) congratulates the Australian Wallabies on an outstanding 2003 Rugby World Cup campaign;
(c) conveys, on behalf of all Australians, the nation’s pride and congratulations for the performances of all the team members who played in the team over the course of the competition;
(d) expresses its thanks to all the team support staff and others who have contributed to the success of the team;
(e) thanks the Australian people who supported teams from all countries that participated in the 2003 Rugby World Cup;
(f) notes the contribution made by Commonwealth agencies and departments to the successful staging of the 2003 Rugby World Cup; and
(g) acknowledges the contribution of the Australian Sports Commission to the development of young Australian rugby players, particularly through the rugby program at the Australian Institute of Sport.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.08 a.m.)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being security upgrade works proposed by the Joint House Department for the Parliament House loading dock.

Question agreed to.

TRADE: BANANA IMPORTS

Senator CHERRY (Queensland) (11.08 a.m.)—by leave—I move the motion as amended:

That the Senate
(a) notes that:
(i) a draft import risk assessment on the importation of Filipino bananas released in July 2002 concluded, based on the best science available, that such imports should not be approved due to the unmanageable risk of the introduction of diseases like moko, and
(ii) the Filipino Government has challenged the Australian Government at the highest levels to overturn this decision;
and
(b) calls on the Australian Government to:
(i) defend the science-based analysis of the import risk assessment process and to release the final report on Filipino bananas as soon as possible, and
(ii) defend Australia’s quarantine standards in trade negotiations against pressure to water them down.

Question agreed to.
COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Extension of Time
Senator McGauran (Victoria) (11.08 a.m.)—At the request of Senator Heffernan, I move:
That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the draft Aviation Transport Security Regulations 2003 be extended to 2 December 2003.
Question agreed to.

PUBLIC AND COMMUNITY HOUSING
Senator Nettle (New South Wales) (11.09 a.m.)—I ask that general business notice of motion No. 711, standing in my name for today, relating to public and community housing, be taken as a formal motion.

The Acting Deputy President (Senator Kirk)—Is there any objection to this motion being taken as formal?

Senator Conroy—Yes.

The Acting Deputy President—There is an objection.

Senator Brown—Madam Acting Deputy President, I want it noted that Labor has refused this motion going forward. I believe there was an understanding about it. This is not the understanding that we had about it.

Honourable senators interjecting—

The Acting Deputy President—Senator Nettle, could you put your motion forward again?

Senator Nettle—I ask that general business notice of motion No. 711, standing in my name for today, relating to public and community housing, be taken as a formal motion.

The Acting Deputy President—There being no objection, I call Senator Nettle.

Senator Nettle—I move:
That the Senate—
(a) notes the finding of the Australian Bureau of Statistics that 99,900 people were homeless in Australia on census night 2001;
(b) further notes that there are 200,000 people on waiting lists for public and community housing;
(c) condemns the Federal Government’s move away from public housing through a reduction in its financial commitment to the Commonwealth-State Housing Agreement and its increasing reliance on private rental subsidies over support for direct provision of housing; and
(d) calls on the Federal Government to:
(i) review rent assistance to ensure that it more adequately helps jobless tenants who are unable to access public or community housing and who cannot afford home ownership, and
(ii) commission an independent review of the tax treatment of investment housing property with the aim of restructuring arrangements so that tax concessions are provided in a cost-effective way and only for investment in housing for low-income earners, as a means of addressing the need for affordable housing.

Question negatived.

HEALTH: GENETICALLY ENGINEERED PRODUCTS
Senator Nettle (New South Wales) (11.11 a.m.)—by leave—I move the motion as amended:
That the Senate—
(a) notes that:
(i) the European Union has recently introduced labelling of animal feed and of highly processed ingredients derived from genetically-engineered (GE) crops, neither of which are currently

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labelled under the Australian regulatory system, and
(ii) Australian farmers face great uncertainty because the 3-year study by the Minister for Agriculture, Fisheries and Forestry (Mr Truss) into whether it is possible to grow and process genetically-modified (GM) produce without contaminating non-GM produce will not be complete until July 2004, and a commercial release of GM canola has already been approved; and
(b) calls on the Australian Government to:
(i) exempt any changes to the GE regulatory and labelling system in Australia from the current free trade agreement negotiations with the United States of America,
(ii) ensure that the Government maintains the ability to improve and extend the labelling laws, to bring them into line with international best practice, and
(iii) ensure that the federal regulatory system protects the rights of Australian consumers and farmers to GE-free food.

Question agreed to.

HEALTH: HIV-AIDS

Senator NETTLE (New South Wales) (11.11 a.m.)—by leave—I, and also on behalf of Senator Stott Despoja, move the motion as amended:

That the Senate—
(a) acknowledges that Monday, 1 December 2003 is World AIDS Day;
(b) notes that a report released by the Joint United Nations Program on HIV/AIDS and the World Health Organization on 25 November 2003, indicates that:
(i) 42 million people around the world are infected with HIV,
(ii) 8 000 people die of AIDS-related illnesses every day,
(iii) 14 000 new HIV infections occur every day,
(iv) 13.2 million children are now orphans as a result of the AIDS virus, and
(v) 95 per cent of people with AIDS live in the world’s poorest countries;
(c) acknowledges the crucial role played by the Global Fund to Fight AIDS, Tuberculosis and Malaria (the ‘Global Fund’) in combating the AIDS pandemic;
(d) notes that:
(i) in its first three rounds of funding, the Global Fund approved $3 billion over 2 years for more than 220 programs in 121 of the worst affected countries, including $555 million to programs in South Asia, East Asia and the Pacific,
(ii) $224 million has already been disbursed to more than 60 countries, and
(iii) the Global Fund is facing a significant shortfall in funding which is jeopardising its ability to disburse funds to countries who have had program proposals approved, and to fund new rounds of grants;
(e) also notes that in 2001, Australia endorsed the United Nations Declaration of Commitment on HIV/AIDS, which called for the establishment of a global HIV/AIDS and health fund;
(f) expresses its concern that Australia is one of only two of the world’s wealthiest countries yet to make a contribution to the Global Fund; and
(g) urges the Australian Government to support the Global Fund as a key global initiative that is enabling countries to strengthen their own national response to HIV/AIDS, and to seriously consider making a significant contribution to the Global Fund by the end of 2004.

Question agreed to.

MEDICARE

Senator NETTLE (New South Wales) (11.13 a.m.)—I move:
That the Senate—
(a) notes that:
   (i) the Government’s revised Medicare package proposes to increase the patient rebate for general practitioner services for two groups of Australians as an incentive to encourage bulk billing for these people, and
   (ii) the Government proposes to introduce discriminatory safety nets which endorse substantial out-of-pocket expenses for medical services;
(b) condemns the Government for:
   (i) undermining the principle of universality by failing to propose measures to increase bulk billing for all Australians,
   (ii) encouraging higher private fees for medical services, which will cause hardship for many Australians and discourage them from seeing doctors, and
   (iii) relying on safety nets in place of strengthening Medicare; and
(c) calls on the Government to:
   (i) increase the patient rebate for all Australians, and
   (ii) develop a plan to promote bulk billing as an essential means of ensuring timely, affordable access to primary health care.

Question agreed to.

NOTICES

Postponement

An item of business was postponed as follows:

General business notice of motion no. 708 standing in the name of Senator Brown for today, relating to logging in Tasmania’s Styx Valley, postponed till 2 December 2003.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2003

SOCIAL SECURITY AMENDMENT (FURTHER SIMPLIFICATION) BILL 2003

First Reading

Bills received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.14 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.15 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2003

The purpose of the bill is to amend the States Grants (Primary and Secondary Education Assistance) Act 2000, to implement the 2003-04 Budget initiatives for schools.

This Government’s eighth Budget has allocated record funding of $6.9 billion to Australian schools and students for 2003-04, an increase of $528 million or 8.3 per cent over last year. Since
1996, Commonwealth funding for schools and students has grown by more than 93 per cent.

This bill continues a commitment to the Capital Grants programme which supports non-government schools. The bill will appropriate approximately $48.3 million for capital funding in non-government schools over the four years, 2004, 2005, 2006 and 2007. This amendment will maintain capital funding for non-government schools in real terms at the 2003 level.

Without this amendment, the level of capital funding for non-government schools for the years 2004 to 2007 will fall more than $11.7 million each year below the 2003 funding level, adversely affecting schools serving the most educationally disadvantaged students.

Over the 2001-04 funding quadrennium, schools will receive over $1.3 billion in Commonwealth funding under the Capital Grants programme. Of this funding, almost $950 million will go to government schools and over $373 million to non-government schools. This means that over 72 per cent of capital funding will go to government schools, a sector with 68 per cent of enrolments.

The 2003-04 Budget continues the Commonwealth’s commitment to literacy and numeracy for all Australian students.

This bill provides additional funding of $54.3 million to be provided through the Strategic Assistance for Improving Students Outcomes programme and the National Strategies and Projects programme over the years 2003 and 2004, to improve the learning outcomes of educationally disadvantaged students, particularly in the key areas of literacy and numeracy.

This funding demonstrates the Howard Government’s continued support for, and commitment to, the acquisition of vital literacy and numeracy skills by all Australian children. Literacy and numeracy are the most important foundation skills our children need during their education. The Government places high priority on the development and proficiency in these skills to enable young people to utilise education, employment and training opportunities in later life.

There has been good progress in literacy and numeracy, with only one country performing better than Australia in reading and maths literacy.

Funding under the Strategic Assistance for Improving Students Outcomes programme is used by State and Territory education authorities to support critically important and sensitive programmes in schools for students requiring additional assistance.

The Commonwealth’s National Strategies and Projects programme focuses on strategic research and initiatives to support the implementation of the National Literacy and Numeracy Plan.

Strategic funding is used to support the development of national standards and comparable national reporting, including reporting against performance measures contained in the Act.

When this Government came to office there was no national reporting of literacy and numeracy standards. Through its leadership, we now have full cohort assessment for literacy and numeracy at years 3, 5 and 7.

In terms of reporting benchmarking and assessment data to parents, in 2001 the Government made an election commitment “to secure State and Territory reporting to all parents of their child’s skills in literacy and numeracy against national standards”.

Currently, Western Australia, the Australian Capital Territory and the Northern Territory provide individual student reports to parents that show the student’s result in relation to the national benchmarks. The Victorian Government has indicated its intention to do likewise from 2003. I encourage the other States to move forward providing this important information to parents.

This continued funding for the Commonwealth’s literacy and numeracy programmes will continue to assist children to attain the necessary literacy and numeracy skills they need for them to participate fully in further education, employment and society generally.

This bill confirms the Government’s commitment to school education and improving the outcomes for all students. Quality education is vital to Australia’s future. I am committed to continuing to provide substantial levels of funding to produce real results for all students.

I commend the bill to the Senate.
SOCIAL SECURITY AMENDMENT (FURTHER SIMPLIFICATION) BILL 2003

The Social Security Amendment (Further Simplification) Bill 2003 forms a part of the measures being undertaken to give effect to the Government’s commitment to implement a simpler and more coherent social security system.

The primary purpose of this bill is to consolidate the rules relating to rent assistance in the current rate calculators in Chapter 3 of the Social Security Act 1991 in a proposed new Part 3.7 of that Act.

Currently, rent assistance provisions appear in many different locations in the Act and there is much unnecessary duplication of corresponding provisions. Under the proposed changes, the general and specific rules for calculating rent assistance in relation to all social payments will be in the one place. Simpler consolidated rules for rent assistance will benefit Centrelink customers. It will be easier for Centrelink staff to work out a customer’s entitlement to rent assistance and to explain the basis of the calculation to customers.

As the consolidation of the provisions is essentially part of a housekeeping process by the Government in relation to the social security law, customers will continue to receive the rent assistance that they currently receive under the existing provisions. There is a small number of minor changes to bring the law into line with current administrative practices, to ensure that the law reflects what people are currently receiving. The principal minor change to the rent assistance provisions is in relation to the payment of rent for temporarily separated couples for all social security payments and for respite couples other than those on Pension Rate Calculator A. It is proposed to adopt a uniform rule for all rate calculators that accords with current administrative practices, so that it does not matter which partner pays or is liable to pay the rent in respect of the premises or lodgings.

The bill also deals with a number of other minor amendments.

First, the definition of compensation affected payments is amended. The amended definition will include certain supplementary payments which are paid as a result of a person being eligible for a social security pension, allowance or benefit. Other amendments ensure that these supplementary payments are recoverable from people who also receive an economic loss compensation payment. The changes will apply after 1 July 2004 but only for customers who receive both the social security supplementary payments and compensation payments from and after this date. Some small program savings will result from these changes.

Second, for consistency, the definition of ‘independence’ which currently applies to youth allowance customers will now also be applied to disability support pension youth customers. This will result in a small number of customers receiving a higher amount of disability support pension payment.

Finally, there is a number of minor technical amendments being made to clarify the operation of the income and assets test provisions of Chapter 3 of the Social Security Act.

Debate (on motion by Senator Buckland) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

Ordered that the resumption of the debate be made an order of the day for a later hour.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:

Customs Legislation Amendment Bill (No. 2) 2002

COMMITTEES
Foreign Affairs, Defence and Trade References Committee

Report

Senator COOK  (Western Australia) (11.16 a.m.)—I present the report of the Foreign Affairs, Defence and Trade References Committee entitled Voting on trade: the General Agreement on Trade in Services and an Australia-US free trade agreement, to-
Senator COOK—I seek leave to move a motion in relation to the report.

Leave granted.

Senator COOK—I move:

That the Senate take note of the report.

This has been an important and revealing inquiry for the committee. An obvious limitation has been that, in effect, we have been inquiring into two events that have not yet occurred. Indeed, as we deliver our report today, we cannot be certain that the General Agreement on Trade in Services part of the Doha Development Round will be successfully concluded. Given that many commentators regard the round as having effectively imploded at the mid-term ministerial review held recently in Cancun, Mexico, the future for GATS, and the rest of the issues in the round, is now shrouded in doubt. Question marks remain—but the biggest question mark is over whether momentum can now be generated to kick-start progress again, and can it be done while capturing the few gains that were put on the table before the ministerial abruptly closed down.

The Australia-US free trade agreement faces a different challenge. These talks are at a make or break stage. Indeed, this week Minister for Trade Mark Vaile goes to Washington for another negotiation with US Trade Representative Bob Zoellick. Originally these talks were to be completed by the end of the year, but we understand hotel bookings have been made to enable them to continue into January if the deadline blows out. All the big questions in these negotiations appear to still be on the table and unresolved. The biggest issue here is agricultural access to the American market for our farmers.

Other issues such as cultural protection, the Pharmaceutical Benefits Scheme, the investor state clause and the negative list approach have also intruded. We refer to those issues in our report. Senators have put down their views on these matters.

However, on the Australia-US free trade agreement, commentators suggest that, given the tight deadline and the negotiating muscle now behind the effort to get a deal, it is the time to expect a breakthrough or a breakdown. My money is on a breakthrough. The Prime Minister and the President, you would think, have too much riding on this for it to be otherwise. But, if there is ongoing delay, US congressional consideration of a final package will get uncomfortably close to, or actually overlap with, next year’s presidential election campaign. That period is usually regarded as a graveyard time for any legislation containing the slightest whiff of controversy. It is, therefore, hard to see a package containing the agriculture breakthrough our farmers want receive congressional approval during this period. And it is hard to see any Australian government closing a deal which does not meet the expectations of our primary producers after all the hype on agriculture. But we will see what happens. It is the committee’s view that our mandate be extended so that, if an agreement is finalised, like the US congress we can then continue to review the outcome.

So our inquiry has been into incomplete negotiations. There have been two consequences of this. The first is that we have received a large number of community based submissions sceptical or outright suspicious of the government’s motives and intentions in these two different sets of trade talks. Our report sets out these concerns and the counterarguments. But it is probably true that in many cases the anxieties that have been expressed can neither be mollified nor confirmed until there is a text of a formal
agreement setting out the commitments in precise terms. Consequently, our report reviews some of the key issues in both sets of negotiations, but particularly the Australia-US free trade agreement, which some senators have grave reservations about. As the Senate is bound to vote on any legislation or regulations arising from a completed FTA, these reservations, listed in our report, should be seen as a preliminary indication of the Senate’s concerns. We trust that by being up front now it will aid both the direction of the current talks and the future passage of bills and regulations through the Senate.

The other major issue covered in our report is the process by which the parliament and the executive commit to a trade deal. We have given that matter a timely and considered in-depth airing. Ever since the riots in Seattle in 1999, trade talks and other meetings of international economic organisations and the G8 have been the target of antiglobalisation demonstrations. Whatever anyone thinks of this, one thing is clear: trade negotiations, and the process by which a nation embraces and then adopts a trade outcome, are under greater and more searching scrutiny than ever before. Therefore, we have reviewed current practice and suggested important reforms which we believe make the process more accountable and transparent and more relevant to our modern needs.

The recommendation we have made recognises that the Australian Constitution provides for what is essentially a partnership between the executive and the parliament in deciding the national interest. Some might regard it as a checks and balances approach. The executive negotiates and adopts a trade agreement. The parliament approves the legislation and regulations necessary to implement what the executive has done. Only when both steps have been completed and are in harmony does a trade agreement come into force. And that is the point. A trade agreement does not come into force until both processes have been completed. That is the constitutional situation and it has been confirmed in the evidence adduced by the inquiry. Let me be clear about what this means: it means the parliament can, in practical terms, strike down a trade agreement by amending implementing legislation if the amendment changes the terms of the agreement the executive has entered into. Since each bill arising from a trade agreement is considered on its merits, there may be a temptation for the parliament to modify individual bills if it has reservations about them.

Indeed, it is easy to imagine that some bills may excite considerable pressure from the community if, for example, they tampered with the Pharmaceutical Benefits Scheme. But if the Senate amends an implementing bill or regulation and insists on its amendment then it kills off the whole trade agreement. That fact alone should encourage the executive to take a positive view of the recommendation we have put forward. To negotiate effectively for Australia, the other country’s negotiators need to be confident that a deal struck is a deal delivered.

To give this the necessary integrity and certainty, our reform proposes, firstly, that the parliament be briefed on the initiative for a trade agreement and the justification for it from the beginning and extend its approval to proceed. Once this bridge has been crossed the government can be sure in the knowledge that its goals are endorsed and it has a mandate in principle. It also means there is an obligation then on the parliament, having approved the initiative, to later support it. Secondly, our reform proposes a monitoring role of the negotiations for the Trade Subcommittee of the Joint Standing Committee on Foreign Affairs and Trade. This is just a sensible step to keep parliament in the loop. Thirdly, the most significant element of the reform we propose is that
both houses of parliament vote to accept a trade deal as a package, and then it is a simple yes or no vote.

As I have said, at the present time parliament votes on each item of implementing legislation and if it amends anything it can strike down the entire package. Invariably, trade agreements contain measures that do not satisfy everyone. If each item of legislation is taken separately, the temptation is heightened to amend and modify some items. Our proposed reform removes that temptation by requiring an up-and-down vote. That means the parliament votes on the net value of the package. In other words, they accept the good with the bad if the balance of the outcome is favourable and conforms with the original support the parliament gave the executive to negotiate in the first place.

For these reasons I believe our reform should be attractive to both the executive and the parliament. But there is another motivation as well. The Seattle protests have sparked an insistence from what is described as civil society that they should have a greater say in proceedings at all levels. Some NGOs want to be interwoven into the decision-making process itself. I do not gainsay the right of these organisations to express their views. That they do so is one of the strengths of our democracy. But it should also be said that they do not have a veto.

The most effective way of dealing with this pressure is for parliament to reassert its primacy as the elected voice of the people. The reforms introduced by the government in 1996 have made the treaty-making process much more open, transparent and systematic. They have enhanced public awareness of the treaty-making process. This

the US constitutional framework and gets the balance right between the executive wing of the government and the parliament. Let me conclude by thanking Mr Brenton Holmes, Ms Andrea McAuliffe, Dr Sarah Bachelard, Ms Saxon Patience, Ms Pamela Corrigan and Ms Laurie Cassidy for the able support they gave to this inquiry.

Senator JOHNSTON (Western Australia) (11.27 a.m.)—May I commence my remarks by commending the Chair of the Foreign Affairs, Defence and Trade References Committee for the very thorough inquiry that was conducted into what are very important issues for a broad cross-section of Australian commercial life. The government members on the Senate Foreign Affairs Defence and Trade References Committee could not, unfortunately, accept a number of the findings and recommendations contained within the majority report entitled Voting on trade: the General Agreement on Trade in Services and an Australia-US free trade agreement. Having said that, we do accept a number of the findings and recommendations and, from our point of view, it was pleasing to note the conclusions that the report came to in a number of areas. The first was that, in a majority of cases, stakeholders were satisfied with the level of consultation undertaken on the Australia-US free trade agreement and the General Agreement on Trade in Services so that it was rare that there was negative commentary, indicating that the government had not engaged a broad range of people. Obviously, these sorts of agreements are very important, and it is clearly vital that the government fulfil an obligation to engage as many people as possible in proceeding to implement these types of treaties.

The reforms introduced by the government in 1996 have made the treaty-making process much more open, transparent and systematic. They have enhanced public awareness of the treaty-making process. This
is, and has been, a very vital part of this government’s approach to dealing with the plethora of international treaties and covenants which many people in Australia seek to have applied on a domestic basis. The broad majority of Australians are left in the dark as to what these types of treaties convert to on the ground and in practical terms. The Australia-US free trade agreement will encourage a much greater integration of the American and Australian economies—and this was recognised by the committee—and I will have a little more to say about that in a moment.

Australia has approached the GATS negotiations in a prudent manner, and the committee noted this. The negotiators have taken particular care to address the prominent concerns of the community. A very large number of submissions were made to this committee, and a large number of witnesses attended, such that the Hansard is a very comprehensive compilation of opinion, information and data relating to where we are going with these very important agreements. However, certain recommendations on treaties, and the parliamentary process as recommended in the majority report, would fetter and inhibit the government’s capacity to negotiate very sensitive trade agreements such as the US free trade agreement. Accordingly, the government members of this committee had considerable difficulty coming to terms with how practical it would be to have a greater level of transparency, given the nature of politics to some extent and the vested interests that underlie the commerciality of these agreements.

Accordingly, the government members saw that flexibility and timeliness would be the victims of a further enhanced transparency in the process. That is not to say that the government has not been keeping people informed, but we must remember this is a commercial negotiation and the commercial interests of Australians are paramount in terms of trading with another sovereign nation and must be protected.

So we saw that some of these recommendations would be unworkable. They would circumscribe the capacity of the government to secure the best possible trade outcomes from these negotiations and undermine the executive’s constitutional authority to sign such treaties. Certain recommendations contained within the majority report would, as I have said, take away the flexibility and the timeliness of the government’s negotiating approach and inhibit the government’s strategy in seeking to obtain the best possible outcome. I think that is obvious, fundamental and, to some great extent, trite. The government is firmly of the view, and the government members of the committee were firmly of the view, that there was no evidence to suggest that such an approach would be practical or would have any real benefit when converting to the end product and outcome of the negotiations and of the agreement itself.

There are considerable checks and balances, the first and most important being that the Joint Standing Committee on Treaties—a committee that was of course inaugurated by the government—already provides a very successful and studious scrutiny role of trade agreements. Where this agreement might go beyond the existing regulation, the parliament has the right to vote on legislative change required as part of that agreement. This trade agreement will come before the Joint Standing Committee on Treaties. I have no doubt there will be considerable interest in that very open and transparent process and that people will be able to work through and see what outcomes have been achieved. Throughout the negotiations, the government has been committed—and maybe not enough emphasis has been placed upon this in the majority report—to ensuring that informa-
tion on trade negotiations is made readily available to the community whilst protecting the commercial-in-confidence and the commercial realities underlying the negotiations.

To this end, the government has engaged in an extensive and unprecedented process of consultation on both the GATS and the US free trade agreement, including very extensive consultations with a wide range of stakeholders who are battling along in circumstances where their relationship with the United States in particular could be greatly enhanced and made easier through the terms and conditions of this trade agreement. The committee noted that there was a diversity of concerns evident during the consultative process about how things were going. Most of the concerns were indicative of a failure to understand the requirement to obtain successful commercial outcomes in the negotiations.

Let us turn to what the US free trade agreement is likely to yield. One of the most important things that struck me, and I think the other government member of the committee, Senator Sandy Macdonald, was that the United States is home to rapidly expanding information technology. This technology is something Australia must have access to, must be part of and must participate in. The need for us to have the advantage of the priority of a free trade agreement with respect to information technology is, again, one of the most obvious things confronting any student of trade—indeed, any student interested in seeing where Australia will be in 10, 20 and 50 years time. So the integration of our economy deeply with that of the United States, the world’s biggest and most successful economy, is going to be very significant for this economy and the benefits will be there for ordinary Australians to see in enhanced opportunities to improve their standard of living. The capacity of Australian companies to be more globally competitive and to be able to benchmark themselves against American companies is a further advantage.

Finally, for the Australian superannuation industry to be able to access the US investment market more readily, more openly and more freely is going to mean that our future generations will have a much more secure and optimum use of the money that is now being put into superannuation funds. The same holds for the long-term future of the agricultural industry. We are already successful in the sheep and beef markets, and those areas are clearly going to be enhanced through these agreements. So may I say that the government members of the committee are excited about the prospect of a US free trade agreement and see a number of advantages.

Senator RIDGEWAY (New South Wales) (11.37 a.m.)—Mr Acting Deputy President, before I begin I seek clarification as to the time available for dealing with this report from the Foreign Affairs, Defence and Trade References Committee. I understood that all speakers were to be allowed 10 minutes. I am advised differently that there are only 10 minutes remaining for this particular segment.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—That is correct, Senator Ridgeway. There was a 30-minute time limit on the overall debate.

Senator RIDGEWAY—In that event, I advise the chamber that I propose to speak for five minutes and will share the remainder of the time with Senator Nettle, from the Greens. I will also seek leave at that stage to incorporate the remainder of my comments in Hansard. The Australian Democrats strongly endorse this report entitled Voting on trade: the General Agreement on Trade in Services and an Australia-US free trade agreement and its recommendations. We be-
lieve that the report appropriately addresses the broad range of issues that have been identified in respect of both GATS and the proposed Australia-US free trade agreement, as well as more general issues regarding trade policy and the role of parliament in the trade agreement-making process.

Senator Sherry interjecting—

The ACTING DEPUTY PRESIDENT—Order, Senator Sherry! This cross-chamber chatter is not conducive to Senator Ridgeway’s contribution to the debate. It is not relevant to his contribution, and I would ask senators to desist.

Senator RIDGEWAY—The committee and the secretariat should be commended on the excellent job that they have done in putting together what is a very important report. More particularly, I want to thank Senator Cook for his steadfast chairmanship of the committee and the hearings themselves. It is timely that the report is being tabled in the lead-up to the final round of negotiations for the proposed Australia-US free trade agreement. The inquiry has been extremely timely, as throughout the year public concerns about GATS and the proposed free trade agreement have brought the issue of Australia’s international trade policy to the forefront of public debate. As we are all aware, this is not usually the case and trade is often not considered to be a controversial issue. However, given the nature of modern trade agreements and the significance of the potential impact these agreements will have on our social and economic future, we believe that this debate is an important one.

I want to move very quickly to particular issues concerning the recommendations themselves. I also want to put on the record that the Democrats initiated this inquiry, with the support of the ALP, in late 2002 in response to public concerns at the lack of information and consultation from government regarding major trade agreements. I think it has been a most worthy exercise. Many submissions have been received and stakeholders have expressed their views through those hearings.

As to the report, the Democrats want to state from the outset that we are not anti trade; we support the notion of fair trade that is first and foremost in the national interest. Having said that, whilst efficiency and economic growth are vitally important, the concept of national interest is about more than basic economic considerations. We are committed to the highest standards of Australian social and labour conditions and to the preservation and improvement of our environment and make these the primary consideration for any trade decision. It is vitally important that we resist any efforts to compromise on the protection of our national cultural identity.

Having said this, the committee report adopts an appropriately critical approach to the government’s trade policy strategies. It reviews the government’s demonstrated preference for bilateral trade initiatives at the expense of efforts in the multilateral arena which, in addition to diverting trade away from our other trading partners, limits Australia’s role in ensuring that the international trade system improves opportunities for the developing world. Further, the report urges the government to undertake more extensive research and greater public consultation before committing to international trade agreements to ensure that our commitments conform to Australia’s national interest.

Finally, the Democrats thank, again, the committee secretariat. It is an impressive report. The recommendations, I think, are very reasonable. They are not radical. They are ones that I think the government ought to be encouraged to take on board. The report lays out the way forward for the parliament
in scrutinising, reviewing and debating any treaties that are put in place. I now seek leave to incorporate the remainder of my remarks.

Leave granted.

The speech read as follows—

The advantage of extensive consultation is well demonstrated by this Inquiry. Throughout the course of this Inquiry, the Committee conducted hearings around the country, which provided a valuable opportunity for the Senators to meet with concerned stakeholders. The Committee has heard from organisations and individuals ranging in size from the huge Australian Wheat Board, to an independent peanut farmer from Queensland. From academics and actresses to lobbyists, unions and industry representatives—the Committee managed to hear from them all. The benefit of such widespread consultation is that you get a broad range of views, and through this process the Committee managed to build a clear picture of the likely impact these trade agreements may have on Australia’s future. A number of witnesses identified the significant opportunities that may open up for individual sectors of our economy as a result of better access to overseas markets through trade agreements. Having said that, there was wide consensus regarding the range of various concerns that would compromise the advantages that could potentially be gained.

As a result, the Committee’s Report thoroughly analyses the various issues of concern with respect to social policy objectives that may be compromised as a result of GATS and the proposed USFTA. It discusses the potential impact these agreements may have on the right of future Parliaments to freely regulate in the public interest, and the importance of retaining the ability to deliver essential public services. The Report also makes recommendations urging the Government to protect the PBS, Australian content in both traditional and new forms of media, quarantine rules and foreign investment regulation.

A particularly pleasing aspect of the Report is the fact that the Committee has concluded that trade agreements should be brought to the Parliament before ratification for debate. This is something the Democrats have emphasised and repeatedly called for this throughout the year. Parliamentary approval of treaties has been an important part of Australian Democrat policy for some time. Former NSW Senator Vicki Bourne introduced the Parliamentary Approval of Treaties Bill in 1995, which we continue to pursue. Throughout this year, we have emphasised the importance of this issue, and have continually called for agreements such as the GATS and the proposed USFTA to be brought before the Parliament for scrutiny and debate.

We would like to make one distinction, however, between our policy in this regard and the approach taken in this Report. The Democrats appreciate that a distinguishing feature of modern international trade agreements is that unlike other types of international treaties, trade agreements are strictly enforceable, and impose (as the Report states) ‘binding justiciable constraints on government’.

However, the Report argues that this therefore establishes greater justification for Parliamentary approval of trade agreements, as opposed to ‘conventional’ treaties. We understand that the focus of the Committee in this Inquiry is on the impact of trade agreements specifically, and can therefore appreciate why Parliamentary approval of trade agreements is the main concern of the Report. However, it is our strong belief that Parliamentary approval of treaties should not be restricted to trade agreements alone.

As a matter of principle, we believe Australia should consider itself strictly bound by all international agreements it enters into, irrespective of the nature of dispute settlement procedures contained within each treaty. The mere fact that one treaty is not as ‘enforceable’ as another is not, in our opinion, sufficient reason to consider it exempt from the need for Parliamentary consideration. The Democrats will continue to support the need for parliamentary approval of all international agreements.

Having said this, the recommendations of the Report in relation to the Parliamentary approval of trade agreements propose a useful process to ensure that there is greater democratic legitimacy in seeking to bind Australia to major trade agreements.
This process, which is outlined in the Report, would ensure that the elected representatives of the people of Australia have an opportunity to have a voice in the process of entering into binding international commitments. The Parliament would have a role in approving the Government’s priorities for trade negotiations, which would give the Government a greater democratic mandate in negotiations. A concluded trade agreement that conformed to already agreed objectives would be more likely to receive final Parliamentary approval.

This process is similar to the one that operates in the United States, where Congress has an opportunity to accept or reject any major agreement entered into by the Executive Government. It is time that Australia embraced a similar arrangement. The current system, where commitments are made by our Executive without consultation that have a significant impact on every facet of Australia’s economic and social structure and bind us long into the future, is inappropriate and lacks democratic legitimacy.

In conclusion, once again I’d like to thank the Committee Secretariat for their impressive efforts in producing a report of an outstanding quality. I commend this report to the Parliament, and urge the Government to seriously consider its findings and take these recommendations on board.

The General Agreement on Trade in Services and the proposed US Free Trade Agreement are significant agreements that are likely to have a major impact on Australia’s future. We must proceed with caution—embracing the possibilities that are opened up as a result of greater trading opportunities, but ensuring that these are not at the expense of social policy objectives and the long-term national interest.

Senator NETTLE (New South Wales) (11.43 a.m.)—The Senate Foreign Affairs, Defence and Trade References Committee inquiry into the General Agreement on Trade in Services and the Australia-US free trade agreement has been an extremely important opportunity for parliamentary scrutiny of these trade agreements. As the committee report outlines, there is an urgent need to dramatically increase the role of parliamentary scrutiny when executive governments are negotiating and signing off on trade agreements, as this government is doing at the moment. The Greens support the processes outlined in the committee report to bring greater parliamentary scrutiny to the process of negotiating trade agreements.

The recent collapse of the WTO talks in Cancun and the stalling of other multilateral trade negotiations has occurred because primarily the United States but also some of the large trading blocs—the quad countries in the WTO—have not been getting what they want out of the multicultural trade agreements. So they have taken a different approach, where developing countries have stood together with community voices to say that countries should have the right to regulate things that occur in their country—a pretty reasonable request. This has not been accepted, so the United States has taken a different approach. Its approach is now to pick off countries one by one for trade negotiations. Small countries are being forced into individual negotiations with the world’s largest economic superpower. If I were a betting person, I know whom my money would be on as to who will get a better deal. Australia is the largest country that the United States has attempted to negotiate a free trade agreement with. We are the size of Pennsylvania by comparison to the size of the United States economy.

The timing of this Senate report is particularly crucial as Minister Vaile is currently in Washington for possibly the last round of negotiations for a US-Australia free trade agreement. The US-Australia free trade agreement represents a very real threat to Australia’s access to affordable medicines, and we are hearing that more now as we are at the pointy end of the negotiations and the Americans are putting on the table their demands in relation to our intellectual property laws and the patenting of generic medicines.
The FTA also represents a threat against our children growing up having Australian stories being told to them in the Australian media.

The Prime Minister and Minister Vaile indicated in the last week that they are prepared to put our Pharmaceutical Benefits Scheme and our cultural industries on the table for supposed agricultural wins. I have been talking to Australian farmers in New South Wales over the last few months. The No. 1 response to the question of what is a barrier to their getting their exports into the US marketplace is the US subsidies that are paid to domestic farmers in that marketplace. The chief trade negotiator confirmed to the Senate inquiry that the negotiations are not seeking to reduce US subsidies. That is a bridge too far, and that is for the multilateral process. While these subsidies exist, Australian exporters are competing at a disadvantage in the US market. While such things as our quarantine regulations, our GE regulations and our single-desk export marketing remain on the table in these negotiations, there are greater threats for Australian farmers.

The Australian Greens have made recommendations in this committee report that, in light of the threat to social services and the misconception about wins for agricultural exporters, Australia should cease its role in the negotiations on a free trade agreement with the US, that trade agreements should occur in a multilateral fora based on principles of social justice, international labour laws, human rights and environmental standards and that this fora should occur in a transparent and accountable way. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS
Rearrangement

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.48 a.m.)—I move:

That government business order of the day no. 6 (Medical Indemnity Amendment Bill 2002 and a related bill) be considered from 12.45 pm till not later than 2 pm today to enable second reading speeches to be made.

Question agreed to.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL 2003
Second Reading

Debate resumed from 17 September, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (11.48 a.m.)—I rise to speak on the International Tax Agreements Amendment Bill 2003—Senator McGauran—What’s the Labor Party policy?

Senator SHERRY—Senator Julian McGauran is interjecting. With a little less provocation and interjection, I was about to indicate what the Labor position is on this bill. It is a very difficult time of the year in terms of getting the legislation considered and completed. I was about to indicate how cooperative I intend to be, because I will be confining my comments to five minutes at the maximum, but Senator McGauran is doing his very best to wreck the informal agreements that operate in the Senate. It is a difficult time of year for a cooperative Labor opposition. Mindful of the pressure on the legislative time frame, I will truncate my remarks about the International Tax Agreements Amendment Bill.

The International Tax Agreements Amendment Bill 2003 provides a legislative basis for two double tax agreements: the United Kingdom double tax agreement and
the Mexico double tax agreement. The bill passed the House of Representatives on 16 September 2003 and was referred to the Senate Economics Legislation Committee, which reported on 3 November 2003. The Joint Standing Committee on Treaties also reported on the two treaties on 9 September 2003. I indicate very clearly that the Labor Party will oppose this bill. In his budget reply speech, the Leader of the Opposition, Mr Crean, indicated that Labor would fund in part its package to save Medicare with a review of international tax measures, which included the UK double tax agreement.

This is the third double tax agreement that has been signed between Australia and the United Kingdom. The first double tax agreement between the two countries was signed back in 1946. It was partly revised by an amending protocol in 1980. The agreement that was intended to be ratified by this bill was concluded on 21 August 2003 and replaced the existing agreements. As it has not been updated since 1980, the existing agreement is not well aligned with modern business practices, the respective tax systems or modern tax treaty arrangements, as would be desirable.

The new treaty explicitly covers, for the first time, a number of taxes that have been introduced since the 1980 protocol was negotiated, and it deals with a number of issues that have arisen in each country since then. The capital gains tax was introduced in September 1985. The tax commissioner’s view was that, because the treaty did not cover capital gains tax, Australian law would apply. The commissioner issued rulings to reinforce that. The treaty explicitly confirms Australia’s right to tax capital gains. This is an integrity measure. Fringe benefits tax was another of Labor’s 1985 tax reforms. The UK also taxes fringe benefits. The new treaty explicitly removes the potential for double taxation of fringe benefits. The agreement also covers employee share option schemes and includes a formula for sharing the rights to tax employee share option schemes. Each country will then apply its own tax treatment of employee share option schemes on a pro rata basis.

The new treaty also makes changes to the provision for exchange of information. Under the new arrangement the UK does not have to have an interest in information before providing it to Australia, as it did under the old treaty. The UK treaty makes significant reductions in source withholding taxes on a bilateral basis. It cuts interest withholding tax to a maximum of five per cent, royalty withholding tax to five per cent of the gross payment and tax on cross-border intercorporate dividends to five per cent or nil.

The first round of reducing withholding taxes is significant—$90 million rising to $100 million a year, according to the explanatory memorandum. The Australia-Mexico double tax agreement follows agreements with other members of the North American Free Trade Area. The Mexican treaty puts more emphasis on source taxation consistent with the UN tax treaty model. It therefore contains higher limits on withholding taxes than either the US or UK agreements but they are substantially lower than Mexico’s royalty withholding tax of 35 per cent or its interest withholding taxes that range from 4.9 per cent to 25 per cent. Mexico does not have a dividend withholding tax. The cost to Australian revenue of the Mexico tax agreement is minimal. It is estimated at $2 million a year in both the explanatory memorandum and this year’s budget.

As I indicated at the commencement of my remarks on this international tax arrangements bill, the Labor Party are mindful of the pressure on the program this year. I have curtailed my remarks to a little over
five minutes, including interruptions from Senator McGauran, the National Party doormat of the current government. In concluding, the Labor Party will not be supporting this legislation. We do believe there are some greater priorities, particularly the health system of this country, that can be accorded revenue support. In this instance we will not be supporting the legislation.

Senator MURRAY (Western Australia) (11.54 a.m.)—The International Tax Agreements Amendment Bill 2003 contains the two double tax agreements that Australia has recently negotiated. These are given legislative authority by including them in the International Tax Agreements Act 1953. The bill also contains some minor technical amendments. The first agreement that is being ratified and adopted into legislation is with Mexico. I note from the Bills Digest No. 41 that the former Labor Minister for Trade the Hon. Dr Neal Blewett was the Australian minister who initiated the negotiations for the Mexico tax treaty in the early 1990s. I am sure he would be horrified to hear that Labor is now opposing his original initiative.

My understanding is that Mexico is now the 47th country with which Australia has entered into a double tax agreement. Trade with Mexico represents a relatively small $1 billion a year but that is a large figure for anybody else. This agreement does complete Australia’s tax treaty network with the North American Free Trade Area and in that sense it is an important access point for bigger fish, as it were.

The agreement is fairly standard and follows the OECD model. The OECD prescribes a standard bilateral agreement that countries can and should enter into. In the area of international taxation, due to the peculiarities of each country’s taxation regime, bilateral agreements are the only realistic option. A bilateral agreement, known as a double tax agreement or DTA, has three or four central purposes. Firstly, it prevents double taxation. Without the agreement, an enterprise—whether a company, trust or individual—seeking to trade in another country could have profits taxed both in the country where they are sourced and in the country where their enterprise is resident. Secondly, the agreement is aimed to prevent fiscal evasion, particularly tax avoidance and evasion. Thirdly, the agreements prescribe improved cooperation and information sharing between the revenue authorities of the countries. Fourthly, any tax treaty does help facilitate the operation of markets. It is a contribution to the effectiveness, efficiency and flexibility of a market.

The agreement with the United Kingdom supersedes the previous agreement which was written in 1967 and had its antecedents in the 1940s. Obviously, since 1967 the business and tax environments have significantly changed. We have seen the use of licences, technology and the Internet in a way that could never have been contemplated back in 1967. Global Australian companies like BHP Billiton, Brambles and Rio Tinto did not exist back in 1967, nor did the concept of dual listing. Equally, in 1967 Australia did not have a capital gains tax. Back then we did not have the concept of franked dividends, thin capitalisation or debt equity rules. One problem that has arisen in the older treaties is the uncertainty surrounding Australia’s capital gains tax. This has been exploited in several cases and the High Court found when considering the old double tax agreements that capital gains tax had effectively been avoided. By updating the agreement with the UK we can ensure that capital gains tax cannot be avoided by clever tax planning.

The provisions of both agreements were referred to the Senate Economics Legislation Committee. This committee reported earlier this month and recommended that the bill be
agreed to. There was no minority report. The Democrats are very disappointed to understand that the Labor Party will be voting against this bill. The Democrats believe that the Labor Party argument is that, although they support the policy behind the agreements, they would prefer the revenue to be spent on Medicare. Frankly, that is a very odd choice of things to lay off the importance of this bill against. In considering the importance of trade with the United Kingdom, one only has to look at the speech made during the second reading debate by the Labor taxation spokesperson in the House, Mr Cox, who, I might say, has a very good policy mind. Mr Cox said:

This is an important treaty because of the strength of investment and trade flows between the two countries and the substantial changes to the taxation system over the last 23 years. At 30 June 2002, the stock of UK investment in Australia was $224 billion ... The stock of Australian investment in the UK is $71 billion ... Total Australia-UK trade flows exceeded $18.7 billion in 2002, comprising merchandise exports to the UK of $5.6 billion, merchandise imports by Australia of $5.8 billion, services exports to the UK of $3.6 billion, and services imports from the UK of $3.7 billion.

I am amazed that the Labor Party would ever contemplate putting this trade at risk by failing to update a treaty previously written in 1967—a long 36 years ago. The Labor Party did not vote against this bill in the House of Representatives, so is this a policy change from the Labor Party, or is it simply a one-off? Is it simply some aversion to treaties with Mexico or the United Kingdom? Or perhaps the Labor Party are so angry at the drop kick of Jonny Wilkinson that they thought they should punish the Poms in another way? I am all for punishing the Poms, but perhaps not through this bill. In a way I hope it is just a brainstorming occasion. I would prefer to believe that than think that the Labor Party are trying to make it harder for Australian companies to invest globally, because, if they were opposing this for any other reason, it would mean that they were turning their backs on a long history of encouraging global investment, a long history of freeing up Australia’s engagement with the markets of the world and a long history of trying to make our trade tariff system much more rational than it was.

It is the Democrats that are often accused of being economically unsound, which, I might say, is a singularly perverse view which does not ever have regard to the record. But, when the Labor Party suddenly vote against sensible tax treaties, you have to wonder about certainty in this world. Only two months ago Mr Cox in the House of Representatives said:

The new treaty also improves the provision for exchange of information. Under the new arrangement the UK does not have to have an interest in the information before providing it to Australia, as it did under the old treaty. This is an important anti-avoidance and anti-evasion measure.

In other words, the treaty will help Australia crack down on the use of tax havens. This seems like something that the Labor Party would support but, as I mentioned earlier, they are not going to support this treaty because they are not going to support this bill.

When the shadow Treasurer, Mr Latham, was discussing last year’s International Tax Agreements Act that ratified the updated tax treaties with Russia and the United States—and he is not a great fan of the United States, as we know—he said:

While the new provisions of the US agreement are technical and the politics are not controversial, it represents a significant tax expenditure—indeed, a yearly revenue cost to the Commonwealth of $190 million. Labor support for this major reduction in tax on business reflects our commitment to getting Australian capital working productively. Competitive tax rates on business
are a necessary part of continued improvements in Australia’s productivity; they are not sufficient, of course, but they are absolutely necessary.

That was Mr Latham supporting the tax treaty with the United States, even though it will cost nearly twice as much as this one.

Last year the Senate also supported and ratified the United States and Russian tax treaties. The only senator who voiced any opposition to the treaties was the One Nation senator, Senator Len Harris. Last year the Medicare crisis was just as strong as it is this year, and yet the Labor Party supported the tax treaty with the USA. The Labor opposition to these DTAs is based on a budgeted $100-plus million revenue cost, but even Mr Cox acknowledges that this budgeted cost ignores the benefits of the agreement. The inquiry quite clearly indicated that the financial benefits of the agreement have not been promoted, either in the explanatory memorandum or by government, but they exist. Mr Cox acknowledged that the reduced cost of capital as a result of the double tax agreement would increase both investment and GDP, resulting in second order revenue gains for Australia’s Treasury. Treasury do not take second round revenue impacts into account in working out budget costings. In this instance, they estimate the double tax agreement would increase economic activity and, consequently, government revenue by $70 million a year. My personal opinion is that that could be a modest or conservative estimate.

Additionally, the agreement will save Treasury between $5 million and $10 million a year in foreign tax credits. The treaty provides improved access for Australian companies to trade within the entire European Union, through the gateway effect, and that is made more attractive because it is now free of withholding taxes. As I mentioned earlier, the modernisation of the United Kingdom treaty will improve the tax office’s ability to uncover the use of tax havens. It is also part of a process to end international structuring to avoid Australian capital gains tax, yet all of these benefits are ignored in the Treasury’s costings—which, I might say, is a weakness, and I would urge the Treasury not to do that—and consequently have been ignored by the Labor Party in what I think is an irrational decision to oppose this bill, which is quite contrary to their former great sense with respect to double tax agreements.

Clearly, this agreement is in Australia’s best interests. The Labor Party, as I have shown by the quotes from Mr Cox and Mr Latham, know that the agreement is in Australia’s best interests. So what they are doing is a stunt—a stunt to direct attention towards Medicare. I, and the rest of the Democrats, share their concerns about Medicare and particularly bulk-billing. The government, from their direction, share concerns about Medicare and bulk-billing, otherwise they would not be trying to do something about it. The debate is whether what the government is doing is going to help Medicare sufficiently or harm it. We, and particularly my colleague Senator Allison, have been working constructively with the government to improve health funding and to produce an outcome that the Australian public will find benefits them. But Medicare will not be saved by opposing this bill. Medicare will not be saved by $100 million worth of savings by rejecting this bill. Damaging Australia’s international trade with important markets in North America and Europe will not save Medicare. The best estimates indicate that, at most, ignoring all the peripheral benefits, these agreements could cost around $20 million to $30 million a year rather than the very conservative estimate that the government has made of $102 million.

If the Labor Party really think that Medicare could be saved by finding additional revenue, why are they talking so often about
tax cuts? Why did they support the capital gains tax cuts for wealthy individuals? That one measure alone costs the revenue $1.8 billion a year, yet it only assists those with investment properties and share portfolios. If they really want additional revenue, why do the ALP not support the Democrats and, incidentally, the Reserve Bank, in calling for reforms to negative gearing and building depreciation allowances? These measures alone would save the Treasury over $1 billion a year. This would have the additional benefits of cooling the housing boom, reducing the pressure on interest rates and helping farmers and exporters by reducing the strength of the Australian dollar. Again, if the Labor Party want additional revenue, they could support the Democrats in calls for reform to the tax treatment of company cars. This is now a $900 million a year tax concession that is bad for the environment. Or they could support our campaign to tighten up on what is known as the mutuality provision, which is allowing Super League clubs to rort the tax system and not pay their proper taxes. All of these ideas highlight the fact that this is a stunt, and for a relatively minor amount of revenue. The Labor Party support for last year’s United States treaty, costing twice as much, demonstrates what a ridiculous 180-degree turn this is—and how foolish, from their perspective.

In summary, we will be supporting this legislation. We believe that the trade, investment, and secondary revenue benefits, along with the crackdown on tax avoidance, outweigh the simplistic costings from Treasury, which understate the financial benefits of these measures. We are disappointed that the Australian Labor Party—who formerly had a very sound, economically sensible and responsible position on tax treaties—have adopted their current position with respect to this bill. I am certain it is a one-off. I cannot imagine that the alternative government of this country or a future Labor government would not seek to enter into double tax agreements in the future. If they were to adopt that approach, such a decision would turn Australia—from a trade perspective at least—into an isolated island. It would also permit increased opportunities for international tax avoidance.

However, in one respect I very much welcome the Labor Party attitude because it enables me to demonstrate once again that, thankfully, the Australian public has the Democrats to sensibly and responsibly exercise the balance of power in the Senate and ensure that political stunts like this do not harm the economy and international trade relations. Maybe business will stop fawning at Labor’s door and start to give us the backing that our long, 26-year history entitles us to, in terms of our sensible assessment of economic priorities. So, Minister, we will be supporting the bill.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.10 p.m.)—Perhaps I could say to Senator Murray that, on this occasion, not only do I love him but I love him this morning for his support for this very important measure. I am aware of the time, but I want to make a few comments, in summing up, about the underlying policy rationale and the importance of this initiative. Senator Murray may have almost said it all in relation to the attitude of the Labor Party to these most important initiatives, but I do want to add a couple of comments.

Firstly, the International Tax Agreements Amendment Bill 2003 represents an important milestone in delivering a competitive and modern tax treaty network for Australia that I think most of us would agree is very important. The bill provides domestic legislative authority for two comprehensive double tax treaties: a replacement for the existing Australia-United Kingdom double taxa-
tion agreement and a new Australia-Mexico double taxation agreement. These two new double tax treaties will improve Australia’s international relations with the UK and Mexico by promoting cross-border activities in trade, investment, transport and employment. Importantly, they will also protect the integrity of our tax system and our revenue base by combating fiscal evasion, through improvements to the exchange of information framework between revenue authorities. Both treaties will produce significant positive economic outcomes for Australia by contributing to a larger, faster growing and more dynamic Australian economy with, of course, flow-on effects for employment, trade and investment.

The new tax treaty with the UK, signed on 21 August this year, delivers another key instalment of the Howard government’s commitment to modernising Australia’s tax treaty network. It will replace the existing and outdated double tax agreement with the UK, signed in 1967 and last modified in 1980. The importance of modernising our treaty with the UK is underscored when you consider the international economic significance of the United Kingdom, which is the fourth largest economy in the world; the size of the Australia-United Kingdom investment and trade relationships; and the gateway relationships that the UK has with Europe and Australia has with Asia. It is an interesting nexus.

The treaty continues Australia’s move towards a more residence based treaty policy, in line with the direction taken in our recent protocol with the United States. It delivers a significant plank in the government’s commitment to the Ralph report recommendations, which I have had the privilege of rolling out since I have been in this position, and to update our ageing treaties with our major trading partners. The new treaty achieves a balance of outcomes that will provide Australia with a competitive tax framework for international trade and investment, while ensuring that the Australian revenue base is both sustainable and suitably protected. The treaty protects our ability to effectively apply our taxing rights in respect of Australian-sourced business profits, the exploitation of natural resources and the sale of significant Australian assets. Withholding taxes on certain dividend, interest and royalty payments will be significantly reduced, in line with the US protocol. This will provide enhanced, long-term benefits for Australian business by making it cheaper for them to obtain intellectual property, equity and finance for expansion.

Australia’s standing as a global financial centre will also be improved on conclusion of the treaty. Interest withholding tax changes will reduce the cost for Australian business obtaining funds from United Kingdom financial institutions and will remove an impediment currently faced by Australian banks lending offshore. At the same time, the reduction in the royalty withholding tax limit will make Australia a more attractive destination for overseas investment in research and development and will reduce the cost to Australian business using intellectual property that is owned offshore. The new treaty also provides improved business certainty in relation to capital gains tax issues and emerging treaty issues such as dual listed companies and employee share options. Finally, the government’s decision to agree to non-discrimination articles in our new tax treaties is incorporated in this new treaty with our close trading partner, the UK.

Senators will be interested to know that the Mexican agreement, signed on 9 September 2002, will complete Australia’s tax treaty network with the North American Free Trade Area, or NAFTA, countries. It represents an important addition to Australia’s existing double tax treaty network. Broadly
speaking, it will allocate taxing rights along the same lines as Australia's other double tax treaties, including those with Russia and Argentina. The size of the Mexican economy—it is the ninth-largest in the world—and its growth prospects emphasise the strategic importance of this agreement. Australia's trade and investment relationship with Mexico is the largest Australia has with a Latin American country. A major beneficiary of the agreement will be Australian businesses trading with and investing in Mexico. The government looks forward to the strengthening of trade and investment, and to the wider relationships between Australia and Mexico, that the successful conclusion of this agreement will deliver.

I also mention that the bill makes some technical corrections to update cross-references to the International Tax Agreements Act 1953. It also clarifies that, for the purposes of that act, references in Australian tax treaties to income from shares or to income from other rights participating in profits shall not include a return on a debt interest. This is an amendment that follows and is consistent with the enactment of Australia’s debt and equity rules in 2001. As part of my comments about the underlying rationale of this bill, I am sure that I do not have to remind senators—certainly not those from the government and the Democrats—of the importance of this bill for Australia’s ongoing economic success story. It is there to lay a solid foundation for the ongoing and further development of Australia’s trade and economic cooperation with the United Kingdom and Mexico, and will significantly enhance our bilateral relationships with those countries. The initiative will address barriers to international competitiveness. I would not have thought that we would want any elected representative to block measures that will create employment and investment in Australia.

I think it is quite appalling the way that the Labor Party has sought to reprioritise in relation to opposing these essential agreements and this bill. Clearly, the opposition has failed to recognise that the new treaty package will only produce a positive economic outcome for Australia. The governments of both countries have undertaken to reduce the taxes that inhibit investment and growth in employment. If anybody asks business, they will tell you about it. This will involve a cost to the revenue in the form of reduced withholding taxes, but that is expected to be more than offset by future tax revenues flowing from a larger, faster growing and much more dynamic Australian economy. The treaty will provide long-term benefits for business, making it cheaper for Australian based business to obtain intellectual property, equity, and finance for expansion. It will also remove obstacles currently in the way of Australian corporate expansion offshore.

Providing these benefits will have a flow-on effect throughout the economy—and not just to big business. The cost of the treaty, as I said, will be more than offset by future tax revenues. The treaty will also yield returns from lowering the cost of business imports through lower withholding taxes, thus making business more profitable and increasing future tax revenues. With the United Kingdom treaty the government has achieved a policy position that reduces cost on imports and encourages direct investment. At the same time, it exercises an appropriate level of source country taxation. The new treaty achieves a balance of outcomes that will provide Australia with a competitive tax framework for international trade and investment, and will ensure that the Australian revenue base is both sustainable and suitably protected. We have to get that balance right—or as right as we possibly can.
The new treaty ensures that Australia can effectively apply its taxing rights in respect of Australian source business profits, the exploitation of its natural resources and the sale of significant Australian assets. The interest withholding tax changes will lead to an effective reduction in interest rates paid by Australian borrowers to foreign lenders. In effect, this will increase the competitiveness of banks and, other things being equal, could be expected in turn to raise both investment and GDP. This increase in economic activity is likely to increase tax revenue and, of course, is likely to increase jobs. This government believes that everyone who wants a job ought to be able to have one. If all of the relevant reductions in interest and royalty withholding taxes were to flow through to higher taxable corporate income, they would result in increased corporate taxation of over $20 million. That is a Treasury estimate. Similarly, there is likely to be a reduction in Australian tax credits claimed for UK withholding taxes in the order of $5 million to $10 million.

The Labor Party does not seem to understand that, for Australia to even stay in the game against its competitors and go on enjoying growth, it must find ways of becoming more efficient and more effective, and more integrated and more related to the global trading system. I have said this on other occasions, but what is Labor’s alternative policy? I agree entirely with Senator Murray that it is pretty short-sighted to try to knock this off in favour of some opportunistic political bid in relation to health policy. It just is not aligned and its only action is to block all of Australia’s crucial reforms. I really do not think that the Labor Party has thought this through. Rather than investing the intellectual resources and what I might call the political ticker in developing a sustainable international tax regime that will benefit Australia, in many respects the Labor Party has seen as its priority a whole lot of internal bickering about who will have the privilege of leading the party into oblivion. How does that benefit the country? Mindless opposition and opportunism will get us nowhere. Opposition for the sake of opposition is not a way to advance this country.

I do not think it is the way in which the Senate usually treats tax reforms. Although on occasions I have my disagreements about how the Senate currently operates, I must say that, in respect of tax legislation, I have usually had cooperation. Sometimes there have been refinements and modifications, but on the whole we have not seen from the Labor Party this sort of mindless opposition to measures that are going to benefit the whole country and that are almost impossible to argue against—at least in any coherent way. How can it be appropriate to make it harder for Australian companies to invest? That has not been addressed by Senator Sherry, although I know that he may not be the main spokesperson for the Labor Party in relation to the position that has been taken. It is an attempt at bashing business for no good purpose. The fact that the Labor Party opposes this bill simply indicates the depth of its disarray and confusion on matters of tax, trade and investment. I appreciate that Senator Murray, on behalf of the Australian Democrats, has been able to raise his eyes above the crass political positions that sometimes can be taken in relation to these matters and has been able to see the overwhelming national interest and benefit in these bills. I commend them to the Senate.

Question agreed to.
Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
SPAM BILL 2003

SPAM BILL (CONSEQUENTIAL AMENDMENTS) BILL 2003

In Committee

Consideration resumed from 26 November.

SPAM BILL 2003

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The committee is considering the Spam Bill 2003 and opposition amendment (1) from sheet 3162 moved by Senator Lundy. The question is that the amendment be agreed to.

Senator LUNDY (Australian Capital Territory) (12.24 p.m.)—I addressed my remarks to opposition amendment (1) yesterday, but it is worth recapping what this amendment is designed to do. Essentially it is designed to extend the exemption under the Spam Bill 2003 to include both trade unions and political lobby groups. Currently the schedule 1 clause 3 exemptions include government bodies, political parties, religious organisations and charities. Labor is of the view that these exemptions are a little selective and, to make it fair and consistent, that trade unions and not-for-profit political lobby groups should also be eligible for exemption. We agree with the government’s reasoning that there is a place for exemptions under this bill and we believe that this would be a fairer and more consistent piece of legislation if these exemptions were extended to the two types of organisations I have described.

Just to reiterate what these exemptions are about, they are exemptions for these organisations to be able to send emails that could be considered of a commercial nature. We have already moved part of the amendments designed to ensure that an unsubscribed facility is still contained in such emails. Of course, good practice would also apply with these organisations in respecting the rights of privacy and working on the basis of a permission system when they engage with people on an ongoing basis. I commend the Labor amendment to the chamber.

It is probably also worth noting at this point that the government has taken the opportunity to reflect on the decision of the chamber yesterday with regard to some of the amendments. I would like to place on the record my disappointment that the government has stated its intention that it will be rejecting amendments by the Senate on this legislation. I think this reflects very badly on the government with regard to the goodwill Labor has shown the government in respect of this bill.

We believe our amendments strengthen and refine this bill. We would like to see this bill passed as soon as possible. If it is in fact true that the government is going to reject the amendments passed by this chamber, then I think it is an indication of this government’s willingness to start playing their own type of politics with this very important piece of legislation.

Senator GREIG (Western Australia) (12.26 p.m.)—I spoke on the philosophy and the ethos of our position on this matter yesterday. I was criticised at length by the minister, who claimed that we Democrats have had a duplicitous position on this issue: that we were vehemently opposed to exemptions of any kind, yet we are now supporting Labor’s proposal to expand those exemptions. The minister claimed that that was an indefensible position and an inconsistent position and wanted to know why it was that the Democrats would hold to that position. I will answer that—I believe I answered it yesterday, but I will go over it again.

We Democrats believe firmly that the Spam Bill 2003 ought to ban all spam—no excuses, no amendments, period. We believe
that all unsolicited email, whether it is of a commercial or non-commercial nature, is annoying and unwanted and expensive and ought to be addressed. I accept that there are limitations on how we can do that in a legislative way given the global nature of the Internet. However, if I were to maintain an utterly consistent position on that, as the minister suggests, and to oppose all amendments as they appear here during this debate to disallow or to not allow any exemptions, then I would be placing myself and my party in the position where at the end of the day we would be consenting to a bill that does allow for exemptions—because that is built into the government’s legislation and has the support of the opposition—but which of itself is quarantined to only a few exemptions giving special privilege to some groups. I spoke of that yesterday.

If I were not to support Labor’s amendment to expand the exemptions to trade unions and other not-for-profit lobby groups, then I would be consenting to a legislative regime which allowed only some groups in the community the right to commercial spam—namely, political parties, religious organisations and charity groups—but denying that same right to other groups in the community. I will not do that, because I believe in equity and I believe that the bill should not be biased and that it should have balance. I am therefore supporting the expansion of the amendments to include those groups. But that does not in any way assuage me or my party from our original concern that the bill ought to have no exemptions. So there is no duplicity here.

What I am doing is reluctantly acknowledging the fact that, whether I like it or not, whether my party likes it or not, the major parties—the coalition and Labor—will be supporting this bill with amendments. So the question before us is not whether there ought to be amendments. We Democrats fought for that; we did not get support for that. The fact is that this bill will pass with amendments allowing exemptions. The question for me is: how should those exemptions be arranged? Should they be unfair or should they be fair? Clearly, they should be fair. The exemptions proposed by Senator Lundy do put in the balance that is lacking from the bill, and that remains our argument.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.30 p.m.)—I was not going to reply, but Senator Lundy decided to somewhat gratuitously attack the government, which was rather unfair, and I do not propose to sit here and cop that. I listened very carefully to what Senator Greig said. Senator Lundy, of course, is the representative of the trade unions in this chamber. That is the nature of the Labor Party; it is the political arm of the trade union movement. Every senator that comes into this chamber is typically a trade union boss. It is not surprising that Senator Lundy would want to include trade unions in these exemptions. It is not surprising because they are the paymaster. If you are Labor senator and you get a call from the ACTU, you jump. We understand that—it is the nature of the Labor Party. The amazing thing is that Senator Greig has decided to jump with them! That is the astonishing thing, Senator Greig: these people attack your party as much as they attack my party. There is no argument in logic that trade unions should have special exemption. They have a known membership base. Basically, it is an attempt by Senator Lundy to try to look after her mates. That is fair enough, but why would the Democrats want to be part of that? It defies logic.

I listened to you very carefully, Senator Greig. You are opposed to all exemptions, but you are going to widen the exemptions. That is the logic of it. You say, ‘If we’re going to have some exemptions, then let’s widen them still further.’ People may look at
that. I have to say that I have thought very hard and listened very carefully to see whether I could discern a guiding principle in what you say. I am not sure I could. There is an old saying in politics, Senator Greig: ‘If you stand for nothing, you will fall for anything.’ Essentially, that is the problem with the position that you have adopted. If it was a principled position, you would not be doing what you are doing. Your ‘principled’ position is that there are to be no exemptions, so you have come into this chamber and you have now widened the exemptions. That is the Democrat logic. I do not agree with it.

I do not propose to delay the chamber. There was a press statement that was put out last night by my colleague the Hon. Daryl Williams, the Minister for Communications, Information Technology and the Arts. With the permission of the chamber, I would seek leave to incorporate the press statement in Hansard.

Leave granted.

The document read as follows—

OPPOSITION AND DEMOCRATS WEAK ON SPAM
26 November 2003
21/03
Tonight, the opposition and Australian Democrats have sold out the Australian community by inserting a giant loophole in the Australian Government’s anti-spam bill.
They have sided with unscrupulous scammers who could not have designed a better loophole for themselves.
Under amendments passed by the Senate tonight, Australians can expect to receive spam from any company that thinks the recipient might have an interest in their products.
This removes the Government’s strict requirement that the recipient must consent to receiving commercial email.
The Howard government is committed to an effective spam regime that allows consumers to take advantage of the benefits of the Internet without continual bombardment with unsolicited, intrusive and often offensive electronic messages.
It is disappointing that the opposition and the Democrats have supported amendments that let those responsible for the flood of nuisance email clogging up Australian inboxes to get around this legislation.
The government will reject these amendments in the House of Representatives for the sake of Australian consumers and our international reputation for delivering effective and responsible online regulation.
And I call on the opposition not to delay Australia’s fight against spam by continuing to argue for a weakening of the legislation.

Senator GREIG (Western Australia) (12.34 p.m.)—If the minister can argue that the Labor Party dances to the tune of the trade unions, then I can argue that the coalition dances to the religious sector. I would turn the question back on the minister: why provide for special exemptions for the religious community? The minister says that trade unions attack my party as much as they attack the coalition—that may be the case in some circumstances. But the religious right focuses its attack much more on my party than most other parties and does not court us, as it does the coalition.

To answer the minister’s question of why support the expansion of exemptions—and I will go over it for him again—it is because not to do so allows special privileges to some groups in the community to the exclusion of others. As I said in my second reading contribution, if we quarantine the current exemptions—if we deny Senator Lundy’s Labor amendment—to those which exist in the bill, then we give special privileges only to political parties, religious organisations and charity groups. That means that a religious organisation or a political party could engage in commercial spam that could include the sale of products like T-shirts, bumper stickers...
or magazines and could engage in commercial spam such as raising funds for campaigns to oppose gay law reform, for campaigns to oppose abortion, for campaigns to oppose euthanasia, for campaigns to oppose stem cell research—whatever particular conservative bent they have on a social issue. I am not opposed to their being involved in campaigns—they have that right. However, I do not believe that they must have that exclusive right to the exception of others. I believe that human rights group, women’s groups, lesbian and gay lobby groups must have the same and equal access through using the same medium, and that that can only be achieved by accepting the amendment proposed by Labor.

That does not undermine our original argument that there ought to be no exemptions. That would be a far more clinical way of providing for a comprehensive and effective bill. But I do not have that power because, on this issue, I do not have the numbers. The numbers lie with the government and the opposition. Therefore, this will pass with some exemptions. I am frustrated by that, but I accept it as the political reality of the numbers in this chamber. So the question before me is not whether there ought to be exemptions—I wish that were the case. The question in front of me is: should the exemptions be fair? Yes, they should. The only way that fairness can be ensured is by accepting Labor’s amendment—I am frustrated by that fact but have accepted it—and ensuring that the exemptions apply equitably.

Ultimately, the real question here is not whether the government will accept the exemptions but whether Labor will insist on them. If this amendment from Senator Lundy passes—and I believe it will—this bill, as amended, will soon go to the House of Representatives, where it is likely that the government will reject the amendments included in this place and return the bill. The question before us will then be whether we insist on them. If it is the case that the opposition backs down from those amendments and allows only the quarantined special privileged exemptions to go through, then it really is a sad day and we do have a very biased and inadequate bill at the end of the day.

Question agreed to.

Senator GREIG (Western Australia) (12.37 p.m.)—The Australian Democrats oppose schedule 1, clause 3 in the following terms:

TO BE OPPOSED.

Our opposition implements recommendation 6 of our minority report—principally that the bill be amended to prevent government bodies, political parties, religious organisations and charities from being exempt from the provisions. I guess in retrospect it might have made more sense to have dealt with this prior to the one we have just dealt with—

Senator Lundy—It can work.

Senator GREIG—It can work, but I accept that those people following the debate might find it strange that this argument is now being presented. However, I am keen to get it on the record. We Democrats are strongly of the view that government bodies, political parties, religious organisations and charities should not be authorised to send designated electronic commercial messages, thereby exempting them from the provisions contained within the bill. That is a view supported by many of the correspondents and respondents to the committee inquiry. In particular, it was noted that people find unsolicited communication from any source to be objectionable, irrespective of the nature of the content. Uninvited charitable appeals and solicitations, political communications and notices are unwelcome to many people.
There does not appear to be any reasonable justification for exempting these types of organisations. As the bill currently stands, there is no prohibition on unsolicited non-commercial email and, while I understand the need for the protection of freedom of speech, it can be argued that this is anticipated by the provisions relating to consent. The exemption for government bodies, political parties, and religious and charitable organisations seems quite ridiculous in that context because they already are permitted to send non-commercial and ideological email.

Is this bill proposing, therefore, to give them a special exemption just so they can send commercial spam—that is, spam to ask people for money? Why, then, are we giving charities and religious organisations the special right to send spam for commercial purposes, such as fundraising, with no requirement to provide an opt-out to the recipients—certainly that was the original intent of the bill—whereas other non-charitable, non-religious organisations will not be able to do so?

Labor’s approach to this issue is to broaden the exemptions—to exempt, as we have just done, not-for-profit political organisations and trade unions—but also to require that unsolicited commercial messages from any of these exempted organisations contain a functional unsubscribe facility. If we must have exempted organisations, then the list of exemptions should be more balanced, and requiring a compulsory opt-out facility does go some way to addressing those concerns. Our preference, though, is to remove all exemptions in their entirety. If we are serious about banning spam, let us ban all spam and not the leave the door open for fundraising emails from charities and political parties to be sent across Australia, cluttering people’s email inboxes. So Democrat amendment (12) seeks to remove the relevant exemption that exempts certain organisations from the provisions of the bill.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.41 p.m.)—I have seen many things in the chamber, but this is one of the most extraordinary. You have just opposed having exemptions with this amendment. Two minutes ago you strongly supported a motion to widen the exemptions. This is the bind that you get yourself into when you adopt an unprincipled position on this bill. It is, frankly, bizarre. People will read this Hansard and say, ‘Gosh, Senator Greig and the Democrats are now opposing exemptions, yet two minutes ago they wanted to widen the exemptions.’ The position the Democrats have adopted is not a position which is going to convince the wider community. It has every sign of being thought up on the run. It is an unprincipled position. I invite people to read what you said two minutes ago and compare it to what you have just said now.

Senator LUNDY (Australian Capital Territory) (12.42 p.m.)—The nature of the amendment that the Democrats have proposed is to remove the clause we have amended. Obviously, Labor will be opposing this amendment. In terms of the sequencing, I am pleased that the Democrats supported our previous amendment because it gives the bill a much stronger foundation on the exemptions. Presumably they did so in the knowledge that that was not Labor’s position and that we would also, along with the government, be opposing this. I certainly acknowledge the importance of that support, despite the angst the minister feels as a result of the position the Democrats took on it.

Senator GREIG (Western Australia) (12.43 p.m.)—Contrary to the minister’s assertions, the position of the Democrats does not threaten our integrity or the integrity of our position of this bill—to the contrary.
Without exception, every email, phone call and letter I have received from individuals and IT industry groups has said to me that the Democrats have the best and most principled position on this bill and that our position of opposing all exemptions is what they would much prefer. We have been commended strongly on that point, both publicly and privately.

I do not need to listen to the minister say that people reading the Hansard of this debate will find this confusing and illogical and would not support our position. To the contrary—I already know that they do support our position. I already know that the position that we as a party take on this bill is the best and strongest. It is wrong for the minister to say that our position lacks integrity. To the contrary—we have received the highest commendations from the industry sector saying otherwise.

Question agreed to.

Senator LUNDY (Australian Capital Territory) (12.45 p.m.)—I seek leave to move opposition amendments (6), (5) and (4), as they currently appear on the running sheet, together. In seeking leave, I draw the attention of the Senate to the fact that amendments (5) and (4) relate to a matter we have debated previously, being the unsubscribe facility for exempted organisations. But opposition amendment (6) relates to inferred consent through conspicuous publication of emails.

Leave granted.

Senator LUNDY—I move:

(4) Schedule 2, page 44 (line 25) to page 45 (line 16), omit paragraph 6(1)(b).

(5) Schedule 2, page 44 (after line 16), after clause 4, insert:

4A When an electronic message is not a designated commercial electronic message

An electronic message is not a designated commercial electronic message if the relevant electronic account holder has previously indicated a desire not to receive messages of that kind from the sender.

(6) Schedule 2, page 43 (after line 26), after paragraph 4(2)(b), insert:

(ba) the electronic address was obtained for the commercial purpose not more than 6 months before the commercial electronic message was sent; and

Progress reported.

MEDICAL INDEMNITY AMENDMENT BILL 2003

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION AMENDMENT BILL 2003

Second Reading

Debate resumed from 26 November, on motion by Senator Kemp:

That these bills be now read a second time.

Senator CHRIS EVANS (Western Australia) (12.45 p.m.)—I rise to make a very short contribution on the Medical Indemnity Amendment Bill 2003 on behalf of the Labor opposition. In doing so, I indicate that the shortness of my address is not a measure of the seriousness with which we treat the issue but takes account of the fact that the shadow minister in the other place, Ms Gillard, gave a very comprehensive speech on the second reading in which she outlined Labor’s position in relation to those matters.

Briefly, this is the latest occasion on which the Senate has had to deal with the medical indemnity issues, and this bill reflects the government’s latest attempt at crisis management over the UMP collapse and the fallout with the medical profession. We have been very critical of the government’s failure to come to terms with these issues in a timely way. They seem to have responded only as the system has reached crisis on each occasion, so we have had the mess that we
have had to live with in recent years. But I think the latest bills before us today, the Medical Indemnity Amendment Bill 2003 and the Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2003, reflect the outcome of the crisis agreement the government reached with the AMA. The agreement was really to prevent the walkout of doctors from the health system and has been effective in that regard. So the Labor position is that we are not going to oppose the bills because, while this is a patch-up crisis fix, the reality is that it has helped keep doctors in the system and therefore Labor will be allowing the bills to pass.

As I say, Ms Gillard has made a very comprehensive critique of the failure of the government to come to terms with the fundamental issues of medical indemnity. I do not want to waste the time of the Senate in this last fortnight of sitting by going through all of those, but I think it is fair to say that the government has grossly mishandled indemnity issues and as a result there has been a great deal of disruption in the health system in Australia and a lot of those ongoing long-term problems have not been resolved. One of those issues which we are keen to get some focus on is the question of long-term care costs for the catastrophically injured. Currently these medical negligence event costs are borne by the insurance system and those that are injured in other circumstances end up with a very inappropriate style of care. We are very hopeful that one of the things that could be looked at and resolved in this process is better models of care for the catastrophically injured.

As I say, the Labor opposition will be supporting the passage of this legislation because of its impact in at least stemming the walkout of doctors from the health system. Our criticism of the government will not stand in the way of our supporting the legislation. I indicate that we will not be moving any amendments in the committee stage. I commend the bill to the Senate.

Debate (on motion by Senator Ian Campbell) adjourned.

Ordered that the resumption of the debate be an order of the day for a later hour.

Sitting suspended from 12.50 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Trade: Free Trade Agreement

Senator O’BRIEN (2.00 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Trade. Can the minister confirm that the Bush administration is refusing to back down on its demand that AWB International lose its wheat monopoly as the price for concluding negotiations on a free trade agreement with Australia? Can the minister confirm that AWB International’s statutory export monopoly powers remain on the negotiating table and therefore under threat?

Senator HILL—The honourable senator has asked similar questions before, and it has been my view that during the course of the negotiations it is better not to provide a running commentary. This is a difficult negotiation but very much in Australia’s interests. Mr Vaile is seeking the best possible outcome for exporters in this country, which obviously includes Australia’s rural community. I think the best thing would be if the ALP were prepared to support the government in seeking what I would have thought all Australians want: a good outcome that can contribute to a growing economy, increased wealth and benefits in terms of education, health and the like. So I do not want to either speculate or commentate in the middle of a very delicate but important national negotiation.

Senator O’BRIEN—Mr President, I ask a supplementary question. I am interested to
know why the minister and the government will not give a clear and unambiguous commitment to retain the single desk for wheat in its current form. Given that the US have matters that they have taken off the table in the negotiations, will the minister now give a clear and unambiguous commitment to retain the single desk for wheat?

Senator HILL—I remind the honourable senator of what has been said before, and that is that the government is fully committed to defending Australia’s export single desk arrangements in all current international trade negotiations and that obviously includes the US free trade negotiations. I just regret that the ALP is negatively, but typically, chipping away at this project which could bring great benefit to the Australian people. Its efforts to undermine what clearly is in the national interest is extremely disappointing, but perhaps it just reflects the current state of the ALP.

Immigration: Border Protection

Senator SCULLION (2.03 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate how the government’s policies for dealing with people who unlawfully breach Australia’s borders are fair and responsible? Will the minister inform the Senate of any alternative policies in this area?

Senator VANSTONE—I thank the good senator for his question. It is very clear that our processing of claims for protection visas from people who land and are processed on-shore are refined and streamlined. Detention centres in Australia are not, contrary to public opinion, full of people waiting for protection visa decisions. As a matter of interest, only 12 out of 1,100 people in detention have not had a primary decision. The others are either visa overstayers or people who have had a primary decision—or a secondary one, or a tertiary one—which they are continuing to challenge.

My department can easily decide protection applications in detention within 90 days where the cases are straightforward. I mention the 90 days because I was asked about alternative policies and some of the Labor spokespeople opposite make much of their commitment to try to do it in 90 days. That is possible. But it needs to be understood that a decision may take a lot longer. People may come without identification, they may not tell us the truth about where they come from and there may be a lack of cooperation from agencies in other countries to properly and thoroughly identify who these people are and to have the appropriate checks made.

The point I am making is that prolonged detention is overwhelmingly the result of people who have been found not to be refugees choosing to pursue every available avenue of merits review and court challenge. So it is quite the opposite to what the public are sometimes led to believe by our colleagues opposite. Prolonged detention is not a function of being a refugee. When someone is found to be a refugee, they are out in the community. Prolonged detention is a function of having been found not to be a refugee—in other words, someone who either overstayed or came here illegally who is seeking a migration outcome. Labor’s policy of determining 90 per cent of cases in 90 days is, frankly, quite ludicrous. It is easy to do for the straightforward cases but out of anyone’s control for the more difficult cases. Credibility and character are very real issues here. If we do not check those before granting visas, it will not take long for smugglers to work out that Australia is the best place to send passengers with those sorts of problems.

I raise the point about the majority of people in detention not being refugees—in fact,
only 12 are waiting for an assessment—because there is an assumption by my colleagues opposite that this government should always be condemned for what it does. Carmen Lawrence said on 15 November:

It’s quite shocking that the Kurds might now be in danger of being sent back to Turkey ... it’s one of the basics that you don’t send people back to circumstances where they are likely to be subject to further persecution.

I bet the Turkish government will be interested in hearing about that. Our colleague Senator Bartlett said of the government:

Nor can it pretend that Kurdish people in Turkey do not suffer significant and constant persecution. In other words, there is a willingness on the other side of this place to treat everybody the same and not look at individuals. But the quote from Asim Bali in the paper this morning says:

... it was “not true” to say the group had suffered discrimination. All 14 had wanted to go to Australia for a better economic future.

That is on top of reports that six of the 14 wanted to return home. Our processes are fair. (Time expired). 

Senator SCULLION—Mr President, I ask a supplementary question. Will the minister further inform the Senate on government policies relating to the processing of persons unlawfully breaching Australia’s borders? Is the minister aware of any alternative policies in this area?

Senator VANSTONE—I think the key point in explaining the Australian government’s policy is that we want to deter the people smugglers. We have a refugee and humanitarian program, under which we take about 12,000 people a year, and they are protected in Australia under that program. I met with the UNHCR this morning and I was pleased to hear that the United Nations High Commissioner for Refugees is very pleased with the cooperation they are getting from Australia and that our constant taking of refugees, in particular recently from camps in Africa where they do not have the money to pay a people smuggler, is much appreciated by the UNHCR. That is why we have a policy of trying to ensure that people smugglers do not get to the mainland, because then their sorry cargo will be processed offshore and those who are coming here to seek a migration outcome will be unsuccessful. It is quite the opposite on the other side. They have a policy of: ‘Bring the boats on down and we’ll do it all here.’ (Time expired)

Iraq

Senator FAULKNER (2.09 p.m.)—My question is directed to Senator Hill, in his capacity as Minister representing the Minister for Foreign Affairs. Does the minister recall his statement on 18 November that the Australian government had ‘underestimated’ the security problems that would arise in Iraq at the cessation of formal hostilities? Given the Howard government’s early commitment to the coalition of the willing, what specific plans did the government develop for its participation in the occupation of postwar Iraq? What specific actions did these plans recommend for the maintenance of security in Iraq, including Australia’s role?

Senator HILL—I think what I would have said was that, in my view, the coalition underestimated some of the security problems that might arise after Saddam Hussein was removed from office. I probably also said that obviously it was difficult to appreciate the full circumstances which would flow from events because the way in which those events were to flow was not known, the extent to which the Baathists were removed would not be known, the full ramifications of Islamic extremists would not be known and how the various Shia factions and their leadership would behave was not known. Many factors were difficult to pre-
dict. Having said that, the coalition parties, both before the conflict and during the con-

flict, nevertheless did put in place plans that would flow from Saddam Hussein’s removal.

Senator Faulkner will recall the steps that were taken immediately after the conflict in establishing what came to be the Iraqi govern-

council; what came to be the coalition provisional authority—although that was via another body—and what has come to be in the establishment of ministries, the training of the new Iraqi army, the training of the new police force and the training of other security organs within the country. So I think it would be wrong to say that everything that has oc-
curred was predicted in the exact form in which it has occurred. Nevertheless, a great deal of work was put into both the security aspects that were expected and the return to governance that was to be intended if it is to rebuild the Iraqi economy.

Senator FAULKNER—Mr President, I ask a supplementary question. I note the minister’s comment that the coalition underestimated some of the security problems in Iraq and found many factors difficult to predict. I ask the minister whether he is aware of comments this morning by former admin-
istrator for Iraq, Jay Garner, who said that the United States had made several ‘mis-
takes’—his word—in the reconstruction of Iraq after the war. Is this a view that the min-
ister subscribes to? Can the minister say what mistakes have been made by the United States and the coalition of occupying powers, of which Australia of course is one?

Senator HILL—I did hear those com-
ments this morning. I remember that I met Mr Garner in April in Iraq, when he was in charge. I know that there has been some subsequent criticism of Mr Garner about the way he was operating. It would seem that he is now responding to that by criticising oth-
ers. I am not going to contribute to that de-
bate. I think the important thing is to move on, as quickly as reasonably possible, to pass governance to the Iraqi people, to help build the Iraqi economy, to help re-establish critical infrastructure and to give the Iraqi people a better future. I think, rather than trying to find differences of view between Jay Garner and his successors, it would be much more constructive to look towards a positive fu-
ture. (Time expired)

Industry: Textile, Clothing and Footwear

Senator SANTORO (2.14 p.m.)—My question is to the Minister representing the Minister for Industry, Tourism and Re-
ources, Senator Minchin. Will the minister inform the Senate of the Howard govern-
ment’s plan to support and strengthen the Australian textile, clothing and footwear manufacturing industries? Of even greater interest is whether the minister is aware of any alternative policies.

Senator MINCHIN—I thank Senator Santoro for that very good question and ac-
knowledge his strong support for Australian business and industry. Today is quite a sig-
nificant milestone in our efforts to foster Australia’s textile, clothing and footwear industries. Today Mr Macfarlane, the Minis-
ter for Industry, Tourism and Resources, an-
ounced a long-term assistance package, worth $747 million over 10 years, to assist firms in the TCF sector to manage the transi-
tion to a low-tariff environment—something the Labor Party supports. This is a significant government commitment to the TCF industry and its future and provides predictability and certainty for the firms operating in this in-
dustry.

The government have been a strong sup-
porter of this industry. We have previously provided over $678 million in assistance through the TCF Strategic Investment Pro-
gram, which ends on 30 June 2005. The core element of the new package is a $600 million
continuation of the SIP, which provides generous subsidies for investment and innovation. The SIP will be simplified and extended under this package and include support for new activities such as brand support and information technology. The smaller TCF firms will also be supported with a new $25 million 10-year program to help them to improve their enterprise business cultures. The clothing businesses that expand their Australian production will be rewarded with an input credit scheme. We will also have a $50 million structural adjustment program to assist firms to restructure.

Central to the government’s package is the continuation of the tariff reduction program that was begun by the former Labor government with such enthusiasm and dedication and was particularly overseen by the former industry minister, Simon Crean. That will ultimately see tariffs reduced in the TCF sector to five per cent by 2015. That will bring the TCF industry into line with every other industry sector in this country. Firms need time to adjust to the lower tariff environment. That is why tariffs will be reduced in five-year stages to enable these firms to have breathing space to cope with these changes. As we on this side acknowledge and recognise, and as Bert Kelly taught us, tariffs are a tax on Australian consumers. Tariffs force up the price of goods, so the impact of higher prices on clothing most affects those least able to afford it—the lower income workers that the Labor Party professes to support.

Existing TCF tariffs cost consumers up to $1 billion a year, or about $150 a year for every household, so the tariff reductions that we are putting on the table today represent a $6.3 billion tax cut for Australians over the life of this very good package. I am very pleased that today the industry has strongly welcomed these measures. I draw the opposition’s attention to the strong statement of support for this package from the President of the Council of Textile and Fashion Industries. It is a package of support together with tariff reductions. This package will allow TCF firms to strengthen their businesses and to adjust to a lower tariff environment. Most importantly, this is great for Australian consumers—great for low-income Australians, who will have a tax reduction and lower priced clothing.

The PRESIDENT—I remind all senators that when they refer to the people in the other place they will call them by their correct title.

Iraq

Senator BUCKLAND (2.18 p.m.)—My question is to Senator Hill, the Minister for Defence. Does the recent decision to extend the deployment to Iraq of Australian maritime surveillance aircraft until at least June next year mean that the government is preparing for a long-term military commitment to Iraq? Wasn’t the Australian deployment to Iraq supposed to be a short-term operation? Given that the minister has now conceded that the government’s earlier assessment of the time and resources needed to restore security to Iraq was wrong, can the minister now inform the Senate of the current assessment? At what point would the withdrawal of Australian personnel be contemplated?

Senator HILL—I have not conceded that Australia’s assessment of times or resources was wrong. I have said that Australia intended to contribute not only to the overthrow of Saddam Hussein but also to the stabilisation and rebuilding of Iraq. We do that, firstly, to lock in the gains achieved through the removal of Saddam, which was to avoid the threat associated with weapons of mass destruction, and, secondly, to lock in the opportunity of a better future for the Iraqi people, something I would have thought that the Australian Labor Party would support. In fact, as I understand it, Mr Rudd—who has
other things on his mind today!—said some quite positive things along those lines when he was in Iraq a week or so ago. Anyway, whatever the view of the ALP, it remains the wish of the government to contribute to the stabilisation and rebuilding of Iraq.

We made a decision recently, it is true, to rotate the P3 maritime surveillance aircraft, because we believe they are making an excellent contribution towards those goals. That is the way we approach our contribution to this phase. The size and composition of the force are under constant review. We want to ensure that the force elements we provide are most relevant to the tasks that are most needed and that we therefore get best value for our contribution. I am pleased to say that there has been overwhelming appreciation and recognition of that contribution by Australia from the Iraqi people, the CPA and our coalition partners. As I said the other day, over 30 countries now have forces in Iraq working towards those goals, and over 70 countries are contributing to those goals. I regret that the ALP cannot unambiguously come on board and support such obviously worthwhile objectives.

Senator BUCKLAND—Mr President, I ask a supplementary question. Given recent attacks on coalition aircraft in Iraq, has the government changed its security assessment for Australian personnel working in and around Baghdad International Airport? What is the current assessment of the risk to safety of these personnel?

Senator HILL—The security of our personnel, not only ADF personnel but Australia’s officials—our diplomats and other officials—who are working towards the goal of rebuilding Iraq, is of critical importance to us. It is under constant review and where it needs to be reinforced it is reinforced. We do not wish to see our people take unnecessary risks and we put in a lot of effort to achieve that objective. For example, our officials are supported by a force element specifically in Iraq to protect their physical wellbeing. We believe that everything is being done that is possible to protect their safety.

**Health: Complementary Medicines**

Senator ALLISON (2.22 p.m.)—My question is to the Minister representing the Minister for Health and Ageing. Minister, this year your government caused enormous havoc in the complementary health product industry because of the lax activities of one manufacturer, Pan Pharmaceuticals. Will you admit that the product recall by the TGA was bungled and that there is still no concrete evidence of unsafe products? Can you explain why your government has such a different attitude to the lax activities of the pseudoephedrine supply industry? How do you explain the increase in the legal supply of pseudoephedrine from 16,000 kilograms in 2000 to a massive 40,000 kilograms in 2001? Has your government yet discovered what happened to the 16,000 kilograms that went missing in 2001? Why are you pursuing vitamin C tablets when pseudoephedrine—that building block of methamphetamines—is being ignored by your government?

Senator IAN CAMPBELL—I think it is outrageous to claim that the government have been anything other than diligent in relation to product recalls and in relation to Pan Pharmaceuticals. People associated with Pan would say that we have been overzealous in ensuring that those products were recalled properly. In my own consultations and discussions with people in that industry they have been nothing but generous in their praise for the actions of the minister and of the relevant authorities throughout the Commonwealth. That was an incredibly important period of time in Australia. The reality is that there was a huge risk of significant consumer backlash against the industry as a
whole. There was a huge risk that the Pan failure and the associated recalls could have created a backlash from the community against the complementary health care industry as a whole.

The reality is, however, that because it was handled by the government, the minister and the relevant authorities in a very diligent, sensible and sound way—and the role that the industry played was crucial in this—the industry has rebounded. Many of the other suppliers in that industry have been able to get back to levels of sale and supply that were evident prior to the Pan Pharmaceuticals recall. I am surprised that Senator Allison would try to criticise the government in relation to that.

In relation to the pseudoephedrine that the senator has referred to, the most immediate priority for the government is to address the extraction of pseudoephedrine from cold and flu tablets to make speed. Organised criminal networks are behind much of the production of speed in clandestine laboratories across Australia. Under the current Commonwealth budget the Commonwealth has committed $4.3 million over the estimates period for a new national strategy to tackle the problem of the diversion of chemical precursors. Quite contrary to the assertion made by Senator Allison, the Commonwealth has committed significant resources to addressing this problem. The Minister for Justice and Customs has had a role through the Australian Federal Police in tracking down organised crime networks that use these precursors, with some significant success. To say that we have been soft on this is absolutely contrary to the reality of this government’s diligent pursuit of this problem that can cause so much harm, particularly to young people across Australia.

The one thing I would say for Senator Allison is that she does have an undoubted and deep concern for the use and abuse of these precursors. It might be better, rather than trying to score some political points, to work with the government in trying to solve this problem. The government is committed to it. I would welcome Senator Allison’s support. If she has constructive recommendations about where the government may be able to work even harder then I would be happy to hear them rather than cheap political point scoring.

Senator ALLISON—Mr President, I ask a supplementary question. I am just going to re-ask the question I asked first, which was: is there any concrete evidence that Pan Pharmaceuticals produced unsafe products? Secondly, what happened to the 16,000 kilograms of missing pseudoephedrine? Can the minister also comment on the *Sydney Morning Herald* report this week that a cleaner had managed to steal 26 kilograms of pure pseudoephedrine and 675 kilograms of tablets containing pseudoephedrine? Will the minister give notice to the TGA to refocus its resources from the harmless complementary health industry to the more potent and potentially harmful exploitation of the pharmaceutical industry?

Senator IAN CAMPBELL—I think the authority are doing a good job. I think they have the balance in that regard right. To refer to the complementary health industry as harmless is really quite silly. It is very important, as we learnt from the Pan Pharmaceuticals recall and subsequent collapse, that it is well regulated—absolutely imperative. What you are saying, within a few months of the Pan Pharmaceuticals recall, is that we should go soft on regulating that section of the industry. That is absurd. You have to regulate it well and you also have to pursue the pseudoephedrine and the other precursor chemical issues, which we are doing in a number of ways. I have already described the budget. I inform the Senate that the national working
group on chemical precursors is meeting in this very building today. It happens to be their fourth meeting since December 2002. (Time expired)

**Defence: Shipbuilding Industry**

**Senator MARSHALL** (2.29 p.m.)—My question is for Senator Hill, the Minister for Defence. Does the minister recall releasing his Naval Shipbuilding and Repair Sector Strategic Plan on 29 August 2002, with the claim that he would take it to cabinet the following month? Isn’t it the case that the minister’s plan has become hopelessly bogged down because he has been unable to convince anyone in the cabinet of the merits of creating a privately-owned shipbuilding monopoly? When will the minister finally get around to making a decision about the future of the shipbuilding plan?

**Senator HILL**—It is true that rationalisation of the naval shipbuilding industry has been delayed whilst the government have been seeking to resolve outstanding issues in relation to the Australian Submarine Corporation. The reason for that is that we find it hard to see a rationalised shipbuilding industry in this country that does not incorporate the Submarine Corporation. Of the number of issues that had to be addressed, some have been resolved. For example, I recall we said that we would need to put in place the capability agreement that we had foreshadowed with Electric Boat. That is in place and working very well. We said that we would have to negotiate the agreement we had promised between ASC and the government to provide for the long-term maintenance and upgrading of the submarines. That agreement has been settled and is about to be signed.

There are other issues that are not yet resolved. We said that we would wish to, if at all possible, settle the outstanding IP issues with Kockums. That is still not resolved, although some progress is being made, and I am cautiously hopeful that a negotiating meeting next month might make progress in that regard. Towards that—what we decided really was an action that should precede the rationalisation—some significant progress has been made. On the other side of the ledger, we have settled detail relating to the next suite of shipbuilding in this country. Regarding our decision to replace the *Westralia* oiler, our decision to acquire the three air warfare destroyers and our decision to replace amphibious ships, strict timetables have been set for those projects. They will be pushing the agenda.

Out of those projects, I am confident the industry will move towards rationalisation, because it is the only sensible way to meet a situation where there is too much capacity in this country for the work that is available. In other words, we do not think that the rationalisation should just be simply achieved by a document that is produced by the government in conjunction with certain interests in the industry; we believe it should also be achieved through market influences. We believe that the move towards the new shipbuilding projects will accelerate those market influences and bring the two interests together and that rationalisation will occur in the way that we think is desirable.

**Senator MARSHALL**—Mr President, I ask a supplementary question. When will the minister finally get around to making a decision about the future of the shipbuilding plan? Minister, as part of the review of the Defence Capability Plan, hasn’t the government committed to buying a second-hand replacement for the HMAS *Westralia* rather than constructing a new vessel in Australia? Doesn’t this decision mean that Australian industry will miss out on the economic and employment benefits of a project that was worth $450 million? Won’t this decision also have serious implications for the future of the Australian shipbuilding industry?
Senator HILL—Dealing with the first question, you see, we on our side of politics do not just believe writing a plan is the way you rationalise an industry. We believe that there are economic and market pressures that play an important role as well. Yes, we are going to replace the Westralia with a second-hand oiler that will be refurbished and equipped in Australia. The majority of the money spent, therefore, will be spent in Australia, but that will also achieve a significant saving. That saving is being put towards two larger amphibious ships which will also be built in Australia. The outcome will be a net benefit to Australia. And when? In accordance with the timetable that we released a fortnight ago.

Environment: Land Clearing

Senator LEES (2.34 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. In May the federal and the Queensland governments put forward a proposal and a moratorium to end large-scale land clearing in Queensland. The process was to have been finalised in a few months. However, we are now some six months down the track and, in that time, at least 100,000 hectares of bushland have been approved for clearing and around one million native birds and animals, many of them threatened, have been slaughtered. The Queensland Premier said today that he would act unilaterally if necessary. So I ask: can the minister assure us that the federal government will finalise their end of the bargain within the next week or two—in fact, within the next few days—so that the Queensland parliament can finalise its, to make sure that the national tragedy that is Queensland land clearing can end?

Senator HILL—This process is being driven by the Commonwealth government because we have seen the damage that has been caused to this country through over-clearing of land and we do not want to see the same results occurring in Queensland. On the other hand, we do recognise that the primary responsibility for sound management of natural resources in this country lies with the states, and that is why we have sought to join with the Queensland Premier to achieve a good outcome in this regard. It is a good outcome in terms of conservation, but a good outcome also in terms of rural producers. That is a complex negotiation. I would not have thought that anyone would doubt that. Contributions have been made to that debate by the Commonwealth, by the state, by the conservation organisations and by the rural organisations. Those discussions and negotiations are continuing. I think it is fair to say that significant progress has been made, but there are still some differences, and it is the government’s hope that those differences will be overcome in the near future.

Senator LEES—Mr President, I ask a supplementary question. Minister, it is in fact the farmers who are going to lose out, if the federal government does not fulfil its end of the bargain, because $75 million of Commonwealth money will not be going into the pool. The state government is apparently prepared, as of today, to put in its $75 million, but it will be the farmers who will miss out on half of what they were expecting by way of compensation. I ask again: given that the decision to stop land clearing was made at Prime Ministerial level back in May, can the Minister representing the Prime Minister tell us exactly what is holding up the Commonwealth’s decision and therefore depriv-ing the land-holders of some $75 million?

Senator HILL—as the Prime Minister has said today, we remain committed to providing $75 million towards achieving a fair and balanced outcome which meets our greenhouse and biodiversity objectives in cooperation with land-holders. That has always been the way in which we have sought
to do business, but there have been difficulties in this negotiation. Different approaches have been put by different interested parties, and what is being done now is in an effort to draw those differences together to reach a good conclusion, as the Prime Minister said: good for the environment and good for the economy.

Foreign Affairs: Afghanistan

Senator STEPHENS (2.38 p.m.)—My question is to Senator Hill, the Minister for Defence. Is the minister aware of reports about the deteriorating security situation in Afghanistan? Can the minister advise how many Australians, including military personnel, civilians and aid workers, are currently working with the United Nations Assistance Mission in Afghanistan? In view of the worsening security environment in Afghanistan, does the government have any plans to increase Australia’s aid and human resource contributions to the UN mission?

Senator HILL—I think it is fair to say that there has been some deterioration in recent times, certainly in some provinces, and, regrettably, international institutions have had to remove their people from some provinces. On the other hand, much of the country is reasonably stable. The constitutional processes are taking place, albeit a little more slowly than we would like. A major reconstruction program is taking place with the rebuilding of roads and the like and, of course, there has been a huge return of former refugees. The schools are operating. In most schools, I am pleased to say, girls are back at school. So there have been a lot of positives but, again, a little like some other places, there are those who refuse to accept the reality of a more democratic and peaceful society. They are seeking through violent means to regain the power and influence that they have had in the past.

The international community has been acting in support of the provisional government in Iraq to counter that threat. It is, for me, very pleasing to see the role that NATO and others are playing. Australia has been supportive through our aid program, and we have provided a very small military contribution in support of the United Nations mission. It can always be argued that every country in the world could be providing more towards what are clearly very worthwhile goals, but in view of all of the other interests and responsibilities that Australia has around the world at the moment we think that our contribution is a fair and reasonable one.

Senator STEPHENS—Mr President, I ask a supplementary question. I thank the minister for his response. I understand from that response that he is saying that there is no plan to increase Australia’s aid to the UN mission there at the moment. Can the minister advise whether the government has been approached by Afghanistan to provide additional military resources to help train its fledgling army? Given the minister’s commitment that the ADF will remain in Iraq to help train the Iraqi military, why is the government not also providing similar assistance to Afghanistan?

Senator HILL—In relation to aid, it is worth remembering that between September 2001 and June 2004 Australia expects to have contributed over $85 million in humanitarian and reconstruction assistance to Afghanistan, covering such areas as medical assistance, mine action, food security, education, assistance to displaced Afghans, drug control and strengthening civil society. From time to time, Australia is also asked to provide further defence assets towards defence goals, but the reality is that our operational tempo remains high. Whilst the ADF has been working in the Solomon Islands—which, of course, was not contemplated—
and in other places of the world, there has to be a limit to what can be contributed. At the moment we think that our contribution is reasonable. (Time expired)

Information Technology: Internet Content

Senator PAYNE (2.43 p.m.)—My question is to Senator Kemp, the Minister representing the Minister for Communications, Information Technology and the Arts. It follows on from a response Senator Kemp gave yesterday to a question from Senator Harradine. Will the minister update the Senate on the government’s continued commitment to protecting Internet users, and particularly children, from offensive online material? Is the minister aware of any alternative policies in this area?

Senator KEMP—Thank you, Senator Payne, for that important question. As I said yesterday, the government takes the issues raised by Senator Harradine—and, indeed, by Senator Payne—very seriously indeed. The recent reports citing the experiences of the children at the risk assessment unit at the Canberra Hospital I think would cause the greatest of concern amongst many parents. When I was asked a question in the Senate yesterday by Senator Harradine, I gave the information that this government is very much committed to protecting our children from the dangers that the Internet can present, especially pornography. I agreed that parents have every reason to be concerned about the issue of children and teenagers accessing hard-core, offensive material online. But let me assure the senators that the government has been very proactive in providing parents with information and advice about how they can protect their children against these dangers. A great lead was given by my colleague Senator Alston and I pay tribute to the work that he did in this particular area.

The government has also introduced a robust co-regulatory scheme which imposes obligations on Internet service providers and Internet content hosts in relation to offensive material online. This scheme, introduced on 1 January 2000, specifically targets illegal or highly offensive online material and promotes the use of filtering and access management technologies. As I said yesterday, this scheme is currently being reviewed, and the government expects to announce the outcomes in the near future. I consider this review to be very important, reporting its investigations into the development and filtering technologies and the education and community advisory roles of the ABA and NetAlert.

I also mentioned yesterday the Australian Broadcasting Authority’s mechanism to issue takedown notices. That is, if the ABA finds that material hosted in or uploaded from Australia is prohibited, it can issue a take-down notice to the relevant content host. I can inform the Senate that, since the commencement of this scheme, the Australian Broadcasting Authority has issued 312 take-down notices for such content. Further, in the event that such prohibited material is hosted overseas, the ABA notifies the suppliers of certain filters so that they can ensure that their products are updated to block access to these sites. To this end, I can inform the Senate that 1,475 items have been referred to the filter makers. I think this shows that the government remains very committed to online regulation that accords with current community standards and protects Australians, particularly children, from offensive material.

I mentioned Senator Alston’s great work in this area. I have to say that Senator Alston received no support from the Labor Party on this particular issue. We know that the Labor Party is about to change their leader. I just hope that one of the areas that they will look at in particular is this area and the approach
that the Labor Party, led in this area by Senator Lundy, has taken. During the debate on the government’s Broadcasting Services Amendment Bill in May 1999 I should perhaps remind the Senate that Senator Lundy said:

The Net is not something to be constrained or controlled. It is not evil. It is a tool for social progress and, to young Australians and many other online citizens—

(Time expired)

Senator PAYNE—Mr President, I ask a supplementary question. I asked the minister in the initial question whether he had any information on alternative policies. He has not had an opportunity to respond to that completely, and I would like him to do so.

Senator KEMP—The truth is that, in this area, the Labor Party gave Senator Alston no support whatsoever. In fact, I think the public would be shocked to find the approach that Senator Lundy took. Senator Lundy was opposed to any regulation whatsoever in this area. I do not know whether her colleagues were aware of the approach that Senator Lundy took or, indeed, whether the party room approved of this—

Senator Sherry—I was—and a fine job she did, too!

Senator KEMP—Senator Sherry was aware of it, and he supports this position! The Labor Party has a lot of problems in a number of areas—in taxation, border protection, support for Work for the Dole—

Government senators interjecting—

Senator KEMP—and leadership. It is time that the Labor Party got its act together in this area.

Senator Lundy—Mr President, I rise on a point of order. I once again draw to your attention that Senator Kemp is deliberately misleading the Senate in relation to Labor’s position.

The PRESIDENT—Senator Kemp, I ask you to return to the answer.

Senator KEMP—What I was quoting, of course, was from Hansard. I was quoting your approach, Senator Lundy. You have condemned yourself out of your own mouth on this particular issue. (Time expired)

National Security

Senator LUDWIG (2.49 p.m.)—My question is addressed to Senator Ellison, the Minister for Justice and Customs. Can the minister advise the Senate when we can expect an outcome from the Australian Federal Police investigation into the leak of a top-secret Office of National Assessments document to the Melbourne journalist Andrew Bolt?

Senator ELLISON—Senator Ludwig knows full well that we do not discuss operational matters and that any pending investigation is a matter for the Australian Federal Police. The matter is under investigation, and no doubt they are handling it in their usual professional manner.

Senator LUDWIG—Mr President, I ask a supplementary question. Can the minister advise, then, if he cannot talk about operational matters, how the investigation is going or where it is up to? I am sure he can tell us that. That is not an operational matter. Can he advise why the government has taken nine months, had three separate investigations and spent over $265,000 investigating the lackey leak of a record of conversations from the Department of Foreign Affairs and Trade with no result to date? Why have 157 days passed since the leak of a top-secret ONA document to a Melbourne journalist, yet the minister can still tell us nothing of the outcome of the investigation?

Senator ELLISON—Senator Ludwig says that he does not want to pry into operational matters, but could I just tell him where the operation is at, all the details, who they
have spoken to and what they have been doing over the last period of time. It is with the Australian Federal Police, and it is inappropriate for me to comment.

Communications: Funding

Senator MURPHY (2.51 p.m.)—My question is addressed to the Minister representing the Minister for Communications, Information Technology and the Arts, Senator Kemp. I am sure that the minister would be aware of reports about the trouble BITS incubators are in. The BITS program is a $78 million government program. Two incubators have already shut down in Tasmania, and most of the others say that they will not be able to continue when funds run out mid next year. The government has received two reports on the BITS program to help it determine its position on funding. Having now considered these reports, can the minister inform the Senate whether the government intends to extend the funding program? If so, when, and how much funding will be made available?

Senator KEMP—Thank you for that question, Senator. It is clearly one that you have had a longstanding interest in and it is one I would want to give a very comprehensive answer to. In light of that, I will be seeking information from the responsible minister and, of course, I will inform you as promptly as I am able to.

Senator MURPHY—Mr President, I ask a supplementary question. I note the minister’s response. With regard to the Building on IT Strengths program, I ask the minister whether he could inform the Senate whether or not the government will make the two reports on these programs publicly available?

Senator KEMP—Senator, that is a matter, as you would know, for the responsible minister. I will bring your views to his particular attention and I am sure that he will consider them very carefully, as he always does.

Foreign Affairs: Diplomatic Cables

Senator MACKAY (2.53 p.m.)—My question is to the Minister representing the Minister for Foreign Affairs. Is the minister aware of four diplomatic cables between February and March 2001 which indicate the government sought and received approval to appoint then Senator Herron as High Commissioner to Canada? Why is the Department of Foreign Affairs and Trade arguing that these cables could not be released because they would ‘undermine Australia’s reputation in the eyes of foreign governments’?

Senator HILL—I do not know of the cables. I saw some media on that subject today. I will refer the matter to the Minister for Foreign Affairs and get a response.

Senator MACKAY—Mr President, I ask a supplementary question. Is the minister aware of comments made by the former High Commissioner to Canada, Greg Wood, who disputes DFAT’s position, arguing that in his opinion the release of these cables would be ‘absolutely inconsequential’? Isn’t the real reason the government will not release these cables that they contradict denials made by the Prime Minister’s office at the time that there was ‘nothing to’ the speculation that Senator Herron was in line for a diplomatic posting?

Honourable senators interjecting—

The PRESIDENT—Order! Would senators on both sides stop shouting across the chamber so the minister can answer the question.

Senator HILL—I am told that DFAT has not released the cables in response to an FOI request, in accordance with well-established international custom. The documents relating to the agreement process between countries...
remain confidential. I hope that that satisfies the honourable senator.

Aviation: Airport Security

Senator CHAPMAN (2.55 p.m.)—My question is directed to the Minister for Justice and Customs. Will the minister outline for the Senate how new powers provided to our law enforcement agencies will better protect Australians from terrorism and security threats at our airports?

Senator ELLISON—Senator Chapman asks a very important question relating to the security of our airports, which is something of great interest to all Australians and visitors to Australia from overseas. This year’s budget saw an increase in funding of $18.1 million for our counterterrorism first response and an increase in the number of our personnel from 230 to 386, covering 11 major airports in Australia. Importantly this week we saw the passing of legislation which boosted the powers of the APS and AFP working at our airports, looking after consular premises and other important Commonwealth places such as defence installations.

The bill that we passed this week provided for ABS and AFP officers to request a person’s name, address, identification and reason for being in or near a place where the officers are on duty. As well as that, they have the power to stop, detain and search a person in or near such a place and to seize such things that are likely to cause death or serious harm. These are essential powers, pre-emptive powers, which have now been given to our APS and AFP who look after our nation’s airports. Of course, these powers do come with checks and balances. They can only be exercised at the premises where those people are on duty. These powers do not include the power of arrest; that is still with the police. But they are essential for our personnel who are providing security for our airports and protection for overseas diplomats who are serving in Australia. We have an international duty to provide that to them and for them to have those powers in and around those essential installations for this nation’s security.

It is essential that we have not only safe skies but also secure skies. Australia is recognised internationally as having a secure aviation system. We have taken measures such as having air security officers who fly on domestic flights within Australia, and we are intending to expand that overseas. We are engaged in negotiations with the Singapore government and the United States government. I am happy to say that we have made great progress in relation to securing an agreement with them. We have also had a request from the Canadian government for an air security officer program to be put in place on flights from Canada to Australia. All this adds up to further security, greater assurance to the travelling public of Australia and to those people who want to come to Australia. It sends a very clear message that we are taking the necessary steps to protect those people who are flying in Australia and those people who pass through our airports. This is part of a comprehensive approach to protecting this nation against terrorism. Over a billion dollars has been committed by the Howard government in measures against terrorism and ensuring this nation’s security. The passing of this legislation this week was just one further measure to protect Australia’s interests.

Senator CHAPMAN—Mr President, I ask a supplementary question. I appreciate the detailed exposition that the minister has given so far in relation to securing our airports from terrorist attacks. Could the minister perhaps give further details? In particular, I note his reference to the negotiations which are taking place with overseas countries for international security with regard to the es-
establishment of air security officers. Could he perhaps indicate in a supplementary answer any responses that might have been received from overseas?

Senator ELLISON—It was an election commitment to further progress the ASO program internationally and we took it up with the Singapore government and the United States government. I am happy to say that we have had very positive responses from those two governments. I hope to have agreements in place soon with those two countries. It is also encouraging to see that this program is being adopted more and more internationally. Australia is at the forefront in using air security officers both domestically and internationally. This is an essential part of providing the assurance that people want when they travel by air not only in Australia but also to Australia.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

United States: Nuclear Treaties

Senator HILL (3.00 p.m.)—I have further information in response to a question asked of me by Senator Allison on 25 November regarding the United States and the non-proliferation treaty. I seek leave to have this material incorporated in Hansard.

Leave granted.

The document read as follows—

In response to the Question asked to me on 25 November 2003 by Senator Allison, I provide the following response:

‘What steps has Australia taken to urge the United States to support not only the test ban treaty but the Nuclear Non-Proliferation Treaty?’

Australia has always been strong supporter of Comprehensive Nuclear Test Ban Treaty (CTBT), from the time of its negotiation and adoption. Australia has been active in promoting the early entry into force of the Treaty in multilateral forums, such as the UN General Assembly First Committee, where—as Senator Allison said—we were lead sponsor of a CTBT resolution this year and on previous occasions, Australia was also a leading company-sponsor of the Ministerial Statement on the CTBT issued last year by more than 50 foreign ministers of states which have already ratified the Treaty. What is more, Australia has taken part in biennial meetings of CTBT states parties to promote the early entry into force of the Treaty. We have consistently used such forums and appropriate bilateral opportunities to encourage all states that have not yet done so to sign and ratify the CTBT. Our particular focus has been the group of 44 countries— including the United States—whose ratifications are required before the Treaty can enter into force. We will continue to encourage ratifications of the CTBT and promote our view on the important security benefits flowing from the Treaty.

Regarding the Nuclear Non-Proliferation Treaty (NPT), Australia and the United States are both strong supporters of the Treaty. The United States has repeatedly reaffirmed its commitment to the NPT. Australia and United States are among countries actively engaged in regular international meetings held as part of the NPT review cycles. Both countries are working for a positive outcome for the current NPT Review cycle, which will conclude with the 2005 NPT Review Conference.

‘Why is the United States ignoring our views? Does this not indicate that the United States respects its alliance with Australia only on its own terms?’

The United States is well aware of our position and the US stance does not represent any disregard for our views, not does it reflect poorly on our alliance with the United States. The United States position reflects the United States Government’s assessments of the national and international security issues involved.
‘Yesterday, the United States passed a $400 billion defence bill that lifted the ban on research into low-yield nuclear weapons, also known as mini-nukes. Isn’t this the case that this is a step towards vertical proliferation which goes against several of the practical disarmament steps in the non-proliferation treaty that parties including the United States adopted in 2000?’

It remains the case that no United States decision has been taken to build new kinds of nuclear weapons. The United States is exploring a range of options for deterring and dealing with proliferation of weapons of mass destruction and rogue state threats. The United States Congress has approved limited funding for feasibility studies into modifying existing nuclear weapons to improve earth-penetrating capability, and into the possible development of low-yield nuclear weapons.

The United States has an unrivalled and expanding range of non-nuclear capabilities, and is reducing its strategic reliance on nuclear weapons through deep cuts to its nuclear arsenal.

Australia maintains its commitment to nuclear disarmament based on balanced and progressive steps toward the elimination of nuclear weapons. This is a position that we made clear at the Nuclear Non-Proliferation Treaty (NPT) Preparatory Committee meeting in Geneva in April.

‘Isn’t it the case that this will encourage other countries to pursue new types of nuclear weapons?’

No.

The United States has stated clearly that it has no current requirement for a new nuclear warhead. The United States has also said that it has no plans to resume critical testing of nuclear weapons nor to break the existing voluntary moratorium on such tests.

‘What is the Australian Government’s attitude to the policy of the United States of being prepared to use nuclear weapons even against non-nuclear states?’

US nuclear policies form part of our regular dialogue with the United States on nuclear issues.

The United States has made clear that the key purpose of nuclear weapons is deterrence and that the high threshold for their use remains unchanged. The United States is looking at a wide range of options to address the contingencies of a changed strategic environment, including the threat of proliferation of weapons of mass destruction (WMD). The United States has articulated a strategic posture that calls on US forces to be ready for pre-emptive action if that became necessary to counter a clear threat to the United States or its allies from WMD.

QUESTIONS WITHOUT NOTICE:

TAKE NOTE OF ANSWERS

Trade: Free Trade Agreement

Senator O’BRIEN (Tasmania) (3.01 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator O’Brien today relating to the proposed Australia-United States free trade agreement and the Australian Wheat Board.

Today we again had the same weasel words that this government has been using in relation to its refusal to take the wheat single desk off the table in negotiations with the United States for a free trade agreement. Today’s answer—as I say, weasel words—confirms that the wheat single desk is in play in negotiations. The Australian farming community, AWB Ltd and AWB International should understand that that is the case.

It has been clear for some time in relation to the free trade agreement that the United States has clear targets, and it continues to launch attacks on these targets. It wants an end to the single desk export marketing arrangements for our wheat. The importance the US administration is giving to the target was restated as recently as the day before
yesterday. US pharmaceutical companies and Hollywood film and television industries are also making tough demands through US negotiators. This means that Australian negotiators are spending all their time on the defensive. We are sitting at that table trying to fend off these assaults. It is also clear that, despite the fact that these negotiations are well advanced, the US is not in a conciliatory mood. There is no evidence that there have been any concessions. As I said, it continues to attack and we continue to defend.

A representative of the US wheat exporters, Ms Barbara Spangler, was quoted as saying that she was confident the US negotiators would not drop their demand that the single desk go. Ms Spangler said that the end of AWB’s single desk was also a critical issue for the US congress—and we all know how influential the farm sector has been with the US congress. Who can forget the US Farm Bill—that scandalous increase in domestic support for the farming community, in breach of undertakings the US had given to actually reduce that support? How damaging has that been to Australian farmers? How clear is that evidence that the farming community in the United States has a very strong influence on congress, particularly the congress controlled by the Republicans?

Ms Spangler also said that the end of the single desk—and she was referring to the American wheat farmers—was our only issue in the FTA, a key issue in the American farming community. That is the message that she has given to American farmers—that the American administration is taking to the negotiating table with us regarding the free trade agreement.

Last month, the US sugar industry released a study warning that free trade agreements being negotiated with Australia, Thailand and Latin America would devastate America’s sugar industry if trade for sugar were included. In today’s press we find the US sugar industry saying that there will be no agreement before the presidential election next year. Let me say this: if the Howard government gets the outcome of the free trade agreement wrong, the obvious point to be made to the Australian farming community—and the Australian community generally—is that the cost to Australian farmers could be enormous.

It is significant, I think, that we have been waiting for an announcement from Minister Truss regarding the panel that is going to conduct the review of AWB International. We have been waiting and waiting for that announcement. The minister has refused to advise the Senate Rural and Regional Affairs and Transport Legislation Committee of his decision—if he has made one—in relation to that panel. I suspect that decision is being withheld because the single desk is in play in negotiations with United States. If it is going to be given up, there will be no point in establishing a panel because there will be nothing to review. We will in fact be asked to amend the legislation by cancelling the single desk arrangement for AWB International. I say to the Australian people: beware—the single desk is in play.

Senator LIGHTFOOT (Western Australia) (3.06 p.m.)—Having been involved in farming for a great deal of my life—and coming from a family that has generations of farming background, I find it somewhat peculiar—

Senator O’Brien—Why are you going to sell them out then?

Senator LIGHTFOOT—Notwithstanding the fact that Senator Kerry O’Brien is not a bad bloke—the other one I cannot speak for with the same affection—there is not much else he has going for him with respect to farmers. Take a trade union official out of New South Wales and transplant him into
Tasmania, then give him the shadow portfolio of primary industries, and there has got to be some kind of interregnum between the time that what he says bites and when it does not.

I understand how you can read the newspaper in the morning and get a view. Senator O’Brien’s view is what he reads in the press or what he hears on the electronic media in his chauffeur-driven car on his way to this august chamber. But there is more to the free trade agreement with America and the proposals that have been put up than Senator O’Brien has been able to elucidate here today.

There is no question at all that the federal coalition government is committed to the single desk arrangements. Senator O’Brien says that we are going to trade away the single desk to enter into some kind of memorandum of understanding with the United States on the free trade agreement. That is not the case at all. Western Australia often produces 50 per cent of this nation’s wheat crop, for instance. We are very concerned about the direction in which the free trade agreement is going. We are the most efficient wheat producer in the world—not just Western Australia but Australia generally. These major agricultural commodities are the subject of negotiations. There seems to be general agreement on all other areas of free trade with respect to which we will enter into a memorandum of understanding. The sticking point seems to be with our wheat, our sugar, our beef and, to a lesser degree, with our Pharmaceutical Benefits Scheme.

But that is not the end of the free trade arrangements. Discussions on the free trade arrangements may go beyond the election late next year in the United States, at which time the incumbent President is expected to win by a landslide. If that is the case, and we can produce a better free trade arrangement, that will be to the benefit of Australian farmers. But let me say categorically that there is no backing down by the government with respect to the single desk. Australia’s single desk export arrangements are also consistent with the World Trade Organisation.

Let me get back to the subsidies that Senator O’Brien spoke about—as if the United States were the only country in the world that gives subsidies to its farmers. It does give subsidies to its farmers with respect to wheat, barley, corn, beef and even in some instances, to the detriment of France, to its vigneron. The problem is with the European Union and the subsidies that they give, to the tune of tens of billions of euros a year, right across the board. That trade across the Atlantic between Europe and America is something we can only dream about. That trade has been worth countless trillions of dollars over the past decade, since the initiation of the European Union. If we are going to attack a country for giving subsidies to its farmers, then let us be fair and look at the Europeans as well. If we could only convince the European Parliament that giving subsidies to their farmers is not only detrimental to Australia but also detrimental on a vast scale to the developing countries of Africa and Asia, to India and to other areas where our standard of living is something they can only dream about. I believe that the free trade arrangements we are proposing are excellent. I believe that we will go on and that, sooner or later, we will come to an agreement—(Time expired)

Senator MARSHALL (Victoria) (3.11 p.m.)—I also rise to take note of the answer to a question asked by Senator O’Brien today relating to trade. Senator Lightfoot’s contribution started off very well. He began by saying that Senator Kerry O’Brien is a good bloke. I wholeheartedly agree with that. After that, it went downhill considerably. I was a little worried about his knowledge of the
negotiations. He seemed to have such absolute confidence about what is in these free trade negotiations. If he does, and if he is so sure that—in his words—the government will not back down on negotiating away the single desk arrangement of the Australian Wheat Board and is absolutely committed to retaining it, one must ask: why does the minister not just say that?

It is okay for Senator Lightfoot to come into the chamber and give us these absolute undertakings on behalf of the government: ‘The government will not back down.’ He said, ‘It is absolutely committed.’ But the minister responsible in this chamber cannot give us any such undertaking. The reason he cannot give us any such undertaking is that he knows that the US is negotiating strongly on this issue. The US want this issue negotiated—they have made that clear. The farm lobby in the US is making that clear. It is one of the key issues they are trying to negotiate in the free trade agreement. It certainly gives us concern, as do many other issues in the free trade arrangement.

Senator Ferris interjected while Senator Lightfoot was speaking, but the interjection was directed to this side of the chamber. Senator Ferris posed the question: why do we want to get rid of the single desk? Labor does not want to get rid of the single desk. Labor is absolutely committed to it.

**Senator Ferris**—Well, stop trying to undermine it.

**Senator MARSHALL**—Interestingly enough, Senator Ferris—

**Senator Ferris**—You’re constantly undermining it.

**Senator MARSHALL**—we have declared our intent. The report tabled today by the Foreign Affairs, Defence and Trade References Committee has a recommendation from the non-government members to put into the negative list the operation of the single desk. The Labor opposition members have made that recommendation. The government senators would not sign on to that recommendation; they put in a minority report. What does that tell us? It tells us a few things. The government talk the talk, but when it gets to walking the walk and putting those commitments in writing, they back away at 100 miles an hour. If anyone’s commitment to the single desk should be questioned, it is that of the government. They are letting the farmers of this country down. If they are prepared to negotiate away the single desk arrangements for access in agriculture to other areas in the US, where there are enormous farm subsidies which still make it very difficult for our farmers to compete, wheat farmers will have no chance of competing. They need the single desk arrangement to assist them to compete.

Quite frankly, I cannot understand why the government cannot come out and be honest and if, as Senator Lightfoot says, they are absolutely committed say so. When they are asked a question in this place in question time, why don’t they just say so? There is a whole range of other issues that we have also talked about on this free trade agreement. I should also draw to the Senate’s attention that, in the report tabled today, on another question we have raised many times here about the PBS, again the recommendation by the non-government senators makes it absolutely clear that we are committed to the operation of the PBS and the reference pricing situation that underpins the PBS. Again, where were the government senators on that committee? Where was their contribution to that recommendation? They did not support that recommendation and again put in a minority report.

We can then move on to quarantine standards. Again, Labor and the minority parties say that we cannot move away from our quarantine standards in this country. Where
are the government senators on that question? Not to be seen, not to be heard. We have serious concerns about what this government is doing—

Senator Ferris—You are a disgrace.

Senator MARSHALL—Senator Ferris, I thought you had interjected enough already.

Senator Ferris—You are undermining our quarantine standards and you are undermining the single desk.

Senator MARSHALL—You ought to try and learn something about these issues before you make such ridiculous comments.

The DEPUTY PRESIDENT—Senator Ferris, I ask you to withdraw the reference to the senator. It is unparliamentary.

Senator Ferris—What part of my comment was unparliamentary?

The DEPUTY PRESIDENT—You understand I am not about to repeat an unparliamentary comment. I ask you to withdraw.

Senator Ferris—What I said, Mr Deputy President, was that he was undermining the single desk and undermining quarantine and that is a disgrace. I do not believe that is unparliamentary.

The DEPUTY PRESIDENT—No, that is not what you said. I would ask you to read the *Hansard*. I ask you to withdraw.

Senator Lightfoot—On a point of order, Mr Deputy President: before you rule, it is unfair to ask the senator to withdraw if she is not aware of what she is supposed to withdraw. I listened, with respect, to what the senator said and I heard her say precisely what she repeated to you, and that is clearly not unparliamentary.

The DEPUTY PRESIDENT—I hear what you are saying as a point of order. It is not the way I heard it. I am sure the senator is completely aware of the way in which it will appear on the *Hansard* record. I have asked the senator to withdraw. In most circumstances, senators do withdraw those matters and then consult the *Hansard* later on. I ask Senator Ferris to withdraw that imputation.

Senator Ferris—I withdraw, and I will consult the *Hansard*.

The DEPUTY PRESIDENT—Thank you, Senator.

Senator MARSHALL—I am amazed that senators in this place not only do not know what they say but do not know what they are talking about. Again, that goes to the whole issue before us today. If they mean what they say, why don’t they answer the question and give us that commitment? *(Time expired)*

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) *(3.18 p.m.)*—I am sure that every farmer knows the great benefits that will befall rural and regional industries if the free trade agreement goes through. The sugar industry is almost crying for it to get access to a market which will return 22c a pound when growers are receiving around 6c a pound at the moment. The dairy industry sees it as the way forward. In fact, most industries see the life-line of the free trade agreement out there and they are almost praying for it to happen. It will be the greatest benefit to rural and regional Australia.

Senator O’Brien—If you get something.

Senator BOSWELL—Of course if we get somewhere. That is exactly it. Meanwhile, we have got Mark Vaile and his team of negotiators out there almost constantly trying to achieve this great goal for rural and regional Australia. They are here, they are there, they are everywhere. I rarely see Mark Vaile, although he is deputy leader of this party, and a good one at that. I rarely see him in the party room, and I am sure his wife
rarely sees him, because he is out there trying to achieve this goal.

Senator O’Brien—You’re going to sell them out again.

Senator BOSWELL—While he is trying to achieve a goal, the Labor Party is trying to undermine his negotiations. It is almost like Mr Micawber in the Charles Dickens story: something is always going to turn up. Don’t ever do anything yourself, don’t ever try to be proactive; just try to undermine and weasel and pull the mat out from under farmers and people who want to actually do something. That is the distinct difference from when we were in opposition. If you ever put up a project or policy or legislation that had great benefits for Australia when you were government, you got unilateral support from the Liberal and National parties. Unfortunately, you are not reciprocating that; you are going for the easy way out: ‘Something is going to turn up. We’ll just try and undermine them, try and put fear and loathing in there.’

I can tell you, Senator O’Brien, if you want to win an election that way, you are going to be sitting on that side of the parliament when you are old and grey, because rural Australia is looking for something positive, some ideas, some way forward, some new policy proposals that they can see a future in—not just continually undermining, continually pulling the mat out, continually whingeing, continually whining and continually carping. That is what you are noted for. Senator O’Brien—the biggest whinger, carper and whiner that has ever come into this parliament. All you can ever do is attack. You have never come up with one idea in your life. You have never come up with one positive statement in your life. I have sat here and watched you time and time again. You are a whinger, a carper and a whiner.

When you go into these important negotiations as Mark Vaile is doing, you have to have an opportunity. He does not show all his cards at once. Let me reassure those on the Labor side that if the single desk goes it will be by a referendum of farmers, not by anything else. It will be by a referendum of farmers. That is the only way it will go. So don’t you come in here and grab a statement by some spokesman for the Americans, who are trying to put a bit of leverage against Australia, and have the good old Labor Party go and join them and try to crank up the leverage on the single desk.

Everyone in the sugar industry is so desperate to get this agreement signed and so desperate to be able to achieve it because many see it as the way through their present difficulties. And you, Senator O’Brien, are over there undermining all the time. Of course the Americans will be trying to discourage the single desk for the sugar industry; the sugar growers over there will be trying to undermine the efforts by Australia to get into it. But they do not need your assistance. They can do it themselves. They do not need any fifth column coming in and trying to undermine the sugar industry, the dairy industry or the wheat industry in Australia. You are a fifth columnist! (Time expired)

Senator BUCKLAND (South Australia) (3.23 p.m.)—I will not be like Senator Boswell; I will not join the carping that is going on here this afternoon. But I do rise to take note of the answer given to Senator O’Brien this afternoon. In light of what Senator O’Brien said, it is clear that wheat and rice growers are entitled to be deeply concerned about the fate of their single desks under the proposed US FTA. We know America has launched action in the World Trade Organisation against Canada’s single desk for wheat. Besides the fact that Canada did not march off to Iraq with the US, there has gen-
eraly been a close and cordial relationship between the two nations. But Canadian farmers are finding themselves under attack. I do not think that Australian farmers can expect our role in the coalition of the willing to save them from a similar attack from the US. Not only does the US have form in politicising international trade, so too does the Howard government, and this should be of great concern to the nation’s farmers.

This is especially so in light of Senator Hill’s point-blank refusal to rule out the dismantling of the AWB International wheat export monopoly. Wheat farmers are not the only ones who have to worry about this government’s preparedness to sell them out. The Minister for Agriculture, Fisheries and Forestry, Warren Truss, is yet to release the final import risk analysis report on Philippine bananas and dispel fears that the government is prepared to abandon the 2,300 growers that make up Australia’s banana industry for the sake of political convenience. Mr Truss released a draft import risk analysis on bananas more than 14 months ago. That report, developed after two years of consultation, concluded that Philippine bananas pose an unacceptable disease risk to the Australian industry. In respect of moko disease, the report found:

… there do not appear to be feasible measures capable of reducing the quarantine risks to an acceptable level.

Delay between the publication of the draft report and the release of the final report is unacceptable for the Philippines and the Australian banana industry. Many Australian banana growers fear the finalisation of the assessment has been delayed for political reasons. Their fears appear to be well grounded. In July this year, the Prime Minister announced plans to establish a political forum with the Philippines to resolve quarantine disputes, a plan that threatens to compromise the integrity of Australia’s quarantine regime. Labor knows that Australia’s scientific quarantine system is the key to our disease-free domestic agricultural production and international export success.

But the Howard government has a more cavalier view. There are some disturbing coincidences surrounding the quarantine arrangements for pineapples imported from Thailand and the signing by the government of an FTA with that nation. Last month, onshore mandatory methyl bromide fumigation was accepted by the Howard government in relation to fresh pineapple imports from the Philippines, Sri Lanka, the Solomon Islands and, most interestingly, Thailand. The proposed change from offshore to onshore fumigation was first circulated in June and vigorously opposed by the pineapple industry on the basis that it contradicted the import risk analysis covering fresh pineapple imports finalised only a year ago.

The Australian industry feels that onshore fumigation poses an unnecessary pest risk to the Australian pineapple industry. Honourable senators may not be aware that the fumigation arrangements changed on 20 October. I am sure that honourable senators will, however, remember that the government signed the FTA with Thailand on 19 October—a one-day difference. There may not be a link between these events, but many primary producers believe the link is more likely than not. Many Australian farmers are now asking themselves to what extent the Howard government is prepared to weaken our quarantine regime to achieve a free trade deal with the United States and what that compromise will cost our nation. (Time expired)

Question agreed to.

BUSINESS
Rearrangement

The DEPUTY PRESIDENT—I inform the Senate that Senators Brown and Bartlett
have withdrawn the urgency motion which they indicated they intended to move today.

**COMMITTEES**

**Reports: Government Responses**

**Senator HILL** (South Australia—Leader of the Government in the Senate) (3.29 p.m.)—I present three government responses to committee reports as listed on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in *Hansard*.

Leave granted.

*The documents read as follows—*

**Government Response to Finance and Public Administration References Committee Report**

**A Funding Matter under the Dairy Regional Assistance Programme**

**Introduction**

The Government is committed to transparency and accountability in administering grants programmes. It has accepted the recommendations of the Committee and has ensured these issues have been addressed in the policy and processes for the new Regional Partnerships Programme.

While accepting the Committee recommendations, it notes the comment by Government Senators that:

On the whole, the government Senators welcome this report as an opportunity to identify areas for improvement in the department’s administration of future funding programmes. Government Senators agree that this case has demonstrated certain weaknesses in the interpretation and application of relevant funding guidelines which should be examined by the department. However, several conclusions reached by the majority report are overstated, or not backed up by sufficient evidence to be justified. We therefore wish to place some additional comments on the record.

The additional comments and points of dissent from government Senators are noted in the Government’s Response.

Following are the Government’s responses to the individual recommendations of the Report:

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<td>1</td>
<td>The Committee recommends that DOTARS define the role of Area Consultative Committees (ACCs) in the implementation of Commonwealth funding programmes and undertake a review of the performance of individual ACCs in relation to these responsibilities.</td>
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| 2 | The Committee recommends that the Australian National Audit Office (ANAO) undertake a review of the performance of the Australian National Audit Office (ANAO) in the implementation of Commonwealth funding programmes. | The Government has provided the ANAO with a copy of the report for information and considerat-
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<td>(ANAO) undertake an audit of the administration of Dairy RAP, including the assessment and approval of the Mordek grant. The Committee recommends the ANAO audit address each component of programme administration, including the determination of regional need, the application process, the community information process, the role and responsibility of the Area Consultative Committees and the role and responsibility of DEWRSB and DOTARS. Additional comments and points of dissent by government Senators of the References Committee noted the following: One key point implicitly acknowledged in the majority report but not elucidated is this: there is no indication of actual malfeasance of misconduct by any of the parties involved in this case. Government Senators also noted: The majority report attempts to use the limited evidence of technical difficulties with the Mordek case to make wider criticism of the administration of Dairy RAP. We consider this to be tenuous at best.</td>
<td>ANAO’s current work programme includes a performance audit of Special Accounts. The ANAO is currently conducting a performance audit of the Dairy Structural Adjustment Program and Supplementary Dairy Assistance measures, part of the Dairy Industry Adjustment Package.</td>
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<td>3 The Committee recommends that Commonwealth funding to address regional disadvantage be distributed on the basis of objective funding considerations and that mechanisms be put in place to support intended policy outcomes. Additional comments and points of dissent by government Senators of the References Committee noted the following: Government Senators consider that the majority report has failed to establish a case on this issue. Based as it is on a sample size of one grant in one locality, there is simply not enough evidence to extrapolate from this case that there is a fundamental problem</td>
<td>Independent work undertaken by the Australian Bureau of Agricultural and Resource Economics (ABARE) identified regions of Australia that were adversely affected by the dairy industry deregulation. The provision of indicators of ‘on farm’ and ‘regional’ impact were used consistently by the Department in the prioritisation of regions for funding under the Dairy Regional Assistance Programme. That the Committee’s report disagreed with the cut off points used in determining high, medium and low impact does not detract from the objectivity of the indicators provided by ABARE. Under Regional Partnerships, projects are funded on merit. The Minister for Regional Services, Territories and Local Government is the decision-maker. The 56 outer metropolitan, rural and remote ACCs are advised of a notional allo-</td>
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<td>with the use of the ABARE report to determine Dairy RAP eligible regions.</td>
<td>cation of funding. These funds are allocated according to whether an ACC is metropolitan, rural/regional or remote, with a larger amount being allocated to remote ACCs. These notional allocations are a guide for the total value of high quality projects that an ACC might reasonably expect to be funded under Regional Partnerships in its region. Notional allocations provide realistic guidance to ACCs and proponents about likely funding availability. The Sustainable Regions Programme provides funding to regions undergoing significant structural change. The regions were identified from Socio-economic Indexes For Areas (SEIFA) and Accessibility Remoteness Index of Australia (ARIA) data and include a mix of regional, rural and remote locations.</td>
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<td>4 The Committee recommends that Commonwealth grant programme guidelines clearly outline all criteria relevant to assessment. Additional comments and points of dissent by government Senators of the References Committee noted the following: The majority report makes it clear that departmental officials went to considerable lengths to see that the proponent’s application complied with programme guidelines. This included three assessments by an independent consultant (PriceWaterhouse Coopers) that, while noting some concerns, ultimately recommended that Mordek was eligible for programme funding.</td>
<td>Regional Partnerships Guidelines are consistent with this recommendation. The Guidelines are available on the internet, from the Commonwealth Regional Information Service, the Department of Transport and Regional Services and through Area Consultative Committees. These Guidelines and application form provide detailed information and clear explanation on each of the criteria for the programme. The Guidelines also provide specific information on what is not eligible for funding, for example, they include explicit references to retrospectivity, cost shifting and the duplication of services already available within the region. The Sustainable Regions Programme has project selection criteria. In addition projects are assessed against regional priorities. Programme guidelines are publicly available on the Internet and from executive officers in each of the regions.</td>
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<td>5 The Committee recommends DOTARS adopt transparent and systematic assessment procedures for regional programme grants, incorporating an improved documentary record of assessment procedures. Additional comments and points of dissent by government Senators of the References Committee noted the following: Government Senators welcome this report as an opportunity to identify</td>
<td>For Regional Partnerships, DOTARS is putting in place a single programme management package. The package has significant capacity to organise and record details, applications, assessments, funding schedules and monitoring tasks and outcomes.</td>
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areas for improvement in the department’s administration of future funding programmes. Government Senators also noted: Several conclusions reached by the majority report are overstated, or not backed up by sufficient evidence to be justified. | Under Regional Partnerships priority will be given to those projects that demonstrate value for money. The Sustainable Regions Programme supports funding projects that demonstrate sustainability, address regional priorities and obtain financial contributions from other sources.

| 6 | The Committee recommends that the Commonwealth seek to maximise the benefit of public expenditure on regional programme grants by incorporating a ‘best value’ principle into programme guidelines. |  |

**Government Response to the Senate Standing Committee for the Scrutiny of Bills**

**Fourth Report—Entry and Search Provisions in Commonwealth Legislation**

**Executive summary of government response to the Fourth Report of 2000**

1. The Government welcomes the Fourth Report of 2000 by the Senate Standing Committee for the Scrutiny of Bills (‘the Scrutiny Committee’), entitled ‘Entry and Search Provisions in Commonwealth Legislation’ (‘the Entry Powers Report’). Entry and search powers are a vital tool for ensuring the effective administration of government schemes, and compliance with the law. It is equally important that such provisions be framed to ensure that private rights are protected and that powers are exercised properly.

2. The Government’s policy on entry and search powers forms part of the Commonwealth’s ‘criminal law policy’. Guidelines setting out the policy as at mid-1999 formed part of the Attorney-General’s Department’s submission to the Scrutiny Committee. The guidelines are currently being revised.

3. The diversity of modern regulatory schemes and law enforcement needs is such that search and entry powers take many different forms, and rely on different procedures for their efficacy. The Scrutiny Committee’s views have figured prominently in the development and evaluation of Commonwealth criminal law policy over many years.

4. The Government supports the majority of the principles, and a number of the recommendations articulated in the Scrutiny Committee’s Entry Powers Report. However, some of the principles are not considered to be appropriate to implement in specific circumstances. In addition, some of the recommendations are not compatible with the complexity and range of regulatory and enforcement responsibilities of Commonwealth agencies. There is a need to maintain flexibility in this area.

5. The Government agrees with the Committee’s view that search and entry powers need to be justified and closely monitored. Commonwealth criminal law policy applies a strict and principled rationale to the framing of coercive powers.

6. The Committee made sixteen recommendations. This response addresses each, referring to particular agencies only when the Committee elected to single those agencies out for comment.
Substantive responses to each Recommendation of the Fourth Report

1. The Committee recommends that all entry and search provisions in legislation including bills should have to conform with a set of fundamental principles rather than long-standing practice. These principles should be enshrined in stand-alone legislation based on the principles set out in this Report. This legislation should take as its starting point the search warrant provisions set out in the Crimes Act 1914 (Cth).

Government response to Recommendation 1: Not accepted

Most agencies' powers have been formulated to operate as a cohesive and integrated whole, which recognises varying enforcement contexts. The advantages of having consistency across Commonwealth legislation should not be achieved at the expense of the effectiveness of existing legal regimes.

The enactment of non-derogable, model standards in legislation would not take into account the diversity of situations that entry and search powers are used to address. Nor would it cater for frequently changing enforcement circumstances. Flexibility is necessary to achieve the different objectives of regulatory and enforcement legislation. The following examples illustrate this point.

Example 1: Under some Commonwealth legislation, for example the Auditor-General Act 1997 and the Occupational Health and Safety (Commonwealth Employment) Act 1991, powers of entry and inspection are generally confined to Commonwealth premises. The Government does not consider that the principles identified by the Scrutiny Committee should apply to entry and search provisions exercisable only on the premises of Commonwealth agencies. The Commonwealth should not face undue limitations on the terms on which its own premises may be accessed for the purposes of ensuring occupational health and safety compliance, for instance. Entry to the premises of one Commonwealth agency by another Commonwealth agency should generally be governed by administrative arrangements.

Example 2: Some search powers are exercised in a commercial or regulatory environment which differs markedly from an overtly criminal environment. This is known and understood by the agency involved and those whom it regulates. The routine involvement of police in such circumstances could cause unnecessary alarm, embarrassment and distress, as well as consuming scarce police resources. Police would, of course, be involved where officers judge that their involvement is justified by the particular circumstances of the case. Using police officers where a search is likely to involve examination of large numbers of documents or computer files would consume scarce police resources. Police involvement would assist neither the person whose premises were being searched nor the person conducting the search.

Example 3: In some cases, entry and search powers are based on internationally agreed laws, practice and procedures, for instance, the maritime port state control functions for investigating seafairiness of vessels. Foreign-flagged vessels are subject to port state control inspections in Australian ports, consistent with international treaties, to ascertain their compliance with internationally agreed standards of safety, environment protection and crew conditions. The procedures for conducting port state control functions are based on conventions, resolutions and guidelines promulgated by the International Maritime Organisation and the International Labour Organisation, which do not envisage a requirement for warrants or a role for judicial officers. Consistent with this, maritime inspectors appointed by the Australian Maritime Safety Authority are authorised by section 190AA of the Navigation Act 1912 to go aboard a vessel at any reasonable time to conduct their inspections, without requiring a warrant or the specific consent of the ship's master or owner. Such provisions are consistent with the exception provisions of the Commonwealth's criminal law policy regarding search and entry of conveyances, as obtaining a warrant prior to entry to a vessel is impractical given the inherent mobility of a ship. The Government notes that the requirement for a warrant, particularly one issued by a judicial officer, in such circumstances may in fact frustrate maritime law operations, because of geographic and temporal problems.
Example 4: Entry and Search powers are not always exercised to determine criminal or civil liability. For example, the investigation activities of the Australian Transport Safety Bureau (ATSB) are not conducted for the purpose of apportioning blame (see section 19CA of the Air Navigation Act 1920 which applies to investigations that commenced before 1 July 2003, and section 7 of the Transport Safety Investigation Act 2003 which applies to investigations that commenced after 1 July 2003). Instead, ATSB investigations seek to obtain information about circumstances which led to an accident or incident and identify appropriate safety action to prevent future occurrences. Many of the principles provided are not appropriate in this context. For example, evidence relevant to the ATSB investigations is often perishable and needs to be preserved immediately. For this reason, it is impossible or impracticable in many situations to obtain consent or a search warrant, or to secure evidence pending an application for a warrant.

Example 5: The Scrutiny Committee has recommended that a warrant be struck down as invalid where it goes beyond the requirements of the occasion in the authority to search (see page 54). The current line of judicial authority is that courts will not automatically strike down a search warrant that is wider than it should have been. The court will usually consider whether the offending part of the warrant can be severed from the rest, and uphold a seizure if the items that were seized could have been seized under the warrant had it been drafted more narrowly. The Government considers that judicial discretion in this regard is reasonable, and more consistent with the public interest, than an approach that would strike down a warrant automatically in any case where the officer who issued it made an error about what could be authorised under the relevant statute.

2. The Committee recommends that the entry and search powers available to the Australian Federal Police under the Crimes Act 1914 (Cth) should constitute the ‘high-water mark’ for such powers generally. By law, the powers of entry and search available to any other agency, person or organisation may be less than these, but should only exceed the powers available to the Australian Federal Police in exceptional and critical circumstances.

Government response to Recommendation 2: Accepted with qualifications

The Government agrees that the entry and search powers available to the Australian Federal Police (AFP) under the Crimes Act 1914 (Cth) should constitute the ‘high-water mark’ for search powers generally. This is reflected in the policy currently adopted by the Government on such matters, which provides that the search warrant provisions applicable to police “define the outer limits of the powers and the minimum limitations and obligations that should normally apply to search warrant powers conferred in other contexts”.

However, as the Committee recognise at paragraph 3.8, agencies operate under different conditions, and perform different functions, so there will be occasions when particular entry provisions need not conform with the standard approach in every respect. The Committee accepts, for example, that non-compliance with Part 1AA of the Crimes Act 1914 may be reasonable to deal with exceptional conditions such as instances of national security or a serious danger to public health (see paragraph 1.44 of the Entry Powers Report).

While the Government will continue to regard Part 1AA of the Crimes Act 1914 as a model for the strongest coercive powers available for search warrants, that Act does not limit the scope of other, related powers that agencies seek.

For instance, the AFP does not have monitoring warrant/audit powers. Commonwealth criminal law policy provides that where search powers are sought, not for the investigation of specific offences but to monitor compliance with legislative requirements, a ‘monitoring warrant’ regime should be employed. The creation of criminal offences simply to ‘draw in’ the AFP and its search powers is generally deemed to be an inappropriate alternative to monitoring powers.

The Crimes Act 1914 is inappropriate to operate as model legislation for agencies where there is a need to monitor/audit compliance with statutory obligations in circumstances where no offence will be suspected.
Monitoring warrant powers are more limited than search warrant powers in some respects (for example, they do not permit seizure), but broader than search warrant powers in other respects (for example, the issue of a warrant does not depend on evidence that an offence has been committed). These distinctions are consistent with the differing objectives of monitoring/audit powers and search warrants.


3. The Committee recommends that each agency, person or organisation which exercises powers of entry and search under legislation should maintain a centralised record of all occasions on which those powers are exercised, and should report annually to the Parliament on the exercise of those powers.

**Government response to Recommendation 3: Not accepted**

The Government agrees that appropriate records should be kept of the exercise of search and entry powers.

As noted already, Part IAA of the Crimes Act 1914 sets the benchmark for the provision of search warrant powers in Commonwealth legislation. Accordingly, warrants granted under Commonwealth search warrant regimes generally require an issuing officer to record certain information about the nature and purpose of a search warrant. The warrant must show on its face information such as the magistrate being satisfied that there are reasonable grounds to suspect, in the premises named in the warrant, that there are the things named in the warrant which would afford evidence of the Commonwealth offence identified in the warrant. The warrant must also list the powers the executing officer may exercise, the duration of the warrant, and the types of things that may be searched for or seized. Similar limitations and obligations apply to warrants obtained over the telephone or by other electronic means. However, in such instances both the issuing officer and applying officer are to complete similar warrants, with the applying officer to return their copy to the issuing officer within one day of the expiry or execution of the warrant. The issuing officer is to attach that copy of the warrant to the copy he or she had already completed. An additional level of accountability is applied by the requirement that if the issue of the authorisation of the warrant is questioned during court proceedings and the issuing officer’s signed copy is not produced in evidence, then the court is to assume that the exercise of the power was not duly authorised.

Furthermore, copies of these details are provided to relevant persons, such as the occupier of the premises being searched, who is to be provided with the details of the warrant and a receipt for anything seized during the execution of the warrant.

Monitoring warrant regimes apply to industries which often involve risks to the community (for example, environmental and public safety) and practical enforcement difficulties. In such industries it is reasonable to require operators who accept the commercial benefit of such activities to be monitored under a monitoring warrant regime. It is not practical to centrally record every monitoring activity, though any use of such material in proceedings necessitates the keeping of good records if officers are to avoid court challenges. There may also be instances where it is not practical to obtain a warrant. For example, where the inherent mobility of a conveyance makes it impractical. In such instances adequate protections are imposed. Only authorised inspectors carrying identity cards are to be empowered to exercise search and entry powers. Also, certain protections are offered to occupiers. Entry is permissible only where the occupier is notified of an intention to enter and search and only where the occupier has consented to the entry and search. The occupier is to be informed of the right to withdraw their consent at any time and cannot be held liable for not complying with the directions of an inspector. If non-compliance is to give rise to liability the legislation should expressly state that existing non-disclosure rights and obligations are overridden. Additionally, seizure of items is only permitted under a warrant, which in itself links into recording procedures that apply to the execution of warrants.
The Government does not propose to require centralised records or annual reports to Parliament. The Government does not accept that this practice adds to the current regime. If there is a question as to the validity of a warrant or its subsequent execution the courts can examine that question when it arises and hold that the warrant was not valid and/or its execution was improper.

4. The Committee recommends that the principles set out in Chapter 1 of this Report should apply to both government and non-government agencies, persons and bodies which seek to enter and search premises by virtue of statutory authorisation.

**Government response to Recommendation 4: Accepted in principle**

Although the Government is of the view (expressed in the response to Recommendation 1) that each principle identified in Chapter 1 should not be automatically applied to all search and entry powers, the Government agrees that private persons or bodies should be subject to the same policy strictures on search powers that apply to government bodies.

Entry powers should generally only be conferred on government employees. Public officials are subject to a wide range of accountability mechanisms under the Ombudsman Act 1976, the Administrative Decisions (Judicial Review) Act 1977, disciplinary procedures, the Privacy Act 1988 and the Freedom of Information Act 1982. In general, such accountability mechanisms do not apply to persons outside government. This is to be contrasted with powers conferred in the industrial relations context (see response to Recommendation 5) and monitoring powers, such as are exercised, for example, by contractors to the Commonwealth (appointed as statutory office holders) under the Airports Act 1996.

However, there may be rare instances where it is necessary to empower non-government persons to exercise entry and search powers. For example, some specialist investigations may require the input of experts from time to time, such as crash experts or computer experts, to identify certain materials as relevant to an investigation. In such cases it may not be viable for a Government agency to retain such experts on a full time basis. Another example is where there is a need for a person to enter and search inherently mobile conveyances where it would not be possible due to time constraints to have in attendance an authorised government employee (for example, inspection of a ship). However, the Government considers that the empowerment of non-government officials to exercise search and entry powers should be strictly limited to cases of necessity. Necessity would be assessed by the Attorney-General’s Department on a case by case basis when it is consulted about requests for a grant of search and entry powers in accordance with Government policy (ie see the Department of the Prime Minister and Cabinet’s Legislation Handbook, paragraph 6.26(d)).

Where a need to empower non-Government employees or agencies to exercise search and entry powers is identified there are a range of measures that may be applied to ensure appropriate and adequate accountability is maintained. Appointment procedures may be set down in legislation to ensure that only appropriate and accountable persons are appointed to head the agency or exercise those powers. The ability to apply for search warrants may then be limited to the head of the agency, who may then be able to delegate those powers to relevant experts or other persons when the need arises. The agency head would then be ultimately accountable for the conduct of delegates. Additional accountability may be achieved by ensuring that the experts who are delegated those powers are also appointed under a specific legislative selection criteria. This selection criteria would vary based on the circumstances, but would, where possible, follow the requirements applied generally to authorised officers who may be empowered to exercise those powers (for example, the need for certain maturity and skills). Furthermore, the exercise of those powers may be further legislatively restricted by limiting the exercise of search and entry powers by such non-government employees to instances where, for example, their expertise would be required (for example, a specialist investigator would only be able to enter and search certain sites in certain instances).

As noted before, Part 1AA of the Crimes Act 1914 sets the benchmark for Commonwealth search warrant regimes. Non-government em-
ployees in this context would also be required to comply with the basic requirements adopted from Part 1AA that are imposed in general on Government employees. For example, authorised non-government employees would be subject to the same general regime for obtaining search warrants as Government employees (for example, the provision of certain information on oath establishing legitimate grounds to enter and search premises), as well as practical accountability measures such as being required to adequately identify themselves to the occupants of premises being searched and the need to provide the occupier of the premises with notice of the intention to enter and search their premises. Furthermore, the relevant legislation implementing such a search warrant regime for non-government employees would also apply the same rules to judicial officers granting search warrants that apply in other grants of search warrants to Government employees (for example, the need to be satisfied that there are sufficient grounds set out in the information to establish the need for a warrant).

However, as noted in the Government’s response to Recommendation 1, certain principles that are formulated for general application may be inappropriate to apply in every context. For this reason, while the Government agrees in principle that non-government agencies should be subject to scrutiny measures that apply to government bodies, it does not agree to enshrining this principle in legislation.

5. The Committee recommends that the right of entry provisions in the Workplace Relations Act 1996 should conform with the principles set out in Chapter 1 of this Report.

Government response to Recommendation 5: Not accepted

The principles set out in Chapter 1 of the Report are not appropriate for general application to the various entry powers conferred by the Workplace Relations Act 1996 (‘WR Act’).

The WR Act confers powers of entry on four categories of person: (i) officers and employees of registered trade unions to whom a permit has been issued; (ii) inspectors appointed by the Minister; (iii) Authorised Officers appointed by the Employment Advocate; and (iv) the Industrial Registrar (or person acting on his or her behalf) pursuant to an authorisation issued by the Federal Court. The powers are exercisable for the purpose of ascertaining compliance with the provisions of the WR Act. In the case of inspectors and Authorised Officers, the matters investigated are not offences and attract only civil monetary penalties.

The Government considers that the same principles should not apply to entry of premises by both trade union officials and government officials.

The right of entry conferred on officials or employees of trade unions by the WR Act is limited in a number of ways. Before a trade union official or employee can seek to enter into a workplace, he or she must hold a right of entry permit. Such permits are issued by the Registrar, and can be revoked on application by an employer, organisation of employers, or an inspector, if the Registrar is satisfied the permit-holder intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner. The Australian Industrial Relations Commission can also revoke a permit as part of the settlement of an industrial dispute about right of entry.

Entry to investigate a suspected breach of the WR Act, or an award, order or certified agreement is only available where persons who are members of the permit-holder’s organisation are employed. A permit-holder may also enter premises for the purposes of holding discussions with employees who are members, or eligible to become members, of the organisation concerned.

In either case, permit-holders do not have the right to use force to effect an entry, nor do they have the right to search premises or seize documents or other material. The power to enter may only be exercised during working hours and with 24 hours notice. The right of entry permit must be shown on request. (It is appropriate to note that State workplace relations legislation may also contain right of entry provisions, with the rights and obligations under that legislation varying according to the jurisdiction.)

As regards the other entry powers conferred under the WR Act, the Government does not consider that entry of premises only by consent or warrant is appropriate. The Government notes that the right of entry provisions under the WR Act do not permit entry by force or provide a power to search.
The majority of entries by inspectors and Authorised Officers are to follow up on confidential unofficial complaints or formal claims, to make inquiries, provide information and deal with claims and complaints, generally through voluntary compliance. If a warrant requirement were to be introduced, it is anticipated that this would significantly impair the ability of inspectors and Authorised Officers to efficiently investigate and resolve claims. Resources would have to be diverted from investigation and compliance work to the task of obtaining warrants. The requirement to obtain warrants would delay the resolution of investigations, increase costs and reduce the number of entries by Authorised Officers and inspectors.

6. The Committee recommends that all existing entry and search provisions in legislation, including those contained in regulations, be reviewed and amended by 1 July 2001 to ensure that they conform with the principles set out in Chapter 1 of this Report.

**Government response to Recommendation 6:**
**Not accepted**

This recommendation is linked to Recommendation 1, with which the Government does not agree. The reasons set out in the response to Recommendation 1 apply with equal force to the Committee's proposal that all existing entry and search powers be reviewed for conformity with the principles set out in Chapter 1 of the Fourth Report.

7. As a priority, the Committee recommends that all entry and search powers that go beyond the entry powers in the Crimes Act 1914, including the powers exercisable by the Australian Taxation Office, the Department of Immigration and Multicultural Affairs, the Australian Transaction Reports and Analysis Centre, the Australian Security Intelligence Organisation and the Minister for Defence under the Defence (Areas Control) Regulations, should be reviewed and amended so that they are consistent with the principles set out in Chapter 1 of this Report.

**Government response to Recommendation 7:**
**Accepted in part**

Implementing this recommendation could impose a significant additional burden on State magistrates. If magistrates were given the responsibility to issue search warrants under each of the Acts identified by the Scrutiny Committee in Chapter 3, this would have direct resource implications for the State court system, and indirect resource implications for the Commonwealth.

Issuing warrants is an administrative function which judges may consent (but cannot be obliged) to perform on an individual basis. Several years ago, judges of the Federal Court who had consented to issue certain listening device and telephone interception warrants advised the Attorney-General of their intention to withdraw their consent, because they had formed the view that this was not a function that judges should perform. The relevant Acts subsequently had to be amended to allow authorised members of the Administrative Appeals Tribunal to issue those warrants.

As noted already, the Government is concerned about the application of the principles set out in Chapter 1 and achieving consistency across Commonwealth legislation at the expense of the effectiveness of existing regimes, which have in many instances been formulated based on functional and operational necessities of different agencies. However, the merits of undertaking a review at an agency level have been recognised by some agencies.

**Australian Taxation Office**

The Australian Taxation Office (ATO) is responsible for administering a range of revenue laws, including self-assessment taxation systems. In recognition of the associated costs, self-assessment systems do not require taxpayers to provide full records to the ATO each year. When returns are lodged, a statement is signed attesting that the information contained in the return is accurate and that records are available for the ATO to confirm this.

The Government does not agree that a warrant must be obtained before access can be gained to premises for the purpose of verifying claims made by taxpayers in their returns. It should be accorded full and free access, and reasonable facilities for this purpose.
The access powers of the ATO are a long-established feature of taxation administration and enforcement in Australia. Even prior to the introduction of the goods and services tax (GST), there were approximately 280,000 access visits yearly. This volume of monitoring activity could not be conducted under a warrant based system without a very large increase in resources or a substantial reduction in monitoring. This in turn would lead to losses in revenue. It is not proposed to amend these provisions.

Department of Immigration and Multicultural and Indigenous Affairs

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) acknowledges that it is appropriate to review its existing search and entry provisions, and has undertaken to do so. However, as indicated in the response to Recommendation 1, the Government is of the view that it is not appropriate to amend entry and search provisions to accord with each principle outlined in Chapter 1 of the Report. The Government does not support the principle that the power to issue warrants to enter and search premises should only be conferred on judicial officers. The delay that is often involved in contacting and consulting with a judicial officer in order to obtain a search warrant is unacceptable in situations where DIMIA officers require a warrant as a matter of urgency to assist in apprehending an illegal migrant believed to be at a particular residence.

Australian Transaction Reports and Analysis Centre

The Government will give further consideration to the Committee’s recommendation that the entry powers available to the Australian Transaction Reports and Analysis Centre (AUSTRAC) be amended to require consent or a warrant issued by a judicial officer.

The Government notes the Committee’s comment that many compliance audits by AUSTRAC currently take place by consent and, therefore, a requirement to obtain a warrant in the absence of consent would be unlikely to affect AUSTRAC’s work. AUSTRAC’s search powers are exercised in a commercial and regulatory environment which is different to that of a criminal investigation environment. AUSTRAC is not a law enforcement agency, nor does it perform investigative functions. AUSTRAC generally employs a cooperative, non-adversarial approach to monitoring and auditing compliance and assisting cash dealers with their reporting requirements. AUSTRAC conducts inspections, not to investigate specific offences, but to monitor compliance with legislative requirements. AUSTRAC audits are limited to those who have an obligation under the Financial Transaction Reports Act 1988 to report certain financial transactions or who must undertake specified account signatory identification processes and retain information relating to those processes.

The Government anticipates that, should a warrant requirement be introduced, a number of cash dealers would require AUSTRAC to always obtain a warrant in order to conduct an inspection. In view of the large number of audits conducted each year, a warrant requirement would cause delays and increase costs for AUSTRAC and may undermine the effectiveness of the audit program.

Australian Security Intelligence Organisation

There are fundamental differences between activities undertaken by the Australian Security Intelligence Organisation (ASIO) in accordance with its security functions and activities undertaken in the performance of law enforcement and revenue functions. ASIO’s function is to gather security intelligence, rather than to investigate a crime, or ensure compliance with legislation. ASIO may not be concerned with investigating a specific action, but with gathering information for assessment against a wide range of relevant information from other sources before its significance is apparent. A second important difference is that, unlike most law enforcement activities, ASIO search warrants are frequently exercised covertly, which renders unworkable many of the principles articulated in Chapter 1.

Subsection 25(2) of the Australian Security Intelligence Organisation Act 1979 requires the Attor-
ney-General to be satisfied that the issue of the warrant will substantially assist ASIO collect intelligence in respect of a security matter. It has been the view of successive governments, and parliaments, that responsibility for deciding matters relating to security should, as a general rule, rest with the Executive rather than a judicial officer. The accountability regime for ASIO warrants is independent and rigorous. The Director-General is required to report to the Attorney-General on the utility of every warrant. In addition, the Inspector-General of Intelligence and Security has an oversight role which looks at every aspect of ASIO’s warrant processes, and on which the Inspector-General reports annually to the Prime Minister, the Attorney-General and to the Parliament.

Department of Defence

The Government agrees that the power of the Minister administering the Defence (Areas Control) Regulations 1989 to authorise a person to enter onto any land or premises to ascertain whether the regulations are being complied with, or for related purposes, should be reviewed. Such a review, including the ability for the Minister to authorise that person to undertake various specified actions, has been undertaken. Regulations 14 and 15 of the Defence (Area Control) Regulations 1989 are to be amended to permit a local magistrate to issue a warrant to permit entry on to land or premises. This amendment is seen as offering an appropriate safeguard to the community that would be fair and consistent with entry powers under the Crimes Act 1914.

8. The Committee recommends that the Commonwealth Ombudsman undertake a regular, random “sample audit” of the exercise by the ATO of its entry and search powers to ensure that those powers have been exercised appropriately.

Government response to Recommendation 8: Accepted in principle

The Ombudsman is an independent statutory office-holder and the Government is unable to direct him to undertake particular investigations. The Ombudsman possesses the power to investigate the ways in which the ATO and other agencies within its jurisdiction exercise their search and entry powers, either following a complaint or on his or her own initiative. It is open to the Ombudsman to consider whether to investigate the ATO’s use of such powers in the context of the Office’s existing workload and resources and any particular issues that come to his attention.

The Committee noted in paragraph 4.23 of the Report that there were only nine tax complaints made to the Commonwealth Ombudsman during 1988-99. As the Ombudsman noted in their submission to the Committee, an analysis of these complaints “does not disclose any discernable pattern of systemic defective administration.”

9. The Committee recommends that the procedure that is applicable in Victoria and in some other jurisdictions be followed where, after execution, a warrant is returned to the court which issued it.

Government response to Recommendation 9: Not accepted

The Government agrees that warrants should be properly and fairly exercised. The Government does not accept that returning a warrant to the issuing authority would add to the current regime. Currently an issuing officer is required to retain a copy of the application for, and a copy of, the warrant. Furthermore, the crucial matters to which the warrant relates are to be recorded in the warrant. These include details such as the duration of the warrant (ie generally several days from the time of issue), the premises or persons to which the warrant relates, kinds of evidential material that are to be searched for and the powers authorised by the warrant. Any use of a warrant contrary to the terms set out in the warrant is susceptible to judicial challenge and may be held to amount to an unauthorised exercise of power.

Acceptance of this model would also burden issuing officers with original warrants that they do not seek, in circumstances where the warrant has often already been produced to a judicial officer in another state or territory. The magistrate or the trial judge in the state or territory where the charges are being heard is centrally concerned with the probative value and legality of the means used to collect the evidence. The administrative procedures developed over years of practice by Commonwealth agencies, which satisfy both the principles included in their legislation and the
rules of court in each jurisdiction, are sufficient to guard against injustice. The procedures are guided by the Commonwealth Director of Public Prosecutions (Commonwealth DPP) which provides advice and assistance, through its DPP Search Warrants Manual.

Providing the issuing officer with the warrant also provides security risks as there is the risk of compromising an investigation by leaving operationally sensitive material with an issuing officer who may not be able to provide proper protection. The Commonwealth DPP is currently reviewing the practice that applies with respect to search warrants, with a view to bringing them into line with the practice that applies to telecommunications interception and listening device warrants. The practice in this context is that the material is uplifted when the warrant is issued and is held by the AFP for the Commonwealth DPP with an undertaking to return it to the issuing officer if the issuing officer requires it.

Finally, it is uncertain whether the return of a search warrant to the issuing officer or court would provide any additional protection or safeguards in relation to its execution. If an issue arises in relation to the execution of a warrant and the seizure of evidence, it is likely to arise in the context of a prosecution as part of the defence case. In that context the lawfulness of actions taken are reviewed in order to determine the admissibility of evidence. The court would determine whether the warrant had been lawfully executed and the evidence obtained is indeed admissible.

10. The Committee recommends that, unless there are exceptional circumstances involving clear physical danger, all occupiers of premises which are to be entered and searched should be given a written document setting out in plain words their rights and responsibilities in relation to the search. Occupiers should be informed that the proposed entry and search is either for the purpose of monitoring compliance with a statute, or for the purpose of enforcement or gaining evidence and possible prosecution, but not for both purposes.

**Government response to Recommendation 10:**

Accepted in principle

The policy on such matters has been changed to require that an occupier be informed in writing or, if that is impractical, informed orally, of his or her rights and responsibilities in relation to the search. There is no reason to distinguish in the context of this proposal between a search warrant, monitoring warrant and search authorised by consent. The statement of rights and responsibilities that are suitable for communicating to an occupier in plain language should be drawn from the legislation itself, rather than from common law principles or those set out in Chapter 1 of the Entry Report. In addition, situations of emergency, serious danger to public health or where national security is involved (as stated by the Scrutiny Committee at paragraph 1.44), will justify exceptions to this policy being made.

A further issue arises when the occupier does not speak English. DIMIA is considering the circumstances in which it is possible to establish the translation requirements of a person prior to the execution of a warrant and obtain an interpreter to explain the provisions of the search warrant. Given the delay involved in having an interpreter available to explain the search and the consequent opportunity for the subject to evade detection, DIMIA is considering the merits of a system whereby officers executing a search warrant carry documents detailing the relevant rights and responsibilities in a variety of different languages.

Where a warrant in relation to either a person or premises is being executed, section 3H of the Crimes Act 1914 requires that the executing officer or a constable assisting must make available to the person a copy of the warrant. The executing officer must also identify himself or herself to the person at the premises, or the person being searched, as the case may be.

It is a standard feature of Commonwealth search warrants that they authorise entry to premises either for the purpose of monitoring statutory compliance or for the purpose of collecting evidence of a criminal breach.

Search warrants may also be authorised for other purposes, such as to gather evidence for non-criminal investigative purposes. The ATSB require search warrants when it is necessary for the purpose of collecting information on a transport accident, incident or unsafe situation. As noted
already, these investigations are not conducted to apportion blame, but to obtain information about circumstances which led to an accident or incident and identify appropriate safety action to prevent future occurrences. These activities are conducted in a cooperative environment which renders the need for a search warrant unnecessary in many cases. Police assistance in executing a search warrant is neither appropriate or necessary in most ATSB investigations as this may be counterproductive to the flow of information.

In cases where entry and search is part of an established ongoing program of inspections to ensure compliance with legislation such as occupational health and safety or transport safety, requirements to provide occupiers with written guidelines on their rights and responsibilities is excessive, particularly where these are conducted in accordance with internationally agreed standards and procedures. These programs involve many thousands of routine inspections of premises annually, with no further action being taken in the majority of cases. Persons in the industry understand the purpose of the visits is to conduct regulatory inspection rather than criminal investigations.

11. Where search and entry powers are used by an investigative authority, the Committee recommends that:

- those who are being investigated should have an ongoing right to be informed of the current status of those investigations; and
- where an investigation has been concluded with no charges laid, those who have been investigated should have the right to be informed of this fact immediately; the right to have all seized material returned to them; and the right to compensation for any property damage and damage to reputation.

Government response to Recommendation 11: Accepted in part

The Government does not support the proposal that where a search warrant is executed as part of an ongoing investigation, the person investigated should be kept informed of the progress of the investigation.

In NCSC v News Corporation Ltd (1984) 156 CLR 296 the then National Companies and Securities Commission (NCSC) declined certain requests of companies suspected of offences relating to acquisition of shares, which would have given them a greater role in a hearing conducted to investigate the suspected offences. The NCSC declined the respondents’ requests for greater information and various forms of involvement in the hearing, on the basis that procedural fairness did not require it to afford the respondents the right to be legally represented throughout; nor to cross-examine, present evidence or make submissions. In upholding the NCSC’s argument, the High Court stated:

It is the very nature of an investigation that the investigator proceeds to gather relevant information from as wide a range of sources as possible without the suspect looking over his shoulder all the time to see how the inquiry is going. For an investigator to disclose his hand prematurely will not only alert the suspect to the progress of the investigation but may well close off other sources of inquiry... (NCSC v News Corporation Ltd (1984) 156 CLR 296 at 323)

The comments are similar to those made in the United Kingdom case of R v Serious Fraud Office: ex parte Nadir (Company Law Digest Vol. 12 No.4 1991), where the court stated that it would in fact be “contrary to the public interest to supply information which might enable a suspected fraudster to interfere with witnesses or destroy documents before the investigation was completed.”

While any investigation can be reopened on the discovery of new evidence or similar conduct on another occasion, the Government accepts that individuals should be informed, as soon as practicable, when proceedings are not likely to be instituted on the basis of existing evidence. The advice to individuals will need to be appropriately qualified and tailored to the circumstances of the particular case, including dealing with whether civil proceedings remain an option.

In appropriate contexts, status reports are already provided, particularly in the audit context. For example, as a general rule, the ATO currently informs taxpayers of the progress of audits.

The Government supports the proposal that those who have been investigated should have all seized material returned to them, subject to well
established limitations on this principle relating to the non-return of unlawful items such as narcotics and the forfeiture of proceeds of crime. The principle that seized material should be returned is already recognised in the case of police investigations by section 3ZV of the Crimes Act 1914, which provides that subject to any court order, if a constable seizes a thing by exercising a search and entry power granted under the Crimes Act, he or she must return it if the reason for its seizure has lapsed or it is not to be used in evidence; or otherwise within 60 days, if seized without warrant in an emergency. Commonwealth criminal law policy also provides that there should be an upper limit of 60 days on the retention of seized items, subject to extension in appropriate cases. A longer period may be specified only if there is a clear justification, as was the case in the Customs Legislation Amendment (Criminal Sanctions and Related Measures) Act 2000.

The Government does not support a statutory right to compensation, noting that inappropriate actions by law enforcement officers are dealt with by existing disciplinary or criminal sanctions. The issue of a right to compensation for any property damage and damage to reputation is a civil matter best dealt with under the general principles governing tortious liability. While there is a limited statutory right to compensation for damage to electronic equipment (section 3M of the Crimes Act 1914), any other claims for compensation should be addressed in the established civil jurisdiction of tort law.

The Government has a number of reasons for this view. An entrenched statutory right of compensation is likely to hinder the effective exercise of entry and search powers and the conduct of investigations. Investigators are likely to feel constrained in their activities. This in turn is likely to affect the normal operations of agencies in effectively conducting investigations and administering their affairs.

There may be many reasons for not commencing criminal proceedings (the suggested 'trigger' for a right to compensation) after the execution of an entry and search warrant. Authorities may rely on alternative enforcement measures, such as civil proceedings or administrative sanctions. Consideration of the Commonwealth prosecution policy may lead to a decision not to prosecute (for example, if there is insufficient evidence to justify prosecuting). A failure to prosecute should not imply that the exercise of search and entry powers was inappropriate giving rise to a right to compensation.

12. The Committee recommends that all agencies which exercise powers of entry and search should introduce best practice training procedures and other internal controls to ensure that the exercise of those powers is as fair as possible, and should set out the appropriate procedures and scope for the exercise of these powers in enforcement and compliance manuals.

Government response to Recommendation 12: Accepted in principle
The Government accepts that appropriate best practice training procedures and internal controls should be in place in Commonwealth agencies that exercise search and entry powers. The Commonwealth DPP Search Warrants Manual is available free of charge to interested Commonwealth agencies.

13. The Committee further recommends that, where practical, all executions of warrants are video-taped or audio-taped, and that where the person is a suspect, a verbal caution is given and tape recorded.

Government response to Recommendation 13: Accepted in part
It is a fairly common practice for executions of search warrants to be video-taped or audio-taped, and still photographs are routinely taken by some agencies for evidential purposes. However, it is inappropriate to impose this obligation on all agencies in all circumstances.

A verbal caution is required to be given under existing law to persons suspected of committing a Commonwealth offence (section 23F of the Crimes Act 1914), which largely covers the Scrutiny Committee’s recommendation on warrants executed to investigate offences. There is currently no requirement for tape recording the warning and the Government does not consider that this should be required. An investigating official is obliged under subsection 23F(1) of the Crimes Act 1914 to caution a person who is...
merely in their company on suspicion of having committed an offence (before starting to question them):

that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence.

Given that a monitoring warrant is typically used in circumstances where the official does not have any grounds to suspect that the person being searched has committed an offence, the existing legal protections appear to largely satisfy the Scrutiny Committee’s recommendation regarding verbal cautions.

14. The Committee recommends that the Attorney-General implement a system enabling courts to hear challenges to warrants in camera, or in a way which does not lead to prejudicial publicity for the person challenging the warrant.

Government response to Recommendation 14: Not accepted

All Australian courts have the power to make orders to protect parties from publicity if there is a need to do so. Those orders can include directions that evidence be heard in camera or that the names of the parties be suppressed. There is no demonstrated need to change existing law, and it would be anomalous to make specific provision in respect of only one class of matter.

15. The Committee recommends that the Attorney-General and the Minister for Justice and Customs examine the amendments to the Crimes Act 1914 proposed by the AFP, and the amendments to the Customs Act 1901 proposed by the Australian Customs Service, and introduce legislation to implement those amendments.

Government response to Recommendation 15: Accepted

Amendments to the Customs Act 1901 giving effect to the Committee’s recommendation commenced on 26 May 2000. The amendments were included in the Customs Legislation Amendment (Criminal Sanctions & Other Measures) Act 2000 (Act No 23 of 2000).

The amendments:

- extended the retention period for evidential material from 60 to 120 days (section 203S and section 205E); and
- inserted a provision dealing with the disposal of abandoned goods (section 218A).

Similar amendments will be considered when the Crimes Act 1914 provisions are next amended. There are likely to be amendments to the procedures in relation to investigative powers during 2003 as part of the implementation of the Leaders Summit on Terrorism and Multi-jurisdictional Crime initiatives.

16. While aware that covert searches might make law enforcement easier, the risks are such that the Committee is opposed to recommending such searches.

Government response to Recommendation 16: Noted

This issue remains under consideration.

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Government Response to the Report of the Parliamentary Joint Committee on the National Crime Authority

The Law Enforcement Implications of New Technology

Recommendation 1: That the Government give consideration to the range of offences prescribed under sections 5(1) and 5D of the Telecommunications (Interception) Act 1979 in the context of contemporary technological developments.

Response: Accept.

As part of the ongoing review of the Telecommunications (Interception) Act 1979, the Government monitors the range of offences prescribed under sections 5(1) and 5D of the Telecommunications (Interception) Act 1979 and considers amendments, as appropriate, in light of technological developments.

The Telecommunications Interception Legislation Amendment Act 2002 was passed by Parliament on 27 June 2002. The Act amended the Telecommunications (Interception) Act 1979 to include child pornography, serious arson and terrorism offences within the list of serious offences in relation to which a telecommunications interception warrant can be sought.
Telecommunications services such as the Internet and e-mail are increasingly employed in perpetrating child pornography related offences. In some cases relevant offences are committed exclusively via electronic means. The amendment is intended to strengthen the Telecommunications (Interception) Act 1979 by ensuring the availability of telecommunications interception as an investigative tool in connection with the investigation of child pornography related offences. Consistent with the existing serious offence threshold provided in the Telecommunications (Interception) Act 1979, a warrant authorising telecommunications interception can only be sought in relation to child pornography related offences where the relevant offence is punishable by seven years or more imprisonment.

Recommendation 2: That the Government make TI-related foreign intelligence warrants available to law enforcement agencies.

Response: Noted.

Policy considerations relating to national security are different to those relating to law enforcement. It is not appropriate, therefore, to automatically extend telecommunications interception related foreign intelligence warrants to law enforcement agencies.

There may be circumstances where it would be appropriate, on a case by case basis, to facilitate foreign intelligence gathering by law enforcement agencies. The Government is considering the extent to which intelligence agencies may assist law enforcement agencies in the collection of intelligence relevant to the investigation of serious and organised crime.

Recommendation 3: That the Commonwealth consult with the Standing Committee of Attorneys-General on whether regulation of the use of TI could be delegated to the States and Territories within a continuing context of broad-based mirror legislation.

Response: Reject

The Telecommunications (Interception) Act 1979 reflects a carefully achieved balance between the protection of personal privacy in communications and the public interest in law enforcement and security. That balance would be difficult to ensure if powers were devolved to States and Territories on the basis of 'broad-based mirror legislation'.

Further, the devolution of powers to the States and Territories could lead to an environment of greater regulatory and administrative complexity for carriers and carriage service providers. This could have adverse business consequences for carriers and carriage service providers and could also reduce the efficiency and effectiveness of their cooperation with law enforcement and security agencies.

Recommendation 4: That the Government give particular consideration to the appropriate level of regulation of Internet Service Providers to ensure their cooperation with law enforcement.

Response: Accept

Internet service providers (ISPs) are regulated under the Telecommunications Act 1997 as they fall within the definition of ‘carriage service providers’. The Government is of the view that under this regime an appropriate and realistic level of co-operation has been achieved between ISPs and law enforcement agencies.

The continued co-operation between law enforcement agencies and ISPs is an issue which is addressed in forums such as the Law Enforcement Advisory Committee which is chaired by the Australian Communications Authority.

Recommendation 5: That the Government ensure that the integrity of the TI Act is not undermined by emerging technology.

Response: Accept

The Telecommunications (Interception) Act 1979 is drafted to be technology neutral. The Government is engaged in an ongoing review of the operation of the Telecommunications (Interception) Act 1979 to continuously monitor and consider the impact of emerging technologies on the operation of the Act. This review is done via an extensive consultative network with relevant stakeholders. For example, the Interception Consultative Committee (ICC) is a forum constituted by the Attorney-General’s Department and intercepting agencies including the Australian Crime Commission and the Australian Federal Police. The ICC meets quarterly and is a useful forum to deal with both technical and legal policy issues arising from interception activities.
Recommendation 6: That, in conjunction with the States, the Government introduce comprehensive national electronic surveillance legislation, with particular emphasis on the inclusion of appropriate privacy provisions.
Response: Accept.
The Government is actively considering the issue of comprehensive electronic surveillance legislation. At the Leaders’ Summit on Terrorism and Multi-Jurisdictional Crime held on 5 April 2002, the Commonwealth and the States and Territories agreed to legislate through model laws for all jurisdictions for the use of electronic surveillance devices. Appropriate safeguards for the protection of personal privacy will be examined in the development of any legislative regime to deal with electronic surveillance.

Recommendation 7: That the Australian Government place on the agenda of the Standing Committee of Attorneys-General the need for a comprehensive and fundamental review of the operations of legislative provisions that may inadvertently and unnecessarily restrict the capacity of law enforcement to exchange intelligence and operational information.
Response: Accept in part.
Some legislative restrictions on the capacity of law enforcement to exchange intelligence and operational information exist for good reason. Such restrictions are the result of balancing individuals’ interests in maintaining their privacy with the public interest in law enforcement. However, the Government recognises the need to ensure that there are no unnecessary restrictions and to monitor the operation of legislation to ensure that, where a demonstrated and legitimate need for the exchange of intelligence and operational information exists, such exchanges are not prevented.
The Attorney-General’s Department will consult with Commonwealth law enforcement agencies to identify Commonwealth legislative restrictions that may “inadvertently and unnecessarily restrict” the capacity of law enforcement agencies to exchange intelligence and operational information. The Department, in consultation with Commonwealth law enforcement agencies and the Federal Privacy Commissioner will then conduct a review of the legislative provisions that have been identified. The review will consider whether each provision achieves the appropriate balance between the privacy of the individual and the efficient conduct of law enforcement activities. The terms of reference of the review will be agreed between the Attorney-General, Commonwealth law enforcement agencies and the Federal Privacy Commissioner.
The impact of State and Territory laws that regulate the activities of law enforcement agencies is a matter best addressed by State and Territory Governments.

Recommendation 8: That the Commonwealth Ombudsman’s jurisdiction over the use by Commonwealth law enforcement agencies of telecommunications interception be expanded to include the use of any electronic surveillance device.
Response: Noted.
The extension of the Commonwealth Ombudsman’s jurisdiction over the use of electronic surveillance devices will be considered as part of the Government’s work to implement the agreement of the Leaders’ Summit on Terrorism and Multi-Jurisdictional Crime to develop legislation regulating electronic surveillance.

Recommendation 9: That a national cyber-forensic facility be established.
Response: Accept.
The Government has recognised that establishment of a national cyber-forensic facility could have the potential to improve law enforcement’s capacity to deal with existing crime against or facilitated by computers and, more generally, would support the law enforcement community’s knowledge and understanding of existing and emerging e-crime threats.
The Australian High Tech Crime Centre (AHTCC) has been established as a national centre for combating serious crime involving complex technology. The need for such a centre was a priority identified by the Australian Police Commissioners Conference in its Electronic Crime Strategy of March 2001 and endorsed by the Australasian Police Ministers’ Council in November 2002.
The AHTCC is hosted by the Australian Federal Police (AFP) and staffed by AFP officers and State and Territory police officers seconded to the centre.

The role of the AHTCC is to provide a national coordinated approach to combating serious, complex and multi-jurisdictional high tech crimes, especially those beyond the capability of single jurisdictions. The AHTCC is also tasked with assisting in improving the capacity of all jurisdictions to deal with high tech crime and support efforts to protect the National Information Infrastructure. The AHTCC will achieve this role through the provision of services that include coordination, investigation, intelligence, liaison, and knowledge.

The AHTCC will coordinate the consideration of high tech crime-related issues by Australian law enforcement agencies; investigate instances of high tech crime, independently or by way of cooperation with or referral to a partner agency; provide intelligence services that contribute to a better understanding of the high tech crime environment; act as a central point of contact in Australia for overseas law enforcement agencies; liaise with Government agencies, industry groups, businesses and other organisations on high tech crime matters; and act as a knowledge bank in relation to high tech crime issues, such as preventative measures, best practice investigative and forensic tools and techniques, training and education.

The AHTCC will therefore assist law enforcement agencies in setting best practice standards for computer forensic techniques through carrying out its core functions and through the operation of the Forensics Network, an association of police investigators with computer forensics expertise. The Forensics Network is being established under the auspices of the AHTCC and will include Commonwealth, State and Territory investigators.

Finance and Public Administration References Committee

Report: Government Response

Senator O’BRIEN (Tasmania) (3.30 p.m.)—I seek leave to move a motion in relation the government response to the Senate Finance and Public Administration References Committee report entitled A funding matter under the Dairy Regional Assistance Program.

Leave granted.

Senator O’BRIEN—I move:

That the Senate take note of the document.

The government’s response to the Senate Finance and Public Administration References Committee report vindicates Labor’s decision to initiate an inquiry into the scandal involving the granting of $339,000 in Dairy Regional Assistance Program funding to the Mordek steel-profiling plant, located in Moruya on the New South Wales South Coast. I want to look at some of the issues addressed by the inquiry and its recommendations. At the outset, I want to say that Labor welcomes the government’s unequivocal acceptance of the committee’s recommendations and its implicit acknowledgement that the administration of the Dairy Regional Assistance Program was deficient. In the case of the Mordek grant, Labor says the administration of the program was manifestly deficient—and it appears the government concurs.

The inquiry had its origins in allegations aired in the Coastal Sun newspaper in July 2002 that Dairy RAP funds granted to the Mordek steel-profiling plant were instead directed to the sewering of the North Moruya Industrial Estate. Following the publication of these allegations I asked a series of questions on notice in an attempt to establish whether there was any factual basis to the allegations. The answers I received from the Minister representing the Minister for Transport and Regional Services were inadequate and in some cases contradictory. I pursued the matter at an additional estimates hearing in February and received similarly unsatisfactory answers from the department.
Six weeks after the additional estimates hearing, and in the wake of the government’s failure to provide answers to questions asked at that hearing, I moved for the establishment of the Finance and Public Administration References Committee inquiry. The inquiry was illuminating. We took evidence from the Department of Transport and Regional Services, the Department of Agriculture, Fisheries and Forestry, ABARE, the proponent of the steel-profiling project, councillors from the Eurobodalla Shire Council and the Chair of the South-East New South Wales Area Consultative Committee. The committee concluded that the inadequate administration of the Mordek grant was most likely attributed to two factors: (1) the lack of clarity in the Dairy RAP guidelines and the failure to provide departmental officers with direction in respect of the interpretation of the rules and (2) the failure to ensure an emphasis on providing ‘best possible assistance’ did not undermine the consistent assessment of applications across the nation.

I have addressed the details of the Mordek grant in this place on previous occasions, and I do not propose to address them again today, but I do want to turn to some of the conclusions of the report that were ignored by the government in the response it tabled today. The committee concluded it could not be satisfied the Mordek application was assessed and approved in accordance with the Dairy RAP guidelines, nor that Dairy RAP funds were not used, albeit indirectly, to fund the sewerage of the North Moruya Industrial Estate—funding which was proscribed by the guidelines. Due to the considerable irregularities in the Mordek grant, the committee could not be satisfied that other Dairy RAP grants were not subject to similarly deficient administration. It is telling that the government response does not reject these conclusions. I expect that is because the government accepts the conclusions are well founded.

This is an important matter. The grant to the Mordek steel-profiling plant was $339,000. The Dairy Regional Assistance Program was worth $65 million. These are not small sums. The program had an important purpose: assisting the creation of long-term employment in regions adversely affected by the July 2000 deregulation of the dairy industry. Australia’s dairy regions deserve better from this government than they got under the Dairy Regional Assistance Program. The fact that the government has now acknowledged the deficiencies in the administration of the Dairy RAP is cold comfort to dairy farmers who have been subject to deregulation, dairy communities that have been adversely affected by industry changes and proponents of projects that have been denied funding. The acknowledgement is also cold comfort to Australian families, who funded the Mordek grant and all the other Dairy RAP grants through an 11c tax on every litre of milk.

Labor welcomes the government’s belated acknowledgement of the flaws in the Dairy RAP program and its concession that Labor’s scrutiny of the program’s administration resulted in improved policy and processes for the new regional partnership program. It is a credit to the Senate committee system that this inquiry resulted in the changes to the administration of regional development programs. Not all the changes recommended by the Finance and Public Administration References Committee have been fully implemented by the government. The framework for evaluating the performance of area consultative committees is, for example, still under trial. Labor will monitor the implementation of the changes to the administration of regional programs that have emerged from this inquiry very closely indeed.
Whereas the government has acknowledged its failings in respect of the Mordek grant, and more generally the administration of the Dairy RAP program, Eurobodalla Shire Council has not. The council has never explained the glaring inconsistency that exists between the minutes of council meetings and the evidence it gave to the committee. I have spoken before about those inconsistencies and I know many ratepayers in the Eurobodalla shire are as perplexed as I am about the council’s refusal to account for its behaviour in this affair. Frankly, I have given up expecting an answer, but I do think the ratepayers of Eurobodalla shire deserve better.

Question agreed to.

RECONCILIATION BILL 2001 [2002]

Second Reading

Debate resumed from 5 April 2001, on motion by Senator Ridgeway:

That this bill be now read a second time.

Senator RIDGEWAY (New South Wales) (3.37 p.m.)—I am very pleased to be able to debate the Reconciliation Bill 2001 [2002] in the Senate today on behalf of the Australian Democrats. This bill was first tabled in April 2001, more than two years ago. I guess I have to first ask the question whether we have had some way of measuring whether things have moved forward in the 2½ years since this bill was first introduced. I guess I have to first ask the question whether we have had some way of measuring whether things have moved forward in the 2½ years since this bill was first introduced. I think it is fair to say that there has been a clear lack of responsibility on the part of government which seems to be intent on destroying the spirit of what reconciliation is about by putting forward a policy of practical reconciliation. We have seen the portfolio become the part-time responsibility of the overworked immigration minister. We have seen report after report, including the two unanswered Human Rights and Equal Opportunity Commission social justice reports and the year-long Senate inquiry into progress towards reconciliation and a Productivity Commission report entitled Overcoming Indigenous disadvantage, to name a few. I think they all highlight the need for government leadership, strategic and accountable spending and the need for Indigenous involvement in all policy decisions.

Today, I think, is another opportunity, another chance, to be able to give reconciliation legislative backing. I would encourage the new Minister for Immigration and Multicultural and Indigenous Affairs to join us in this endeavour. I think that, in many respects, we have seen this issue being dealt with now for more than 10 years, as a result of a very long consultation process. I think there is an opportunity here to debate essentially what the Council for Aboriginal Reconciliation recommended—that is, to put in place some legislative framework to deal with the ongoing issues of unfinished business in this regard.

I think it is also important to remind ourselves that, since 1966, from a most recent report by the Centre for Aboriginal and Economic Policy Research at the Australian National University, it has been demonstrated that things relatively have gone backwards in Indigenous affairs on a range of fronts—health, education, employment and most others. I think that, in many respects, it shows that not enough effort has been made to address these issues. It also sends a very clear message that, whilst there has been improvement overall for the rest of the population, the Indigenous population has been falling far behind. I think it is time to try to address some of those issues.

The Productivity Commission report Overcoming Indigenous disadvantage, in some respects, tries to address that issue by committing state and territory governments and the federal government to the COAG process to start looking at setting the national
benchmarks and standards. I congratulate the Council of Australian Governments on taking that initiative. I do make some comments about that in the sense that incentive is needed, not so much evaluation 12 months after the fact. Much of what has been put down so far in that report provides not so much the incentive for state and territory governments to achieve certain outcomes but more an evaluation 12 months after the fact. In other words, it means that we can continue as we have in the past three decades to dedicate taxpayer resources to try to hit the target and in most cases miss it and not have the impact that we would all desire. I think the nation has got to the point of frustration. It wants results, and I think this provides a way of being able to deal with that.

I note that, on the speakers list today, I am also allocated some time to sum up at the end. So I do not propose at the beginning of this debate to spend too much time going through the particular issues. Much of what the bill is about is no different from that which the Council for Aboriginal Reconciliation originally intended. The description of the bill and what it seeks to do is especially set out in the second reading speech that I incorporated in Hansard in April 2001. I recommend that people take the time to properly scrutinise that and understand that this bill does play an important part in the life of the nation. It is about assisting the government and being able to move forward and assisting the COAG process. It does not conflict with it; it complements it.

**Senator CHRIS EVANS (Western Australia) (3.42 p.m.)—** I rise to speak on the Reconciliation Bill 2001 [2002]. While the opposition is supportive of the general thrust of the bill, we do have a few reservations, which I will come to later. I congratulate Senator Ridgeway for at least putting it back on the agenda of the parliament. I think it is an important step forward. There has not been enough focus on the reconciliation process and today’s opportunity is welcomed by most parliamentarians. It is clearly an issue which has fallen off the Howard government’s agenda. It is not so long ago that hundreds of thousands of Australians marched in cities around the country to demonstrate their desire for reconciliation. These marches were a real eye-opener, showing just how strong the feeling in the broader community was on the issue. It is a shame, I think, that the government does not share those feelings.

I remember the march in Perth very well. It was a very hot day and I suffered sunburn on that occasion. The march involved people of all ages, all cultures, all backgrounds marching together to show their support for real reconciliation. When the Council for Aboriginal Reconciliation was wound up in 2000, it made a final report to parliament. In that report it reiterated its four strategies in the road map for reconciliation: sustaining the reconciliation process, promoting recognition of Aboriginal and Torres Strait Islander rights, overcoming disadvantage and achieving economic independence. The road map lays out the most important issues that we need to address to achieve reconciliation in a meaningful way.

Unfortunately, the government has grasped just one strategy and discarded the other three. The government focus is solely on practical reconciliation, arguing that Indigenous and non-Indigenous people today are concerned only with addressing the contemporary disadvantages and immediate issues facing Indigenous people and that they are no longer concerned with rectifying the underlying causes of those disadvantages, including dispossession, poverty and denial of human rights, amongst many others. True reconciliation cannot be achieved using this government’s narrow focus. It must encom-
pass all of the issues and all of the problems and seek to address them as a whole.

It seems to have been the desire of this government to get reconciliation off the public agenda and to keep it off. Perhaps this is because the marches held around the country made them realise that, if they kept it on their agenda, they would be shown up for their lack of commitment to resolving the issues facing Indigenous people in this country. But some individuals, groups and communities refused to let the government sweep this issue under the carpet. Reconciliation Australia, the organisation established after the Council for Reconciliation was abolished, is working hard to advance the cause of reconciliation. However, it is an underfunded organisation and would seem not to have the resources to do the job it needs to do. Reconciliation Australia has the potential to achieve so much to advance this debate in a comprehensive manner, but it is being stifled because the government is paying only lip-service to reconciliation and is not committed to real progress.

However, no matter what good work has either been done or could be undertaken by Reconciliation Australia, the process will not be advanced without national leadership. It is quite clear that this Prime Minister has no desire to provide that leadership. We really do need strong national leadership if this issue is to move forward. The Senate Legal and Constitutional References Committee recently handed down its report on the progress toward reconciliation. The title of that report, Reconciliation: off track, is a fairly accurate way to sum up just where we are as a nation on the issue—off track. We are off track because the Prime Minister refuses to place reconciliation on his list of priorities. A Prime Minister who was seriously concerned with the future of our country would not be placing this important issue on the back-burner—he would be pushing it to the forefront and making sure those organisations with a true desire to achieve reconciliation at all levels had the resources to do their jobs.

The bill has many positive aspects that the Senate Legal and Constitutional Committee agreed with. To begin with, it proposes that a national reconciliation convention be held every three years, with the membership made up of representatives chosen by the minister, a body chosen by the minister as representative of the wider community in relation to reconciliation and ATSIC. Among other things, a convention would identify and prioritise unresolved issues for reconciliation. The bill also provides for a negotiation and agreement process to resolve issues for reconciliation between Aboriginal and Torres Strait Islander peoples and the government. This calls for the Prime Minister to ‘develop a process which will unite all Australians by way of an agreement or treaty through which the unresolved issues for reconciliation can be resolved’.

The opposition does not have a problem with the convention and negotiation process. However, conventions with attendees appointed by the minister and negotiating processes between the Prime Minister and others to resolve reconciliation issues not only give the Prime Minister too much control over who is involved in the reconciliation process and how it is defined but will make it harder to achieve outcomes when the Prime Minister is not committed to the process. It seems to me that the issue is not a structural one, as addressed by this bill, but a broader one. It is very much an issue of national leadership. While Senator Ridgeway’s bill addresses some of the structural issues that obviously have to be a part of the process, without that national leadership, reconciliation will not go forward. It is only when this Prime Minister has gone that there will be any real hope of advancing the cause of reconciliation.
The bill also provides for monitoring mechanisms: the Aboriginal and Torres Strait Islander Social Justice Commissioner will report annually on progress towards reconciliation, an independent body appointed by the minister will report every three years on progress and a joint parliamentary committee will monitor progress. It is worth noting that the Senate committee recommended that the Social Justice Commissioner report on progress. It also recommended that the minister appoint an independent body, in consultation with stakeholders, to evaluate progress. Further, it was agreed that a parliamentary committee should monitor the progress and that committee should be the Joint Statutory Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund. However, it was also noted that the committee had a limited life and, if disbanded, a special joint committee on reconciliation should be established.

Another aspect of this bill worth noting is the recognition of the unique status of Aboriginal and Torres Strait Islanders. The opposition support a new constitutional preamble that recognises Indigenous Australians as the original occupants of our country. We will support the inclusion of a new preamble that recognises the core elements of our nation’s history and democracy. The constitutional preamble should express the values, aspirations and ideals of the Australian people and our history.

In order to achieve real reconciliation, three things are required. The first is community support. Despite the government’s lack of desire to achieve any real outcomes, there is no doubt that much of the community is strongly supportive of progress towards reconciliation. Groups like Australians for Native Title and Reconciliation have a large membership and work passionately to get reconciliation back on track. They push at every opportunity to get the government and the community to move forward. The second is a national coordinating agency. Reconciliation Australia is an underresourced organisation, but its staff are committed and highly capable. With adequate funding and direction, Reconciliation Australia will be able to work with the federal government and the Australian people to coordinate national leadership and support the reconciliation process. The third and most important thing that is needed is national leadership, but this is totally lacking at the moment. Conventions, committees and reporting processes are all well and good but, unless the Prime Minister and the government are totally committed to making progress, we are unlikely to advance the agenda. It seems that national leadership will occur only when there is a change of government.

The Centre for Aboriginal Economic Policy Research recently released a paper which found that the poorest Australians—Indigenous Australians—have been losing out under this government. The paper concluded that, in the five years after 1996, most of the gains that had been made for Indigenous Australians were lost as a result of the policies of this government. In relative terms, Indigenous people have gone backwards in all of the key social indicators—employment, income, education and health. In the area of education—just one of the areas—in the five years after 1996 the number of Indigenous teachers being trained in Australia fell by 33 per cent.

The higher education proposals of this government would make the situation worse, not better. The government has actively introduced cuts and changes to policy that will make access to higher education for Indigenous students more and more difficult. The practical reconciliation that this government tries to pride itself on is obviously failing. The government has hung its reconciliation hat on just that one rung, and even that has
proved to be incapable of being delivered. After spending a year reviewing the progress of reconciliation, the Senate Legal and Constitutional References Committee found:

... true reconciliation involves not just measures to address disadvantage, but all of the matters contained in the Council for Aboriginal Reconciliation’s Roadmap for Reconciliation and the four National Strategies. The Government’s half-hearted response and lack of recognition of the broader agenda undermine the entire process of reconciliation.

Reconciliation is of fundamental importance to our capacity as a nation to face the future as a unified, peaceful, proud and just nation. We must continue to pursue reconciliation with the aim of achieving a lasting settlement between Indigenous people and other Australians. Labor remain committed to reconciliation. We remain inspired by the leaders who have provided so much leadership towards that. I particularly continue to be inspired by the work of Patrick Dodson who, I think, ranks as one of the great Australians and someone whose leadership has served this nation as well as the Indigenous people greatly.

While I commend Senator Ridgeway for trying to put this issue back on the agenda, Labor’s firm view is that we need government leadership to reinvigorate the move towards reconciliation. We support many of the measures in this bill. They are the sorts of structural measures that would help underpin reconciliation. But without national leadership and that government commitment to help drive reconciliation, progress will not be made and the community will not move forward as we should be doing. The fact that this issue has dropped off the agenda and been left to languish is, I think, a national shame. I think it is one of the most damning indictments of the current government. Labor are happy to support the bill, at least as a way of trying to reignite interest and debate in this very important national endeavour.

**Senator FERRIS** (South Australia) (3.54 p.m.)—If one were to listen to the contribution of Senator Evans one would believe that reconciliation is dead in this country. Nothing could be further from the truth. Reconciliation between Indigenous Australians and the wider community is an objective that the federal government is fully committed to, and all of us on this side of the chamber are fully committed to. The Australian government strongly reaffirms its support for reconciliation, as expressed in the historic motion of reconciliation that was passed by both houses of the federal parliament on 26 August 1999. As you will recall, Mr Deputy President, this motion confirmed a wholehearted commitment to reconciliation as an important national priority for all Australians.

Of course, the concept of reconciliation is one that means different things to different people. Of course it does. But there is one common thread to people’s view of reconciliation in this country and that is that all Australians are entitled to equal life chances, to equality of opportunity, and that true reconciliation will not exist until Indigenous disadvantage has been eliminated. The very sad truth is that Aboriginal and Torres Strait Islander people in Australia still remain the most disadvantaged group in our society—that is a very sad fact—despite the best efforts of hundreds, perhaps thousands, of individuals in this country over many years.

The Productivity Commission’s report Overcoming Indigenous Disadvantage: Key Indicators 2003, which was released just a couple of weeks ago, very effectively highlights this tragic state of affairs. The report sets out a very bleak picture for Indigenous Australians, particularly in terms of early childhood development, school attendance,
health care, substance abuse, teenage development and, more importantly, economic opportunities. The report was commissioned last year by the Council of Australian Governments under the Prime Minister’s leadership and it is the first of a number of regular reports on key indicators of Indigenous disadvantage. The annual report will become a significant tool for better government policy and improved service delivery in the future.

We already know that severe problems exist but what this report does for the first time is set out a strategic framework for action in areas of Indigenous disadvantage, where things need to change so that Indigenous people can come to enjoy the same overall standard of living as other Australians, so that they can have equal access to social and economic opportunities that the majority of other Australians quite reasonably take for granted.

The Productivity Commission’s report sets out seven strategic areas for action and it also sets out headline indicators, such as Indigenous life expectancy, that provide an overview of the state of Indigenous disadvantage. However, significantly, it also focuses on early warning indicators that governments can try to influence in the short- and medium-term, like substance abuse through tobacco and alcohol consumption. The Productivity Commission’s report is a report for all governments, and for all parties for that matter. This is not a party political issue; this is an issue for every Australian. Most of us are aware that state and territory governments provide the majority of—in fact, many of the most significant—mainstream and Indigenous specific services that can fundamentally improve the lives of Indigenous Australians on a day-to-day basis, such as education, policing, emergency services and much of the physical infrastructure.

The federal government believes that the best way it can act to achieve reconciliation is through the provision of practical and effective measures that address the legacy of profound economic and social disadvantage that are experienced by many Indigenous Australians, particularly in those crucial areas of health, education, housing and employment. Practical measures in these key areas have a positive effect on the everyday lives of Indigenous Australians. I think at one time or another all of us in this chamber have visited Indigenous communities where we have seen a very great need for improvements in those areas—whether in my home state of South Australia, in the Northern Territory, in Queensland or even in the far north-west of Western Australia. I can think of many communities where, very clearly, there is an urgent need for an improvement in services. Despite Senator Evans’s claims of economic failure and government policy failure, let us have a look at some of the improvements that have taken place in Indigenous affairs since this government came to office in 1996.

In terms of education, from 1996 to 2002 the proportion of Indigenous children who stayed on at school increased from a very poor 29.2 per cent to 38 per cent. I know that 38 per cent is still very low, but an improvement of 10 per cent since this government came to office is very significant. More importantly, the number of Indigenous students registered for post-secondary vocational and educational training has nearly doubled from 1996 to 2002, Senator Evans, to a total of 59,763. I think those figures are worth repeating and reflecting on: the number of Indigenous students involved in post-secondary vocational and educational training has nearly doubled from 1996 to 2002 to a total of 59,763. Senator Evans, if that is failure of government policy, one can only imagine what would be determined to be
successful. The number of young Indigenous Australians who are undertaking post-secondary training has almost doubled. Over the same period of time, there was a 32 per cent increase in the number of Indigenous men and women involved in bachelor-level degree courses or higher degree courses in Australian universities. I know that those figures are still low, but we are starting to build a base of economic advantage through higher education and training for young Indigenous men and women. Anybody who visits the campus of any Australian university will see young Indigenous men and women taking part in the life of a tertiary institution. For me and, I think, for many people in this chamber that is a very significant step forward for the future of our Indigenous communities.

In terms of unemployment, the unemployment rate for Indigenous people actually fell from 22.7 per cent to 20 per cent between the 1996 census and the 2001 census. Again, I am the first to say that we have a long way to go before we can honestly in this place say that there is equality of opportunity for jobs for young Indigenous people. However, between 1996 and 2001 the number of Indigenous people in employment increased from 82,346 to 100,348, an increase of 22 per cent. We know what it is like when you get your first job—the thrill of earning a living, having a sense of achievement and having a sense of self-esteem. When we think about the number of people in Indigenous communities who, during the time that this government has been in power, have had that opportunity, we can only say that we have a long way to go but that we have made a start. For every one of those young Indigenous people who have a job, we know what it means for their self-esteem, their sense of worth and, at the end of the day, their sense of achievement and their economic independence.

In terms of health, the Australian government has substantially increased its spending on Indigenous-specific health programs. Such spending is now at record levels. So much for failure, Senator Evans. Our total spending on specific Indigenous health services this year will rise to more than $258 million—more than has ever been spent before. Again I say that we know this does not indicate we are going to solve this problem, but it is a significant first step. This is a real increase of nearly 90 per cent since this government took office in 1996. Senator Evans, how can you say that this is a failure of government policy? We have increased real spending on Indigenous-specific health by more than 90 per cent since 1996. In the last five years, 46 remote communities have gained access to primary health care for the very first time. Indigenous infant and perinatal death rates have fallen by a third over the last decade. Can anybody imagine the misery of losing a child at birth? I do not think there is a person in this chamber who would not applaud the increased spending on Indigenous health measures and, as a result, infant and perinatal death rates in Indigenous communities falling by a third.

Commonwealth spending on Indigenous programs has increased by one-third in real terms since 1996 and is now at record levels. In 2003-04, the Commonwealth government will spend $2.7 billion on Aboriginal affairs, on Aboriginal policies—more than has ever been spent by any government in this nation’s history. There is still much that we can do and still much that state governments can do to help with the practical measures that improve the day-to-day lives of Indigenous Australians, but, as we all know, many of those problems will not be solved with money. You cannot continue to just throw money at the issue without looking at some of the other measures. It is without doubt—and I think we all agree—that there are very
serious problems facing Indigenous Australians, especially those who live in remote communities, and I have visited a number of them. Despite very large expenditures and the provision of infrastructure to those remote communities, in some cases by the Australian Defence Force, the tragic truth is that the standard of living has not improved. During his trip to Cape York earlier this year, the Prime Minister heard absolutely tragic evidence of the extent of drug and alcohol abuse and the violence against women and children in some of these very isolated communities—it was heartbreaking evidence.

The Bennelong Society, of which I consider myself privileged to be the president, has long recognised these problems and has questioned whether it may now be time for governments to consider what can be done to provide incentives for Indigenous Australians living in those remote communities to move closer to the regional areas, where access to government services, employment and education opportunities, as well as health care, will always be greater.

Reconciliation is a long-term process. We know it will not happen overnight. Nor will it happen by the expenditure of a certain amount of money, even though $2.7 billion is more than any government has ever spent before. A drawn-out legislatively based approach for achieving reconciliation will also not necessarily aid the process. Reconciliation will be achieved over time only if Australians at all levels of society really embrace it. Progress to reconciliation happens on a daily basis. It happens in schools, on university campuses and in tertiary institutions where, for the first time, Indigenous people are seeing a member of their family undertake a course, whether it is an undergraduate course or a vocational training course, that will make them more job ready than any member of their family has ever been before. And it happens when business men and women, community organisations and individuals are able to give an Indigenous person a job so that, perhaps for the first time, a member of an Indigenous family can take home a pay cheque as a result of that job which they trained for and got.

I do not think I will ever forget the experience of visiting Lawn Hill, one of our more remote but very important resource companies in Far North Queensland. One of the very large dump trucks that removes ore bodies from the mine was driven up to where I was standing with a group of colleagues—and the wheels on these trucks were as large as the individuals who were standing beside them—and the driver’s door opened and a 19-year-old Indigenous woman got out of the driver’s seat. She had trained for the job and she had got the job. She was supporting a family back in Brisbane and she was supporting another group in a remote area. She had a sense of pride and a sense of achievement and a look on her face that said: ‘I trained for it, I applied for it and I got it. It’s a real job, it earns real money, and I have a sense of self-worth.’ For her, and for me, that was a very important indicator of practical reconciliation, and I will never forget that.

This government is committed to seeing that every policy initiative is carried out to reconcile Indigenous Australians and the broader community. Improvements are being made, and the statistics that I gave to this chamber earlier indicate that. We are making steps forward. There is a long way to go. But we are making a greater commitment to reconciliation through practical and financial measures than any government in Australia’s history. We will continue to do all that we can to ensure equality of opportunity so that that woman truck driver at Lawn Hill will no longer be special in the Australian community. She will be one of thousands across Australia who trains for a job, applies for a job, gets a job and takes home a pay cheque.
at the end of the week—and a sense of self-worth. That is an opportunity for reconciliation with Indigenous Australians on a practical and economic base that we can all be proud of.

Senator BROWN (Tasmania) (4.14 p.m.)—The government opposes the Reconciliation Bill 2001 [2002]. It is a very sorry situation when a bill as constructive and uncontentious as this one which has been brought forward by Senator Ridgeway is opposed by the government of the day. I would have thought that Senator Ferris would at least have had the good grace to be open and honest about it—to say, ‘We oppose this bill and it fits in with our record of not performing when it comes to reconciliation in this country as is expected in the 21st century.’ I would like to see this private member’s bill brought to a vote so that the Senate can express its will. As you know, Mr Acting Deputy President, it is rare indeed for the government to allow that to happen. The outcome at the end of today will be that we will see whether the government supports this process of reconciliation, and in particular the legislation that Senator Ridgeway has brought forward. It is in the hands of the government to ensure that we have a vote. To be very straight about it, I think that the government is going to talk it out.

I want to mention a couple of things about Senator Ferris’s speech. First of all, she lauded the government for spending $2.7 billion on Indigenous Australia. That is roughly the amount of the Diesel Fuel Rebate Scheme for promoting global warming.

Senator Ferris—What’s that got to do with it?

Senator BROWN—I am giving a comparison here. It has everything to do with it.

Senator Ferris—This is about humans.

Senator BROWN—that is right, it is a human thing we are talking about. I am just saying that one ought to be careful about using figures like that when the spending is not particularly great. That is the measure.

Senator Ferris—It’s greater than it’s ever been before.

Senator BROWN—The measure should not be the past, Senator Ferris; the measure should be the future. Senator Ferris talked about the Bennelong Society. I do not know much about the society, but if it is proposing that Indigenous people should move as a means of advancing their lifestyle, then, unfortunately, it does not know what it is talking about: it has lost the plot, if it ever had it, and it does not understand the situation for Indigenous Australians. The very last thing that we in the 21st century should be expecting of Indigenous people in this country—those who are left, in their close relationship with the land—is that they should move, whether it be by incentive or otherwise. In this debate, the government shows a deplorable failure to understand.

I support the whole process in Senator Ridgeway’s bill and applaud the enormous effort from the wider community, over years—12 years of constructive debate—that has gone into planning and debate so that the council can put forward a proposal to find reconciliation within the community, from the preamble to the Constitution and a treaty to the real on-the-ground reconciliation which is ultimately the thing that matters. But the government is going to say no to it.

As Senator Ferris said, there is tragedy in the plight of Indigenous Australians. If the Prime Minister were to spend as much time dealing with that tragedy as he does in being a cricket tragic, we might see some ad-
vancement for the Indigenous people of Australia. It is a fact that the Prime Minister—and in many ways the nation—has been able to turn down the quality, quantity and fervour of debate and to have it taken off the front burner where it was in the 1990s. This Prime Minister’s failure to recognise that a great leader of this country cannot do anything other than foster reconciliation—instead of turning his back on it—is tragic.

Finally, just as a measure of where we are not going, I want to refer to an article in the Australian on 11 April 2000 and point to the Canadian system of reconciliation and advancement towards reconciliation, which is decades ahead of ours. As you will know, Mr Acting Deputy President Watson, in 1999 Canada established the Indigenous territory of Nunavut out of the Northwest Territories. It is two million hectares, with 30,000 people with self-government and with very comparable rights to those of other provinces in Canada. How far are we away from that in Australia? How likely are we to see that in Cape York, Arnhem Land, the Kimberley, Central Australia or the Torres Strait islands? That is a measure of where we are going with reconciliation. We have gone backwards under this government. We should be moving forward. We should be moving in that direction. But it is not going to happen under this government.

I recognise and applaud Senator Ridge-way’s contribution to the debate and to the advancement of Indigenous people in this country despite the barren times we have in this parliament. That is manifest in the way in which he has brought forward this legislation today. He is to be congratulated. It is a test of the government now to see that it gets the right of passage through to conclusion and bringing into law. That is in the hands of the government. If it does not do that, it is another comment directly on the situation of the Prime Minister vis-a-vis the Indigenous people of this country who deserve that this legislation goes through and who deserve much more to follow.

Senator CROSSIN (Northern Territory) (4.21 p.m.)—The Reconciliation Bill 2001 [2002] has been initiated by Senator Ridge-way on behalf of the Democrats. It has been a long-time desire of mine that we would see a bill such as this come before the federal parliament. It is unfortunate and very sad that, as Senator Brown has said, the government will seek to talk out this time and not see the bill come to any realisation through a vote in the Senate.

Since 1996, nothing but controversy has marked this government’s interaction with Indigenous issues. Their policy has been framed on a notion of practical reconciliation that has a limited number of aspirations. We know that only some weeks ago the Senate Legal and Constitutional References Committee tabled their report of the inquiry they conducted under the reference of ‘Progress towards national reconciliation’. Conclusively, that committee report showed that reconciliation under this government is off the rails. It is not on track; it has been derailed. As Senator Brown said, ‘Reconciliation has done nothing in this country but go backwards.’

I do not want to spend my time this afternoon talking about the concept of practical reconciliation. I think that idea has been criticised, pulled to bits and analysed enough in the report of the Senate inquiry. I want to focus on the bill, how we came to have a reconciliation bill and what it is meant to achieve. I believe that the common rights of any group of people form a yardstick of measurement. They align the wellbeing of any group of people with their equality, as seen within the nation of a country. International developments have highlighted that equality can be progressed in a substantive
way through a framework of recognition that protects the rights of people, particularly indigenous people.

Under this government, the scope of reconciliation and the reconciliation agenda remains extremely narrow. True reconciliation needs a realignment of the relationship between Indigenous people and mainstream Australia, but that just will not happen without any sort of leadership or direction. Central to this very process is recognising the unique status of Indigenous people. I have said before and will continue to say that this country has never come to grips with the fact that we have so much to benefit from Indigenous people. We do not value their contribution. We do not value what they bring to our society and culture. We do not recognise that they have art that is selling for millions of dollars on the international scene, but we do little in this place to recognise the copyright aspect for those artists. They have tourism ventures that could be marketed internationally, but we do very little to capitalise on that. They have Indigenous natural medicines that we do very little to enhance, market and provide to the rest of our community.

We had the outrageous suggestion from Senator Ferris a few moments ago that the Bennelong Society has come up with a position that the best way for Indigenous people to cope in this country is actually to move them to regional centres where they will have access to services. But there are people like me who work day and night, day in, day out—and Senator Ridgeway would be one of those people—to try to get these people back to their country, to their homelands. We work to support and encourage the movement back to their homelands and back to the outstations because these people have a connection to the land that as a white fellow I will never understand, and I will not be privileged to understand. These people in the Bennelong Society believe in assimilation, not self-determination. These people actually believe that the way to go for Indigenous people is just to treat them like white fellows. Well, they are not white fellows. They have a particular and unique culture that we as a country have yet to value. We do not value the contributions of this group of our citizens.

They have inherent rights because they were the first citizens of this country—not just citizenship rights; they actually own the land that we are standing on. They have inherent rights as the people who were on this land long before you and I were ever thought of. The government response to the final report of the Council for Aboriginal Reconciliation shows that they do not understand, nor do they support, the inherent rights of Indigenous people. There were six recommendations in the final report of the Council for Aboriginal Reconciliation. After a delay of nearly two years, the government has been prepared to implement one recommendation in full and one part of a two-part series of recommendations. Basically only 1½ recommendations out of six were supported in this government’s response.

The government have categorically failed Indigenous people. Their track record is poor. They refuse to acknowledge the true history of Indigenous people. I was in this chamber and heard the debate and heard the comments about the stolen generation. I have seen the lack of willingness on the part of the government to say sorry to those people. They refuse to acknowledge their rights and the significance of any symbolic action that might be taken on the part of this government to value these people. This government has a blinkered approach to issues outside their quaint term of ‘practical reconciliation’.

Currently, there is no national profile on reconciliation; it has been lost. This government is not about to contribute in any way, shape or form to a positive process that will
get it back on track and give this country a profile on reconciliation that it can hang its hat on. This government has failed to understand, acknowledge or legalise the aspirations of Indigenous people. There is a lack of leadership from this government, and the Commonwealth must address the national and constitutional position of Indigenous people. Our Constitution has to be changed; it must be changed. We will not go forward as a nation with Indigenous people unless that happens. We will not go forward as a nation unless we find the time to debate this bill, put it to a vote and get it through the parliament. What a sad indictment.

In 1991, the Council for Aboriginal Reconciliation was established by a bill of this parliament that had unanimous cross-party support. All parties agreed that the Council for Aboriginal Reconciliation should be established, and it was. Now, 12 years on, we are debating the bill that is the outcome of that 10 years of hard work and, for some reason, the Liberal Party and The Nationals have fallen by the wayside—they do not support it. They do not want to support it.

The final report of the Council for Aboriginal Reconciliation was given to the Prime Minister and this parliament in December 2000. At that time, there was hope that the journey would continue. As the council said: ... many steps have been taken, many steps remain ...

But a decade was a very short time in which to get reconciliation up and running and in the minds and hearts of people, to educate people and to get people thinking about it and so much more remains to be done. You cannot achieve it in 10 years. There has to be a long ongoing commitment to this.

In that time, we have had the people’s Walk for Reconciliation. We have had Corroboree 2000, the Sydney Olympics and the establishment of the National Sorry Day Committee, not because of this government but in spite of this government. It is because this government will not assist that people have decided to get up and do something about it. Australians support reconciliation and reconciliation is vital for our future. A decade ago we saw a major shift. There was a major shift by the end of the 10 years work of the Council for Aboriginal Reconciliation. But, seven years into this government’s term of office, we have lost that momentum.

The Council for Aboriginal Reconciliation produced Roadmap for Reconciliation, which was a strategy to sustain the reconciliation process beyond the life of the council. It went to leadership and education. It outlined the fact that we should celebrate significant dates, events and ceremonies. It talked about the need to have some sort of protocol and ceremony and the need to be symbolic about reconciliation—the need to focus not just on the practical aspect of reconciliation but on the symbolic aspect of reconciliation. One of the recommendations, of course, was that the parliament should legislate to establish a framework for negotiating the resolution of outstanding issues and to provide a possible draft for that. That is exactly what this bill seeks to do. It was seen that this would put in place a process to unite all Australians by way of an agreement or a treaty through which unresolved issues of reconciliation could be resolved.

Following the Council for Aboriginal Reconciliation’s term of office, an independent body was set up which has now been called Reconciliation Australia. This body was set up to promote and oversee the process of reconciliation and it presents an annual report card. The report for 2002 raised many concerns. One of the concerns was that the emphasis on reconciliation has diminished—so this is not just our view; Reconciliation Australia, in its report card last year, also held that view. It was disappointed that only
one of the six recommendations of the Council for Aboriginal Reconciliation's report was supported by the government. It went on to say that it believed this government was creating division on the issue by referring to diverging views within the public arena and that the very fact that division was being created was a reason for its lack of action. This government always says, ‘We can’t go forward on reconciliation. It is just a bit too divisive out there in the community really. So, when the community are a bit more like-minded about it all, we’ll do something about it.’ The community will not be more like-minded about it unless there is some sort of leadership there to assist them to do that.

Reconciliation Australia also commented on the rejection by this government of the recognition of Indigenous rights. Of course, it made substantial comments about the debacle we have seen over the establishment and construction of Reconciliation Place and the lack of consultation with the stolen generation over the seventh sliver. Reconciliation Australia focuses on the need for national movement and leadership towards reconciliation to ensure that, as the report card is continually commented on each year, there is a hope that this government’s track record might improve. So far that does not seem to be the case.

The Reconciliation Bill 2001 [2002] that we have before us today which was, as I have said, part of the Council for Aboriginal Reconciliation’s recommendation after its term of office, focuses on having a national reconciliation convention, which would be held one year after the act has been put in place. It focuses on negotiation and an agreement process to resolve issues by the way of a treaty and a process for reporting on reconciliation. This government does not support the concept of a treaty, so it has rejected this recommendation and the bill outright because of that.

Australia remains the only Commonwealth nation that does not have a treaty with its Indigenous people. The concept of nationhood has been strengthened in New Zealand, Canada and in the USA where treaties have been signed. The government have failed to keep pace with international developments but have promoted divisiveness at the same time. It is ironic seeing that they claimed this is exactly what a treaty would do; they seek to do it without even having a treaty in place. Such a view shows little appreciation for the form or type of agreement that may be devised. Their position already compromises Indigenous Australians.

We know that support for a treaty has fluctuated historically. A treaty or a legal compact was deemed to be practical by the Senate Standing Committee on Constitutional and Legal Affairs in 1983—20 years ago—and the Constitutional Commission in 1988. Then Prime Minister, Bob Hawke, committed to negotiate a compact of understanding in 1987 and in 2000, a poll revealed that 45 per cent of Australians supported the negotiation of a treaty between Indigenous and non-Indigenous Australians. A great deal of people, however, are wary about the concept. Dr Evelyn Scott, who is the former Chair of the Council for Aboriginal Reconciliation, once said:

I’ve said quite a few times, people in this country are not ready for a treaty. They have to be informed and told about it, then they make their minds up on it ...

Not all Indigenous Australians support a treaty and there is a lack of consensus on the possible contents of such a settlement. ATSIC is currently attempting to promote understanding of a treaty and the way in which it could be used to facilitate agreement making at the local, regional, state, territory and federal levels. But none of this is going to happen unless we have a commitment from the federal government to drive the
process and a willingness to believe that is what is needed for this country.

The government’s opposition to many of the council’s recommendations is broadly based on its preference for formal as opposed to substantive equality. The government’s approach to inherent rights has failed to keep pace with international developments, which have established that substantive equality promotes the accommodation rather than the subordination of difference. As a framework, it is therefore better equipped to promote the human rights of Indigenous people.

The government remain opposed to engaging in discussions on ‘unfinished business’ such as an apology, a treaty and the right to self-determination, because, they say, such discussions will not promote unity or reach a consensus. But they have not tried. So this has served to shut down the debate about areas of discord. They have failed to recognise the way in which constructive dialogue can promote understandings of diverging views. As a result, the government have failed to promote a holistic reconciliation agenda at the national level.

Reconciliation needs community support. It needs a coordinating agency. Through the Senate inquiry we heard that Reconciliation Australia was severely underresourced. But above and beyond all of that, reconciliation needs commitment and national leadership. The Commonwealth government’s response to the Council for Aboriginal Reconciliation’s final report demonstrates, as I have said, that there is a vast difference between the objectives of formal equality and substantive equality. The government is averse to implementing many of the council’s recommendations. It has not even formally endorsed the Australian Declaration Towards Reconciliation or even the Roadmap for Reconciliation, because it does not wish to officially recognise the inherent rights of Indigenous Australians, which stem from their unique status as the first people.

Reconciliation is much more than formal equality or practical reconciliation, because this nation will not be reconciled until the life expectancy of Indigenous Australians is the same as non-Indigenous Australians or the average income between the two groups is on a par. It involves a realignment of the relationship between Indigenous Australians and mainstream Australia. The rights of Indigenous Australians extend beyond basic citizenship rights; they extend beyond any notion of practical reconciliation. Indigenous people have the right to be self-determining, not assimilated, to protect their cultural identity. This has been recognised through international legal frameworks and agreements, but it has not yet been recognised by this government, which is limiting the scope of reconciliation’s agenda at the national level.

The government’s emphasis on practical measures in which a consensus can be reached has not encouraged the public to engage in any other forms of reconciliation. This government has not evinced the kind of leadership that can engender constructive dialogue about the other forms of reconciliation. While the people’s movement has sought to engage in the debates that must be had, the lack of leadership at the national level has inhibited progress towards reconciliation. This is because this government does not intend to, nor ever will, legitimate the aspirations of Indigenous Australians.

This is a bill that is worthy not only of the consideration of this parliament—of the Senate and of the House of Representatives—but needs to be endorsed. It needs to be voted upon and it needs to be put in place. This country will not move forward until we can come to terms with what reconciliation actually means. It is much more than practical reconciliation; it is about all the things that
the Council for Aboriginal Reconciliation identified in its 10 years of work, and it is about the many things that Reconciliation Australia still points to as signposts that must be achieved in this country. But they are things that this government continues to turn its back on by ignoring the aspirations of Indigenous Australians. (Time expired)

Senator JOHNSTON (Western Australia) (4.41 p.m.)—When we hear speeches—right-minded speeches—such as we have heard from Senator Crossin, it puzzles me to think what went on between 1983 and 1996 in terms of reconciliation. What did happen? Let me tell you what happened. What happened was exactly what is unfolding in each of the Labor states today—that is, that the ALP in power simply stands on the hose in terms of native title and reconciliation. They are full of all the high-minded, high-sounding, eloquent, empathetic words, but you give them the responsibility and what do you get? A round number before one in outcomes for Aboriginal people! It is quite depressing; it is quite tragic.

Senator Kemp—It is a pathetic performance.

Senator JOHNSTON—It is pathetic. I commend Senator Ridgeway for his clear and ongoing commitment to, and concern for, the Indigenous people of this country. And while I have probably a number of adverse things to say about the Reconciliation Bill 2001 [2002], I think it is important that we acknowledge that these matters are vital and should be debated and discussed in this place. I cherish the opportunity of going through the sentiments that underlie this private member’s bill that he has sponsored.

I pause to say that I am surprised that the bill is entitled ‘Reconciliation Bill 2001’. That does concern me. If these matters are so important, as I believe they are, why has the bill languished for so long. I hope that the good senator will address that issue when he closes the debate, because I think we should hear about why it has sat on the Notice Paper for so long.

Senator Forshaw—Because the government controls the agenda, you goose!

Senator JOHNSTON—Every Thursday there is an opportunity for private members’ bills. The Labor Party, of course, take command of that and they put this matter to the bottom of the pile—just like they do in each of the states. If it was half as important as Senator Crossin had us believe, it should have been dealt with much sooner.

Reconciliation is defined in section 4, which says:

... reconciliation refers to the achievement of a united Australia which respects this land of ours, values the Aboriginal and Torres Strait Islander heritage and provides justice and equity for all.

The sentiment is laudable but, for goodness sake, how on earth can you benchmark those sorts of ideals in legislation, in the law of the land? This is a problem. It is not the sort of thing that legislation can deliver. In short, you cannot mandate reconciliation, and that is what this bill seeks to do. That is its fundamental problem. This approach to the concept of reconciliation—to endeavour to define it in the first place—is a bold and brave step. You simply cannot pursue a concept such as this with a mandated legislative framework.

Section 6 of the bill establishes a convention with a number of delegates whose participation is to be determined by the minister. It is to be:

... a body chosen by the Minister as representative of the wider community in relation to reconciliation...

That in itself is a very interesting concept: ‘a body chosen by the Minister as representative of the wider community’. The bill does not disclose how many people are to attend
the convention through the exercise of choice by the minister from the wider community. Lastly, there are to be delegates from ATSIC. In order to have a proper convention, if you want one, you have to get down to the mechanics of how you are going to set up membership.

The main problem and the underlying flavour of this convention—which is to be held every three years for 12 years—is that it ends up being some sort of chardonnay set, elite gathering which people simply cannot afford to attend. The very important point about this is that—sadly, with great respect to the author of this legislation—it does not look at the capacity of Aboriginal people to travel great distances to attend. For instance, I would have thought that a convention held anywhere other than in central Western Australia would disenfranchise almost all rural and regionally based Aboriginal people because they simply would not be able to get there. This section does not talk about the costs of getting people to the convention.

The bill says:
... at least 50% of delegates must be Aboriginal or Torres Strait Islander people ...
There is no mechanism within the bill for the appointment or selection of those people. Anybody here who understands Aboriginal politics and Aboriginal representative bodies and how they function will know that one of the principal areas of concern is representation and how members of various boards and councils, particularly land councils, are chosen. This bill, having set up the convention, simply falls short of the mark almost because it does not determine and set out any proper mechanism, any fair and equitable mechanism, for the attendance of people at the convention.

Section 8 of this bill is most interesting. Subsection 8(1) commands:

The Prime Minister must immediately begin negotiations ...

So the bill itself inherently sets up an adversarial framework. The PM is put into negotiations with ATSIC—and there is a presumption and an assumption here that ATSIC is representative of Aboriginal people which I think is very tenuous. Again, the bill says:

The Prime Minister must immediately—in other words, it is a mandatory requirement—begin negotiations ...

The word ‘negotiations’, being an adversarial and contractual term, suggests that there has to be some giving and taking—some quid pro quo, some consideration. That concept is completely ridiculous if you are trying to build some form of reconciliation, some form of mutual agreement, some form of heading together in the same direction and some form of unity. You do not force the Prime Minister through mandatory legislation to:

... immediately begin negotiations with ATSIC in order to develop a process which will unite all Australians—so, gee whiz, the first thing you have done is be divisive in forcing the Prime Minister to do something—by way of an agreement or treaty through which the unresolved issues for reconciliation can be resolved.

Let us look at what this is actually doing. The Prime Minister is charged with sole responsibility for the negotiation of the agreement or treaty. As a senator for Western Australia, my first question is: what of the states? This section deals not one jot with the states. The states are charged with legislative responsibility for native title and native title agreements, land administration, Aboriginal health by and large, and Aboriginal education by and large—a whole host of things that are absolutely fundamental to Aboriginal aspirations and standing—yet there is no mention of the states.
Where are we going with this? To be perfectly blunt, it is completely and utterly half-baked. What of local government? If you are going to have an agreement or a treaty like this, you will have to deal with land—and if you look at the definition of unresolved issues for reconciliation in the definition section of the bill you will see that it does talk about Aboriginal culture and Aboriginal land. Aboriginal land is currently in an evolutionary state. There are approximately 40 determinations in support of the grant of native title. The bill deals not one bit with those determinations. We have battled our way through native title complexities for almost 12 years now. This bill should have dealt with native title grants, native title claimants and future native title claimants. It is just not simple enough to enable us to say, ‘Let’s have a treaty.’

What of local and state governments? If you are going to deal with land and actually give somebody something from the process, the least I would have thought you would have to do is engage both the state and the local governments in the treaty process in a sensible and rational way. We are talking about a complete and utter lack of consultation here. We are also disclosing some considerable ignorance about the practical operations of our democratic institutions.

Further to this, you have ATSIC representing Aboriginal people, but who is going to be a party to the treaty? Is ATSIC going to represent the totality of Aboriginal people? I can tell you I know of a very broad range of Aboriginal communities and groups who would not wish to be represented in any such document, agreement or negotiation by ATSIC; they would wish to be represented by someone else or by themselves. Again, there is a total lack of understanding and a total lack of consultation. We just have this half-baked approach.

Given that a very significant proportion of Aboriginal people do not speak good English and do not read or write, how will we establish that they are active and willing participants in the process? These are fundamental questions that people in Sydney and Melbourne—with the greatest of respect to them—simply never address. There needs to be a proper framework, due consideration, and careful and judicious analysis of what is sought to be achieved by this legislation and how you best go about achieving it equitably and fairly.

Let us look at the definition of what are the unresolved issues of reconciliation. In section 4, the definition says:

unresolved issues for reconciliation means any issue, whether already identified or identified through the processes of this Act, that is an impediment to achieving reconciliation—remember that we defined reconciliation as ‘the achievement of a united Australia which respects this land of ours, values the Aboriginal and Torres Strait Islander heritage and provides justice and equity for all’—until it is addressed, including but not limited to the following:

(a) the recognition of the right to equality;
That is a very interesting phrase, given that there are antidiscrimination and equal opportunity regimes in each of the states as well as the Human Rights and Equal Opportunity Commission, which is a national regime. What are we doing about saying that there is an unresolved issue with regard to the recognition of the right to equality? I am left to guess what that can possibly mean. The bill goes on:

(b) the protection of Aboriginal and Torres Strait Islander culture, heritage and intellectual property;
I can understand the issue that relates to intellectual property. You are going to put into a treaty or an agreement, a whole code—a
whole matrix of law—that relates to Aboriginal intellectual property. Let me tell you that there are some private commercial rights attaching to that intellectual property that should never, ever go into a global feel-good like this treaty, because the individual Aboriginal owners of intellectual property will be disenfranchised. They will be ripped off by any such agreement. It is patently obvious that you just cannot do this sort of thing without proper consideration. Culture and heritage are the jurisdiction and prospect of each of the states. Let us take Western Australia. It has an Aboriginal cultural heritage act that is very detailed and has quite extensive provisions for the protection, encouragement and acknowledgement of the culture and heritage of Indigenous people.

Paragraph (c) outlines that an unresolved issue for reconciliation is:

... the recognition of Aboriginal and Torres Strait Islander customary law;

This is such a major and fundamental issue of confusion that I could not think of a more difficult legal concept ever. We have numerous clan and tribal groups across Australia. Each one of them has different customary law. Some are very similar, some are the same, but there are vast arrays of customary law. Guess what the boundaries between these clan groups are? Their hills, their rivers, their trees, their different coloured soils—their goodness knows what.

This bill is anticipating a national agreement that is going to provide an acknowledgement of customary law in the face of the Crimes Act and the criminal codes of each of the states. Let us be realistic here: this is just unbelievable. There is not one bit of understanding of the way the rule of law and legislation in each of the states actually function in this concept. We are going to have customary law that renders conduct illegal in the Northern Territory when it would probably render it lawful in Western Australia. The border is not a dotted line on the ground when you walk across it. So for five paces you will be committing an offence on one side of those five paces, but not on the other. This is simply unworkable. Indeed, the parliamentary drafts person and the author of this legislation should have known it to be unworkable.

The bill goes on:

(d) a comprehensive agreements process for the settlement of native title and other land claims.

I have to say that there was a very large amount of this parliament's time in 1993 spent evolving a process for the resolution of native title and other land claims. What are we saying in this legislation about the national Native Title Act? We are obviously saying that the national Native Title Act does not work. Let me tell you, Senator Ridge-way, you do not get any argument from me. We are 12 years down the track and we have had 40 determinations. The track record is appalling. You have every right to be upset and disappointed, because that is the worst piece of legislation that this place has ever enacted. It is just disgraceful. It is complex. It is full of delay. And what happened? The Labor Party, which was in power at the time, told Aboriginal people that it was the greatest panacea that they would ever know, that it was the new dawn. You know what? It was the greatest fraud upon them that has ever been perpetrated. It simply delivered nothing. All the witnesses, all the old people that are so necessary to native title, as the High Court determined, are just dying away. Guess who is letting it happen? Each of the state governments. Each of the state governments is just sitting back and watching extinguishment evolve.

Senator Forshaw—You did nothing.

Senator JOHNSTON—This is what you guys just simply cannot tolerate. Extin-
guishment is dissolving and evolving because of your legislation and a total misunderstanding of the practical realities of what goes on on the ground in each of the states.

(Time expired)

Senator KIRK (South Australia) (5.01 p.m.)—I rise this evening also to speak on the Reconciliation Bill 2001 [2002] presented to the parliament by Senator Ridgesway, who is to be congratulated for this important initiative. Reconciliation began with the passage of the Council for Aboriginal Reconciliation Act 1991, legislation that was supported by both of the major parties to establish the Council for Aboriginal Reconciliation. The objective of this council was to promote, guide and oversee the reconciliation process in the coming decade to the end of the year 2000.

At this time, in 1991, reconciliation was conceived of as a process, firstly, to achieve a better relationship between Indigenous and non-Indigenous Australia through education, attitude change and fostering application of Indigenous cultures. Secondly, it was to overcome Indigenous disadvantage. Thirdly, it was to achieve social justice for Indigenous people. Finally, it was to foster a sense of national unity in the lead-up to the Centenary of Federation of Australia in 2001.

The Centenary of Federation has come and gone. Reconciliation Australia is the organisational body that has taken up where the Council for Aboriginal Reconciliation left off. But we have to ask ourselves: where is reconciliation? It is now perceived widely as a process rather than as a destination. This does not mean that it is not possible to take stock of the current situation. Have we come two steps forward or gone two steps backward? Have we walked together or have we moved further apart?

This was the underlying incentive for the Senate Legal and Constitutional References Committee inquiry into reconciliation. The inquiry was initiated by the Senate on 27 August 2002. Nearly 12 months later, in October of this year, the committee, of which I am a member, had the opportunity to present its report. The purpose of the inquiry, of course, was to take stock, to measure and to suggest some ways forward for reconciliation. The committee delivered its report in October 2003 and the report was entitled—I think quite appropriately—Reconciliation: off track. The committee stated in its report:

The committee believes the process is now off track. There is a sense that momentum is being lost. People are becoming disheartened and reconciliation is slipping off the national agenda. While the ‘people’s movement’ is an important part of reconciliation in Australia, as indeed the Council emphasised more than a decade ago, national leadership is equally important.

It is this national leadership that has been vitally lacking. Since the government gained power in 1996 they have propounded their alternative view of reconciliation—that is, a focus on the practical aspects, as they call it. This government’s idea of reconciliation, it seems, is that it means simply improving Indigenous people’s life chances by improving their health status, access to education, employment prospects, access to decent housing and access to government services.

There is no doubt that these are very worthy aims. There is widespread agreement on the need for practical improvements to Indigenous health, housing, education, employment prospects and the like. By any measure there is no doubt that Aborigines and Torres Strait Islanders are the most disadvantaged group in Australia. Just a few statistics make this quite clear. Life expectancy for Indigenous Australians is around 20 years shorter than for non-Indigenous Australians. The Indigenous infant mortality rate is 2½ times the rate of the total population. The year 12 retention rate for Indige-
The number of Indigenous people is 15 times less than for non-Indigenous people. The unemployment rate for Indigenous people is about 2½ times the national average. The government's approach has highlighted the lack of standardised targets and benchmarks as well as monitoring and evaluation mechanisms to measure and address Indigenous disadvantage. Adequately dealing with these issues is a must for reconciliation, not just practical reconciliation, in this country.

Facts and figures, however, are just one side of the story. Our national conscience, the soul of our nation, will not be healed by the reaching of benchmarks in Indigenous health. What are required are genuine national leadership and a reconciliation process that incorporates both the practical and the symbolic. Dr William Jonas, the Aboriginal and Torres Strait Islander Social Justice Commissioner, in his submission to the committee, said:

... reconciliation must go beyond simply providing equality of opportunity in terms of 'sameness'. It must provide for the acceptance, recognition and celebration of the unique, distinct societies and cultural characteristics of first Australians.

Consequently, an approach such as practical reconciliation that does not extend past the realisation of measures that allow for citizenship participation in society is deficient.

The committee heard a great deal of evidence during its inquiry to the effect that the government has prioritised practical reconciliation to the detriment of its other aspects. An undue emphasis on statistics and targets for improvement only has left Australia with a hollow version of what reconciliation could be. Reconciliation is not about focusing on either the present or the past, and it is not about focusing on either practical or symbolic reconciliation. Labor believes that reconciliation is about all of these important elements. Whilst the bill we are considering today, presented by Senator Ridgeway, is no substitute for genuine, committed, national leadership, it does go some way towards addressing the concerns of the committee and of the Australian Labor Party.

The bill would enact a national reconciliation convention to be held within one year of the commencement of the act, determined by the minister, and would include a body determined by the minister and ATSIC. It would also instigate a negotiation and agreement process to resolve issues for reconciliation between Aboriginal and Torres Strait Islander peoples and the government. It is for the Prime Minister to develop a process which will unite all Australians by way of an agreement or treaty through which the unresolved issues of reconciliation can be resolved. Unresolved issues include but are not limited to: a comprehensive agreements process for the settlement of native title and other land claims; compensation and reparation with respect to loss of legal rights over land and waters; protection of Aboriginal and Torres Strait Islander culture, heritage and intellectual property; the achievement of substantive equality; the effective implementation of relevant recommendations of the Royal Commission into Aboriginal Deaths in Custody, the Human Rights and Equal Opportunity Commission's Bringing them home report and others; recognition of Aboriginal and Torres Strait Islander customary law; Aboriginal and Torres Strait Islander self-government and regional autonomy; economic development; constitutional reform to enable the recognition of Aboriginal and Torres Strait Islander peoples and the protection of their rights; effective political participation; a bill of rights that specifically protects the rights of Aboriginal and Torres Strait Islander peoples; and, finally, principles for negotiated outcomes at other levels.

The bill also sets out a process for reporting on reconciliation, to be a three-yearly
report on the progress towards reconciliation by the Aboriginal and Torres Strait Islander Social Justice Commissioner, tabled in parliament. The initiatives that are outlined in this bill certainly are commendable and very laudable aims. There is no question that the bill would provide a great improvement on the status quo. Labor believes, however, that it is not the answer. To achieve reconciliation we need three things: community support, a co-ordinating agency and national leadership. Community support, despite this lack of government leadership that has been so apparent since the coalition was elected, is still strong. Submissions that were made to the committee made it quite clear that there is still a great deal of enthusiasm out there amongst the wider Australian community for reconciliation. Reconciliation Australia, despite being underresourced, remains committed and capable as an organisation.

It is the third matter—that is, national leadership—that is entirely lacking. Unfortunately, it seems that we cannot legislate to change the government’s heart. Until the Prime Minister and the government deliver a genuine commitment to going through the process of reconciliation—and not just the practical aspects of it—the nation’s conscience will continue to suffer and, even more disturbingly, the disadvantage of our Indigenous people will continue to be entrenched.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.12 p.m.)—The Reconciliation Bill 2001 [2002] before us today was first introduced over 2½ years ago by my colleague Senator Ridgeway. It is a piece of legislation aimed at getting some impetus back into reconciliation and it is a disappointment to me that it is not being supported by others in this chamber. The Democrats have a long record on reconciliation and Indigenous issues. Our first general policy platform, when we were formed back in 1977, highlighted that Australia was an occupied land and that land rights, security of land tenure, health, disadvantage, and restoration of community and family should be part of any policies defined and implemented by Indigenous Australians. We have supported the recommendations of the Royal Commission into Aboriginal Deaths in Custody in 1991 and the final report from the Council for Aboriginal Reconciliation.

In many ways, this legislation builds on the views developed and the final report of that Council for Aboriginal Reconciliation. It is a fact that this government has stood still on the issues of reconciliation, and it is a disappointment. Perhaps it should not be surprising, but there were signs that perhaps it was something that they would give some attention to. But, whether that was genuine or not initially, it has clearly ground to a halt. It is about leadership and there has been no leadership from this government on this issue. That is part of the reason this bill is so important: it will get things happening. You cannot legislate for reconciliation but you can legislate to generate action in relation to reconciliation. It will provide the impetus that is sadly lacking.

A perfect indication of the lack of interest from this government in this issue and this legislation is that not only have we not had the relevant minister, Senator Vanstone—who holds the portfolio of Indigenous affairs—speaking on this legislation but we have not even had any other minister from the government speaking on this legislation. The inaction on this issue and the lack of leadership has left a heavy burden on the shoulders of Indigenous people, when reconciliation needs to be embraced by all people in the non-Indigenous community. It is something, as we all know, that has the support of a large number of people in the com-
munity, but it is not being driven with any leadership by the federal government.

The government has divided reconciliation into two parts, focusing only on what it sees as practical reconciliation. Yet, even in this area of so-called practical reconciliation, research by bodies such as the Australian National University has shown that the government has failed to move things forward in the areas of health, education, employment and income. In some cases, the outcomes in these areas have worsened since the Howard government came to power over seven years ago. Indigenous life expectancy is 20 years less than that of the rest of the population. It seems that continually highlighting statistics like this only results in these realities simply becoming acceptable and apparently unaddressable. The government has been presented with report after report formulated with wide consultation of Indigenous people and the wider community identifying ways of addressing Indigenous disadvantage, such as the social justice reports released earlier this year and in previous years. But in many cases it has not cared enough even to respond, let alone address the recommendations—and these social justice reports are a legislative requirement.

Since this government came to power in 1996, full-time employment for Indigenous people has declined in absolute and relative terms in relation to the rest of the population. The average income of Indigenous adults has declined in the same period. We have seen a decline in school retention rates and in participation in tertiary education. Relative life expectancy has worsened, mainly due to the improving health status of the non-Indigenous population. There has been some minimal improvement in housing. But the overall message is that, while the rest of the nation in many ways has been getting better—as the government, not surprisingly, likes to point out—that is leaving Indigenous people further behind. The bottom line is that the gap is growing. Despite some of the triumphalist rhetoric of earlier speakers from the government, such as Senator Ferris, about $2.7 billion being provided, the fact is that predominantly that is being provided to government agencies.

Indigenous people are still twice as likely as non-Indigenous people to be admitted to hospital, three times as likely to have diabetes, 10 times as likely to suffer blindness and twice as likely to have a baby of low birth weight or to have a stillborn baby. They are three times more likely to be unemployed, and, without CDEP—which is, in effect, Work for the Dole under another name—the Indigenous employment rate would be over 40 per cent. We have other issues, such as Indigenous people being 16 times more likely to be imprisoned. Almost one in 50 Indigenous adults are in jail. The proportion of prisoners who are Indigenous rose from 14 per cent in 1992 to 20 per cent in 2002. The number of Indigenous women incarcerated over the last decade has increased by 255 per cent.

These are facts that the government do not like to hear. Actions such as this bill—which has taken 2½ years to even be able to be brought on for debate—are ones that they do not want support. Yet, despite all that, they are so apprehensive about being seen to have to take a stand on this that they will not even allow this bill to come to a vote. I note that we are being broadcast, which is a sign—for people that are listening that may not be aware—that the House of Representatives has pulled up stumps and the members have all flown home for the weekend. In the Senate, of course, by contrast, we are working through until 11 o’clock tonight, and we will be back here tomorrow working hard on issues of importance to the Australian people. Despite that, we only get until 6 p.m. to de-
bate this issue of fundamental importance to the future of our whole nation.

We do not have a minister in the government highlighting the importance of this issue with a government response, but a range of backbenchers—

Senator Patterson—Like Senator Scullion, who has seen more communities than you’ve ever seen in a lifetime.

Senator BARTLETT—told to come in here and fill up the time so that it does not come to a vote.

Senator Patterson—Senator Scullion knows a lot more than you do.

Senator BARTLETT—That is the level of commitment this government has to the issue. We have a minister who will come in and grumble, complain and snipe across the chamber but not actually stand up and make a speech. They will not actually go on the record and speak on behalf of the government, the executive. Instead we have backbenchers. ‘Backbenchers’ is not a slur or a term of disrespect. The government is separate from the parliament, and the government is represented by ministers. We have had no minister come and speak in this debate, and they will not. They will throw insults across the chamber, but all they will do is drag in backbenchers—some of whom may have valuable contributions to make—who are instructed that their main task is to fill up time to stop it coming to a vote and to stop people being forced to actually be seen to make a stand on such a fundamental issue.

I will turn to the bill itself. The purpose of the bill is to move the debate beyond rhetoric and beyond discussion. Discussion is important but action is what is lacking, and this bill will generate action. As this year’s Senate inquiry into progress towards reconciliation highlighted, progress by COAG to implement action plans to measure and report on progress to address Indigenous disadvantage—practical or otherwise—has been extremely slow and so far not forthcoming. That is why this bill is important as a framework to move reconciliation forward.

This year’s Senate inquiry was born out of the recommendations by the Aboriginal and Torres Strait Islander Social Justice Commissioner in his report in 2001. The commissioner noted:

True and meaningful reconciliation is being prevented as long as the only attempt being made to accommodate Indigenous peoples within the fabric of Australian society is on the basis of sameness, without recognition of cultural distinctions. The lack of leadership demonstrated by the federal government leaves reconciliation without a focus and without cohesion.

When we are talking about the problems and the decline in many areas of disadvantage faced by Indigenous people, it is not an accusation that the government does not care about any of these things; it is a simple statement of the facts: the government is being ineffective, even by its own criteria, and that is in part because there is no focus on the broader important issue of reconciliation. As the commissioner noted:

As important as the people’s movement for reconciliation is, it will surely dissipate if it is not accompanied by real commitments to real outcomes by governments.

This legislation gives effect to legislation drafted by the Council for Aboriginal Reconciliation—a council that this government at least gave lip-service to supporting, yet, after it finished its task after 10 important years of work, we have seen no action. That is what this bill seeks to generate: action.

The council was given a legislative requirement to recommend a means of giving effect to its reconciliation documents, to move it beyond just words and into real effects. After wide public consultation over more than 10 years, its own deliberations and expert advice, the council decided that legis-
islation would be an appropriate means of giving effect to its documents. It is an area I find to be of particular interest. One of my earliest tasks as a relatively young and new staffer to Senator Kernot, who was then the Democrats’ Indigenous spokesperson, was to assist in writing the speech for the second reading debate on the legislation that established the Council for Aboriginal Reconciliation. Having been part of that and having my own memory of it, I had an extra interest in following the progress of that council over many years—through many different situations and tribulations, to its outcomes, to some of the positives that it generated and to some of the frustrations that it endured.

While over many years there has continued to be tremendous public displays in support of reconciliation, it would be fair to say that more than goodwill is required to advance or achieve reconciliation. This bill is designed to achieve, and would achieve, the goal of further advancing reconciliation between Indigenous and non-Indigenous Australians by establishing processes to identify, monitor, negotiate and resolve unresolved issues for reconciliation. That is what is needed; that is what is, unfortunately, sadly lacking. As the recent Senate inquiry highlighted, defining reconciliation is a difficult task, yet it is a widely held view that reconciliation is not simply about overcoming Indigenous disadvantage, although that must be an integral part. That itself is an area where we are all failing.

Notwithstanding that progress towards overcoming Indigenous disadvantage continues to be slow and in many cases halted, this bill also identifies some of the other unresolved issues, including the effect of implementation of relevant recommendations from previous reports; the recognition of the right to equality; constitutional reform to enable proper recognition of the Aboriginal and Torres Strait Islander peoples and protection of their rights; a comprehensive agreement process for the settlement of native title and other land claims; compensation and reparation with respect to loss of legal rights over land and waters; and effective political participation.

Part 2 of the bill seeks to incorporate the Australian declaration towards reconciliation, which provides the starting point for the recognition of the place of Aboriginal and Torres Strait Islander peoples in Australian society. Part 3 implements the centrepiece of the legislation, which is the National Reconciliation Conventions. These conventions will identify and prioritise issues for discussion, enabling debate and strategies to be developed that will address matters that constitute unresolved issues. It is important that the conventions not be seen to be focused solely on one agenda, and it is hoped that the conventions would be attended by delegates from diverse backgrounds. It would provide an opportunity for debate, bringing together a variety of views to make achievable plans for actions that would be adopted and followed through. Action, again, is one of the key areas that is missing. The bill also establishes a process that will allow Aboriginal and Torres Strait Islander peoples and the government to develop an agreement or treaty that clearly sets out how the nation will address the unresolved issues for reconciliation and that will help to better unite all Australians.

Part 5 of the legislation establishes a reporting procedure to monitor the progress towards reconciliation so that governments cannot keep hiding behind nice-sounding words and hiding the fact that their progress has been inadequate or indeed nonexistent. It would also establish a joint parliamentary committee on reconciliation to ensure that the Commonwealth takes responsibility for, and has an appropriate mechanism to assess, the progress of reconciliation. All of these
things are aimed at getting action—action that is clearly lacking to date. It is an area of continual frustration, certainly to the Australian Democrats and also to many Australians more broadly, that we are not getting action in so many of these areas. In fact, we are getting a brick wall in some areas, and that is simply unacceptable.

Senator Patterson—You could be a bit gracious and comment on some of the positive things.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Carry on please, Senator Bartlett.

Senator BARTLETT—I would suggest to all Australians and at least to those from the government who are serious about making positive contributions to this issue that it is an area that needs action. It is an area in which we could do without some of the sniping that passes for political debate on the issue. It is an area where—

Senator Patterson—Sanctimonious rubbish!

Senator BARTLETT—The view of the minister in the chamber is obviously that this is simply sanctimonious rubbish.

Senator Patterson—Because you will not comment on any of the positive things we have done.

The ACTING DEPUTY PRESIDENT—Order! Senator Patterson, can you please restrain yourself?

Senator BARTLETT—The government’s role on this issue, clearly—and ministers are, of course, representatives of the executive—is not to actually stand up and defend or put forward the government’s record; it is to come in here and throw abuse. The Democrats’ approach on this over many years has been to support constructive engagement. That is why we have been strong promoters of the Council for Aboriginal Reconciliation. That is why, as many senators would be aware, we engaged with this government, including the Prime Minister, in attempting to move things forward, to overcome mistrust and to overcome disagreements. It is of great disappointment that that has not borne fruit. I do not think anyone could suggest that Senator Ridgeway, who has put forward this legislation, is simply focused on throwing around negatives and trying to attack the government. His record is unchallengeable on this issue of trying to engage with the government, sometimes at potential political cost to himself. He is quite clearly acknowledged around this nation—as well as around this parliament, I might say—as a credible voice on reconciliation and somebody who clearly has the—

Senator McGauran interjecting—

Senator BARTLETT—What was that, Senator?

The ACTING DEPUTY PRESIDENT—Please ignore the interjection and carry on, Senator Bartlett.

Senator BARTLETT—Senator Ridgeway would have spoken for longer, except that he thought he would have had the opportunity to sum up on this bill so that the motion could be brought to a vote. But the government chose to stop it coming to a vote by filling up the time for the debate with back-bench speakers—not a ministerial speaker, of course. People would recognise the importance of the role that Senator Ridgeway plays, not just as a Democrat senator but also as an Indigenous senator, and it is a sad indictment on all of us that we have had only two Indigenous representatives in the federal parliament in over 100 years as a federation. He clearly has an important role in being a voice for reconciliation for the community as a whole. I am not in any way suggesting that he is a representative in any formally endorsed sense for Indigenous people, but
clearly he has a crucial role in promoting and highlighting the need to work together for reconciliation.

If, for once, we could get a genuine attempt from the government, in particular, to engage on this sort of thing, to try to get some action going to move things forward, then I think it would be better for the government, quite frankly, as well as for the rest of the country—and it would certainly be a gain for the Indigenous population. Anything that benefits the Indigenous population of Australia benefits us all and helps build our nation further into the future. I look forward to Senator Ridgeway, through next year and through the next federal election, playing a key role in pushing further forward those parts of the community that want to act on this issue of reconciliation. It is crucial to the future development of our nation. Until we move further on it, we will never develop to our full potential as a united and prosperous nation, one that promotes equality for all and recognises our unique history. (Time expired)

Senator SCULLION (Northern Territory) (5.32 p.m.)—I rise today not only to reaffirm this government’s wholehearted commitment to the cause of reconciliation between Indigenous Australia and non-Indigenous Australia but initially to take the opportunity to make a few comments on Senator Bartlett’s contribution. To try to paint the contributions of the Labor Party, of the Greens, of his fellow Democrats and of the coalition as some sort of slowing down of the process so that there cannot be a vote—and, as he said, this is broadcast, so people are listening—is just a pathetic piece of political opportunism that should be completely ignored. To dismiss backbenchers like me as somehow just filibustering to fill up the time for the debate takes away my right to be able to stand in this place and represent the views of Territorians—and almost 30 per cent of Northern Territorians are Indigenous Australians—and I am quite sure I will get support from my colleague Senator Crossin on that matter. To stand up and completely ignore the wider benefits that have come to the Indigenous community around Australia since 1996, since this government was elected, is a disingenuous approach to ensure that Australians and Indigenous Australians do not have a clear view of what is actually happening.

In contrast, I would like to take the opportunity to congratulate Senator Ridgeway for bringing this issue before the Senate. Whilst I principally support the sentiments brought forward by the senator and whilst I disagree with some of the planks to move forward on this particular issue, I would like to congratulate him for continually showing leadership and for continuing to champion the role of Indigenous Australians into the future. Speaking of leaders, I think it is worth while to go back and look at history to show exactly what we have committed ourselves to in terms of reconciliation. On 26 August 1999, the Prime Minister of Australia, John Howard, stood up and put forward a motion—it was very simple and very clear—for the way forward. He said:

That this House—
referring to the other place—

(a) reaffirms its wholehearted commitment to the cause of reconciliation between indigenous and non-indigenous Australians as an important national priority—
I emphasise ‘priority’, Mr Acting Deputy President Hutchins—
for Australians;

(b) recognising the achievements of the Australian nation commits to work together to strengthen the bonds that unite us, to respect and appreciate our differences and to build a fair and prosperous future in which we can all share;

(c) reaffirms the central importance of practical measures leading to practical results that address the profound economic and social disadvan-
tage which continues to be experienced by many Indigenous Australians;

(d) recognises the importance of understanding the shared history of Indigenous and non-Indigenous Australians and the need to acknowledge openly the wrongs and injustices of Australia’s past;

(e) acknowledges that the mistreatment of many Indigenous Australians over a significant period represents the most blemished chapter in our international history;

(f) expresses its deep and sincere regret that Indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many Indigenous people continue to feel as a consequence of those practices; and

(g) believes that we, having achieved so much as a nation, can now move forward together for the benefit of all Australians.

I have heard a fair bit of rhetoric from the other side that seems to indicate that this government has lost the plot on reconciliation. There is our plan, they are the planks forward, and I think to a large degree they have been met. Of course, leadership happens at a number of levels, and we need to champion not only national leadership in this issue but leadership at every possible level. The next level of national leadership in this issue is the Council of Australian Governments, COAG.

On 3 November, with somewhat of a different make-up, COAG made a principles statement in which the premiers and chief ministers of every state and territory agreed to priority action in three specific areas as reflected in their joint communiqué. These action areas were: investing in community leadership initiatives; reviewing and re-engineering programs and services to ensure that they deliver practical measures and that they support families, children and young people—in particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and, of course, forging greater links between the business sector and Indigenous communities to help promote economic independence.

Unfortunately, as Australia knows, these people who are supposed to be responsible for the leadership in the matter of reconciliation—COAG—very recently decided to walk out as a shameful media stunt. Those people were the Australian heads of state: New South Wales, Bob Carr, Labor Party; Victoria, Steve Bracks, Labor Party; Queensland, Peter Beattie, Labor Party; South Australia, Mike Rann, another member of the Labor Party; Western Australia, Geoff Gallop, Labor Party; Tasmania—no surprise, Jim Bacon, Labor Party; Northern Territory—and personally I am quite ashamed at that—Clare Martin, Labor Party, also walked out; and the Australian Capital Territory, Jon Stanhope, Labor Party. What a comprehensive, shameful lack of leadership on this issue. They have all badly let down Indigenous Australians and should be extremely ashamed of themselves and of the party that they purport to represent. If we are going to ask COAG to take this responsibly, what has to happen is that the members in this place who espouse reconciliation need to speak to their people in each of the states and territories to ensure that they start taking their job responsibly.

This government’s vision is clearly a suite of activities that encompasses both the symbolic and the practical aspects of reconciliation. The practical reconciliation aspects have been widely canvassed, and I do not need to go into them in detail. In talking about practical reconciliation, I think that most Australians and most people in this place who have had some experience with Indigenous Australia will agree that, whilst we have moved forward a long way, there is a long way to go. Without a doubt, these
people still suffer some of the worst deprivations and the worst aspects, on almost every measure, of economic and social disadvantage.

Practical reconciliation has been measured. One of the first reports on overcoming economic disadvantage, *Overcoming Indigenous Disadvantage: Key Indicators 2003*, was released earlier this month. I think that report has been reasonably useful. It paints a picture of substantive disadvantage: against every single indicator, as I said, Indigenous people are doing it an awful lot worse than most Australians and their neighbours. The report substantively agrees that addressing Indigenous disadvantage is a task for the long haul. There is no quick fix. There is no legislative answer. We cannot take the attitude that we can legislate in the Senate and it will all go away; that is just not possible. This is a serious business, and it is a serious issue in the long haul for all Australians, not only in this generation but in generations to follow.

Even if we had the magic bullet to fix the differences in primary school education and in child health, it will still take years and years for this achievement to be reflected, whether in the headline employment or the life expectancy statistics that have so often been repeated in this place. What we need as one of the principal planks in the way forward—this is a wonderful suggestion in the report and needs to be implemented; I am sure the government will implement it—is the improvement of Indigenous data collection analysis, which has to remain a priority. This is a challenge for all of our governments, the data agencies and the service providers.

This set of statistics is now going to be a base for an annual set of reports, so that every year we are going to be able to check these statistics and say: ‘Where can we prioritise our spending? Where can we prioritise our activity to ensure that we are targeting the worst aspects of disadvantage and the worse aspects of inequity?’ It will be a significant tool for improving government policy, and this government is always looking at improving our policy. You cannot make good decisions without good information, and I think that this suite of tools that we have will not only improve our performance in government policy but also improve service delivery.

One of the interesting things in the report is that there always seem to be greater inequities the further away you get from anyone else. The more remote, the greater the inequity—and all Australians who live in regional and remote Australia will understand why that is the case. The report also looks at warning indicators that I think are very important to us. It does not talk only about the headline employment and the other dysfunctions of some of these communities, but about issues such as substance abuse—whether it is smoking cigarettes or using other drugs or substances. When I go to visit communities I am absolutely astounded by the number of people in those communities who smoke cigarettes. It is quite normal to see many people who are 10 and 12 years old who are smoking cigarettes. They come up to you to bot a cigarette. It is not a characteristic of other parts of Australia. Perhaps it is because we do not put warning signs on cigarettes in such a way that they can read them, because the educational levels of most 11- and 12-year-olds in these communities is such that they cannot read English. Those are the sorts of issues that have to be addressed, and it is really important to see that these reports are starting to highlight those issues.

We now know that much of the youth suicide that is such a tragic part of life in the Tiwi Islands in the Northern Territory is actually associated with psychotic depression
when the users run out of cannabis and come off a high and then, tragically, take their own lives. They take their own lives at a time when they have not even started to have a life. Those sorts of tragedies need to be addressed, and I think the fact that these reports are now recognising and measuring some of these non-headline issues means that they will be.

When I travel through my constituency I go to places such as Kintore. I travelled there with the Minister for Health and Ageing to open a magnificent health centre—it is absolutely magnificent by anyone’s standards. It is such a tragedy to drive not far from there and find 60 petrol sniffers who do nothing else but wander around like zombies. The community are so ashamed of them that they have moved them from that place so as not to offend the sensibilities of the minister and other dignitaries visiting there. They are the sorts of issues that we need to start dealing with—and this government is dealing with them. But let us not pretend, as Senator Bartlett has, that these are easy issues and that, if we had only thought about it, we could have got on and fixed them. These are going to be issues and challenges facing not only this generation but future generations.

There is also the issue of symbolic reconciliation as well as that of practical reconciliation. When I first came to speak in this place and Matilda House was in the gallery, I stood, as many people would have in that circumstance, and acknowledged the leaders of the Ngunnawal people and acknowledged that we were speaking in Ngunnawal country. That would not have happened—and did not happen—in this parliament 10 years ago. It may be a symbolic gesture, but it is a way in which the people in the community, in their own way, have taken forward the process of reconciliation.

There have been many other ways in which we have moved forward in terms of symbolic reconciliation. This government, as we have heard before, has put over $6 million into the construction of Reconciliation Place. Those slivers do not mean a lot to me—and I have had a look at Reconciliation Place—but I know from speaking to people that it means a lot to a lot of other Australians. It means a lot that their plight and history have been recognised and that the fact that they have been taken from their lands—some of them as part of the stolen generation—has been recognised. People in this country can visit Reconciliation Place; they can walk through there, hear about their stories and get a feel for the place. Very soon we will have that seventh sliver that will once again recognise particularly the plight of the stolen generation of Australia.

This government has been supporting some of the more symbolic reconciliation processes. We need some group or leadership process to ensure that that goes forward. We have provided $5.6 million to assist Reconciliation Australia and there have been a number of other symbolic processes that I suppose we would refer to as local symbolic processes. I think that is the way every Australian in their own way in a symbolic sense can assist with the process of reconciliation. I look no further than the words of Bishop Desmond Tutu, who should be very much listened to in regard to this. It is a very surprising quote, from about 1998. He said that reconciliation is a waste of time. I was stunned to hear that. He went on to say: ‘Reconciliation has already happened. Look around you. Look at your children. Look at the young people coming on.’

That is where the reconciliation is going to take place, and that is why in this country it is so important to continue to support acts of education. Indigenous people around Australia are very aggrieved that history in many
ways has been rewritten. Recently I attended the 75th anniversary of the Coniston massacre in Central Australia. I want to read from a publication produced by the Central Land Council. They must be commended for this. The publication was part of the ceremony. In that ceremony I knew that I was part of a reconciliation process with the surviving relatives of some of the worst crimes and massacres in Australia, as well as the victims of those people. After a full day of ceremonies and a night of ceremonies, I think everybody went away with a sense that we had reconciled some of those events. Let me quote from the publication:

The loss of so many people has long been a cause of deep sadness to Aboriginal people in the region. A lack of acknowledgment by the non-Aboriginal community of what occurred during those fateful months of 1928 increased the despair felt by people about this black moment in our history. The 75th Anniversary of the event is a chance for Australians to come to terms with our past and a chance for the local communities affected by it to find peace.

And that it did. If we want to move forward in terms of the symbolic aspects of reconciliation, we need to look to ways that have a practical and measurable outcome. We do not need to measure it in millimetres, say how many or use statistics. But we need to look around and understand that reconciliation is about making people feel better about one another. It is about us feeling—all of us—Australians. It is about making sure that all of us somehow have the same access to opportunities and services that will give us some sort of equity. That is what reconciliation is about. It is about how people feel about each other. Whilst we live in that same environment, I am quite sure that Australians will see themselves as one people. Like most Australians, I believe the practical aspects of reconciliation need to be accelerated, and this government is accelerating them. They will lead very closely to a stronger Australia and a truly reconciled nation.

Where does a treaty come into this? In the debate on this bill, my colleague Senator Ridgeway has suggested that a treaty is an essential part of this process. I have to say that I am not sure that that is the case. My experience has been that a treaty is not an appropriate tool for reconciliation or plank of reconciliation. How will a treaty assist in the reconciliation process? How will a treaty help how Australians feel about one another? How will it help us feel better about one another? How will it help us reconcile those differences? It will certainly provide an expectation that there will be change. But there is a funny thing about treaties and some of the symbolic aspects. I can recall walking across the bridge in Sydney. Did that reconcile Australians? It did for many people who participated, but they were those who are always waiting in the shadows of the corridors of life to stand up and say: ‘Oh, what about the Prime Minister? He didn’t walk; therefore he doesn’t support reconciliation.’

It is so easy to put reconciliation off the track with some of these symbolic aspects. These are people. It is not about the symbolic nature of the issue. The people that are associated with it will say: ‘They did, but you didn’t. You don’t like the treaty so therefore you don’t want to reconcile.’

In terms of practical reconciliation, I come from a part of the world where, if you talk to people about crossing bridges and symbolic actions—I would have to even say Reconciliation Walk, with the slivers—people do not hear about that. People such as my colleague from the Northern Territory will no doubt agree that people from places like Maningrida, Galiwinku and Ramingining are lucky enough to own a television. They never get newspapers and would never hear about that. Yet they are the single most op-
pressed—the single most disadvantaged—
group in Australia.

Native title was another piece of legisla-
tion. We cannot legislate to make people feel
differently about one another. That is the
issue that we are dealing with here today. In
1994, native title was going to be a stepping
stone for reconciliation, ensuring that In-
digenous Australians had access to their
country. Whilst it has moved along like that,
I do not believe that in my experience it has
made anybody feel better. It has been a litig-
ious, divisive process. Anyone involved in
the process will confess that that is exactly
the case. That is one piece of legislation that
simply has not worked.

Let us look at the Treaty of Waitangi in
New Zealand if people are going to quote
these things back to us. That was signed on
6 February 1840. Talk to Maoris and ask
whether or not that has caused people to feel
good about one another. Every time I listen
to Maoris arguing the case, they will tell you
that it is all about division and aspects of the
treaty that are litigious. Disputation and liti-
gation do not bring people together; they are
wedges in the community. Division has no
part in the reconciliation process. That is
why I and this government cannot support a
bill that contains a concept that will divide
our people rather than bring them together.

Senator HEFFERNAN (New South
Wales) (5.52 p.m.)—It is a very great privi-
lege for me to speak to the Reconciliation
Bill 2001 [2002], put forward by Senator
Aden Ridgeway, who I think has put a bit of
light at the end of the tunnel for a lot of peo-
ple in the back country who wondered when
someone would be in there and seen to be
doing something in recent times.

Like a lot of my colleagues, I think the
government’s record on reconciliation has
been excellent, but I have to say that I have
great difficulty in figuring out what recon-
ciliation as a symbol is. As everyone has
said, reconciliation means many things to
many different people. It is a bit like Land-
care, which, I have to say, has altered farm-
ners’ ideas of the landscape through a process
of learning and understanding the mistakes
of the past. Through that, farmers have come
to terms with the environment. I think the
Australian public in recent years have shown
a lot of goodwill. A lot of understanding has
overtaken a lot of the hurt and insults of the
past. To that end, I would like to quote from
what I said when I first stood up in this
place. In talking about the challenges being
imposed on Australians, I said then:

No less is the challenge imposed on this gen-
eration of Australians by the centuries of misun-
derstanding and neglect of our indigenous people.
We must provide for the return to our indigenous
people of their self-esteem: built up over thou-
sands of years by their majestic mastery of tradi-
tional living, land custodial skills and timeless
culture; broken down in 200 years by the inevita-
ble exploratory nature of man, the intrusiveness
of his machines, the enticement of his money and
the destructive onslaught of his social habits.

A paradigm shift is required and will only oc-
cur when provision is made for our indigenous
people to progress, even in remote areas, from
communal benefit to individual benefit; when
access for all Australians to health, education and
employment is not distorted by location or station
in life; and when, regardless of race, creed and
colour, we purge those leaders who believe all
should be equal except the equalisers and who see
the often generous funds of government as the
opportunity for a feast on which to fatten their
personal circumstances while neglecting the fam-
ine. Unfortunately, when these predators of the
public purse turn on, Australians who would nor-
mally be concerned and supportive turn off.

Reconciliation for me is not about worldwide
days of recognition or walks over the various
bridges. Reconciliation for me is about the
way I think, act and carry out my daily rou-
tine. I have to say that some people who go
to church on Sundays are among the greatest
cheats, thieves and debauchers you will come across. Some people who formalise reconciliation with a public display or activity go home and say, ‘What’s next?’ A changing of the guard at Buckingham Palace does not guard the palace.

Senator Crossin—This is a speech about reconciliation, not republicanism.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Crossin, you have had your turn.

Senator HEFFERNAN—Where I come from, it is not an insult for an Indigenous person to call a non-Indigenous person a ‘whitefella’; it is not an insult for a whitefella to call an Indigenous person a ‘blackfella’. It is a compliment in the back country. I would like to take people on a little journey through the back country. I can remember one night when I was camped at a bore out in the Tanami Desert. There were only five Aboriginals in the little community who lived at this bore. I put my swag down and the Aboriginal bloke there said, ‘Hey, Boss, no—don’t put the swag there.’ I did not know what he was on about. One of the women explained to me that there was a dripping tap at this bore and that every night this big brown snake came along the track where I was going to put down my swag, and it would have a drink at the bore. So I put my swag on the veranda of the little humpy that was there.

Senator Crossin—It’s a pity it didn’t bite your leg off.

The ACTING DEPUTY PRESIDENT—Senator Crossin!

Senator HEFFERNAN—Senator Crossin does not really understand. Senator Crossin, I have never had an angry Indigenous person come into my office and go out still angry. For your information, Senator Crossin, through you, Mr Acting Deputy President, one day in this place there were some people, whom I met last week in Darwin, who turned their backs on the Prime Minister over the stolen generation. Unlike you, Senator Crossin, I took the trouble to go up into the gallery and get those people and bring them back to my office. They were angry all right; they were very angry. That was on a Thursday. I talked them into staying in Canberra for the weekend and not going back to Darwin angry. On the Monday morning they sat down and had morning tea with the Prime Minister. I think that is what reconciliation is all about.

Senator Crossin—They don’t vote for you.

Senator HEFFERNAN—I am disgusted by that comment: they don’t vote for us. For God’s sake, what has that got to do with it? That’s a disgraceful comment. I don’t give a damn. You are not fair dinkum. You are one of the phoney people.

Senator Crossin—They don’t trust you.

Senator HEFFERNAN—You are a phoney person. There is a lot of phoniness in this debate. People come in here and make symbolic speeches and then go home and forget about it. You want to live it.

Senator Crossin—There has to be a point of order in there.

The ACTING DEPUTY PRESIDENT—Senator Heffernan, I would prefer you to address your remarks through the chair.

Senator HEFFERNAN—I apologise, Mr Acting Deputy President. This is typical. We were in Kununurra last week. There are great opportunities there for the local Indigenous people. The local Indigenous people in Kununurra are pretty disgusted because they are not allowed to interact with the local farming community. The only communications that can occur are through the Kimberley Land Council, which is based in Broome. There is too much of that sort of stand-off.
There is an industry out there that is built on consulting, not just in Indigenous areas but in lots of areas. We have consultants who live off the next consultancy and perpetuate the problem, because they want to get the next bundle of money.

I could go on for hours and hours. One of the great disappointments for me today is that unfortunately I am going to run out of time, as I understand it. So I would like to just say that reconciliation is more than symbols; reconciliation is a way you can live your life. Mr Acting Deputy President, thank you very much for the opportunity.

Debate interrupted.

BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (6.00 p.m.)—by leave—I move:

That consideration of government documents under general business and consideration of committee reports, government responses and Auditor-General’s reports not be proceeded with today.

Question agreed to.

MARITIME TRANSPORT SECURITY BILL 2003

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator McGAURAN (Victoria) (6.00 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the report of the committee on the provisions of the Maritime Transport Security Bill 2003, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
idence that has accumulated over the last few decades clearly shows that human activities are adversely impacting on the earth’s environment. It is not, however, only the land that we live on that is under threat. Recently the ozone layer that protects us from overexposure to damaging ultraviolet radiation from the sun, in particular UVB light, which is linked to high rates of skin cancer, has thinned significantly as a result of the release of chemicals artificially created by humans, namely chlorofluorocarbons or CFCs. CFCs, along with other compounds that contain chlorine and bromine, have significantly accelerated the depletion of ozone in the earth’s stratosphere.

CFCs are used in a variety of industrial, commercial and household applications as coolants for commercial and home refrigeration units, as aerosol propellants, as electronic cleaning solvents and as blowing agents. When they were developed in the 1930s, the thought that these chemicals might have dire consequences for an ozone layer far above us was beyond the realms of imagination. It was not until 1973 that chlorine was found to be a catalytic agent in ozone destruction and it was not until 1984 that conclusive evidence of the resulting stratospheric ozone loss was presented.

When CFCs’ devastating effects on the ozone layer were realised, the international community took immediate steps to halt ozone depletion by developing the Montreal protocol, which called for a worldwide ban on the release of ozone-destroying chemicals into the atmosphere. The fact that the Montreal protocol was agreed to by almost every country on earth meant that it was very effective in achieving the goal of significantly reducing the rates of release of ozone-degrading chemicals.

Despite the rapid phase-out of CFCs, however, ozone levels are expected to remain lower than the pre-depletion levels for several decades due to the extended lifetimes of CFCs and the potential additional impacts of bromochloromethane and hydrochlorofluorocarbons. In an effort to combat this problem, a number of changes to the original Montreal protocol, referred to as the Beijing amendments, were subsequently introduced. These amendments called for new controls on the trade in and manufacture of bromochloromethane and hydrochlorofluorocarbons. Bromochloromethane is primarily used as an industrial solvent and fire extinguisher while hydrochlorofluorocarbons, or HCFCs, which were developed to replace the more damaging banned CFCs, are primarily used as refrigerator coolants.

The bills being debated here today will implement into domestic Australian law these Beijing amendments. The Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, which is the first bill being debated here, continues to promote the generally bipartisan approach which has been taken on this subject. The existing legislation, which was introduced by Labor in 1989, has been successful in reducing Australia’s consumption of ozone-depleting substances by over 80 per cent since that time. The main purpose of this bill is to amend the Ozone Protection Act 1989 and to implement the most recent amendment to the Montreal protocol on substances that deplete the ozone layer, to ensure the ongoing protection of the ozone layer.

The recommended amendments to this bill will call for the establishment of a national regulatory scheme for the management of both ozone-depleting substances and the synthetic greenhouse gases used as their replacements. Although these gases are not, strictly speaking, a direct risk to the ozone layer, there is still cause for concern, as they are potent greenhouse gases. These gases have a much greater impact than carbon di-
oxide on a weight for weight basis and, although they make up only a very small part of Australia’s total greenhouse gas emissions at this time, using them as substitutes for banned ozone depleting substances means that emission levels are on the rise.

The explanatory memorandum to this bill asserts that the introduced amendments will deliver on commitments to manage synthetic greenhouse gas emissions, as detailed in measure 7.2 of the National Greenhouse Strategy. The two additional bills that we have here, the Ozone Protection (Licence Fees—Manufacture) Amendment Bill 2003, and the Ozone Protection (Licence Fees—Imports) Amendment Bill 2003, extend the current payments applying to the manufacture and import of prescribed ozone-depleting substances to certain synthetic greenhouse gases and also allow for an increase in payments.

These bills are extending the system in the existing legislation for licensing the import, export and manufacture of ozone-depleting compounds to also include synthetic greenhouse gas replacement substances. These bills will simplify the current regulatory arrangements for end-use control of ozone-depleting substances and their synthetic greenhouse gas alternatives through the implementation of a national framework to replace existing state and territory legislation. This will allow the government to enact regulations to target preventable emissions and adapt these controls over time to keep pace with changes in technologies and practices.

Reforms to the current financial arrangements for the ozone protection program to establish the Ozone Protection and Synthetic Greenhouse Gas Account will also be made. These reforms will accommodate the additional regulatory responsibilities assumed by the government under this bill and increase transparency by consolidating all financial arrangements into one account. These new arrangements will fund administration of programs to reduce the environmental impact of ozone-depleting substances and their synthetic greenhouse gas replacements on a cost recovery basis.

The Australian Fluorocarbon Council have voiced their support for this legislation, saying that these bills offer a sensible and comprehensive approach to the matter. The AFC said that the bills recognise that a least cost approach is the best way forward and that reducing emissions will position our economy for the future. The Australian Institute of Refrigeration, Air Conditioning and Heating have also recognised the value of these bills, as they provide Australia with a world leading program for the control and management of ozone-depleting substances and synthetic greenhouse gases.

There were some concerns raised regarding the limits of these amendments—in particular, the issue of the continued use of HCFCs. The Greenchill Technology Association argued very strongly their belief that the bills should go further in their effort to increase the use of natural refrigerants instead of HCFCs. They said that, while trying to manage and control HCFC emissions was a worthy objective, emissions would continue to increase if HCFCs continued to be used and that the main thrust of the legislation should be to effectively reduce emissions by using natural refrigerants instead. Labor believes that the concerns raised by Greenchill and by others are best addressed through the development of policy on natural refrigerants rather than through seeking to amend the bills before the Senate this evening. The Labor Party is prepared to argue the case for the advancement of natural refrigeration and to give them due policy consideration. That consideration, however, does not belong as part of these amendments.
I would like to highlight two pertinent reasons why policy must be immediately pursued and implemented—and, more importantly, adhered to. The first point is that this legislation is the product of a policy commitment made by the Commonwealth government back in 1995—the then Labor government. Let me reiterate this point: the commitment to contain greenhouse gas emissions and provide greenhouse gas dividends was made back in 1995. Since this time we have seen nothing but delay from the Howard government, with the result that millions of tonnes of preventable greenhouse gas emissions have been allowed to enter the atmosphere over the last decade. We cannot procrastinate any longer. Had the government put forward this legislation and introduced it in a more timely fashion, we would have saved much more in terms of greenhouse gas emissions.

The second point of importance relates to methyl bromide. Methyl bromide is a powerful ozone-depleting substance and is an important fumigant. Under our obligations to the Montreal protocol, all uses of methyl bromide other than for quarantine and pre-shipment purposes are to be phased out in Australia by 1 January 2005. As a modification to this requirement, however, a formal decision was adopted in 1997 to allow for the granting of limited critical use exemptions in rare cases when several strict criteria were met. It now appears that the Howard government may support dubious exemptions which compromise the intent of this phase-out. This is an issue that the opposition is committed to monitoring to ensure that the Howard government does not take a laid-back approach to critical use exemptions and maintains stringent controls over the use of methyl bromide.

Although some concerns have been raised, in general these bills represent a marked improvement on the current arrangements for management of both ozone-depleting substances and synthetic greenhouse gases released from compounds used as their replacements. Australia has a sound record in the area of control of ozone-depleting substances. We have met targets and deadlines proposed in the Montreal protocol and the subsequent upgrades and amendments to these protocols. In most instances, we have been successful in not only meeting but exceeding those targets ahead of time.

Ozone depletion is an important problem, and the widespread adoption of international protocols has helped to limit the damage. Hopefully, the problem will be largely remedied in coming decades. Although most of the current indications are positive that this will be the case, there are still some areas for concern. The CSIRO, for example, has shown that, while most of the levels of the controlled ozone-depleting substances are decreasing in the atmosphere, CFC-22 levels are still increasing. While the rate of release of CFC-22—which was the most commonly used CFC and is the most abundant ozone-depleting substance in the atmosphere—has slowed greatly, it has not stopped, and this is a cause for concern.

A second area of concern, which is indirectly related to ozone depletion, is global warming due to greenhouse gas emissions. Although ozone depletion and greenhouse warming are two quite different issues, there is a growing worldwide consensus that their combined effects significantly affect climate change. Climate change is, without question, one of the most serious environmental issues facing the planet. Each day we see increased evidence of its impact: droughts, bushfires, floods, cyclones and increased susceptibility to tropical diseases flowing from many of those occurrences.

The Beijing amendments, which are now effectively before the Senate in the form of
these bills, extend the range of control considerations to include not only ozone-depleting gases but also gases that, while they do not directly affect ozone depletion, do contribute to global warming and climate change. The two gases primarily responsible for high levels of greenhouse gas emissions are methane and carbon dioxide. Increases in the level of these two gases in the atmosphere over the past 100 years or so accounts for around 90 per cent of total emissions generated by humans. Carbon dioxide, principally, and methane, as a secondary emitter, are the substances whose emissions must be controlled if global warming is to be effectively managed. Control of these greenhouse emitters relates directly to measures covered in the Kyoto protocol, and it is appalling that, in spite of successful negotiations to obtain concessions for a number of special issues that affect Australia, the Howard government has continually refused to ratify the Kyoto protocol on climate change.

The Beijing amendments being recommended today will impact on global warming in two main ways. Firstly, by extending the types of measures adopted for control of ozone-depleting substances to others that have global-warming potential—in particular, finding replacements for ozone-depleting refrigerants will bring them under controllable regulations. The second focal point is to centralise regulations into a single, consistent set of national rules. National regulations have obvious advantages in terms of certainty and efficiency, particularly for organisations that operate in several states or territories. While the opposition supports the points of these amendments in principle, we do have concerns regarding the government’s commitment to honouring them. The Howard government’s ongoing failure, for example, to ratify the Kyoto protocol highlights its scant regard for the effects of greenhouse gas emissions on global climate change.

Labor has grave concerns about putting this kind of responsibility into the hands of the Howard government, a government that has shown it will allow its prejudices to drive modifications in regulations and procedures as and when it suits them. However, we do recognise that we must take appropriate action now to deal with the effects human influences are having on global climate change and therefore support the amendments to the ozone protection bills to limit the effects of these problems for generations to come. While Labor supports these bills, it should not be seen as the solution to Australia’s global warming problems. Although the original ozone protection bill introduced by Labor some years ago has gone a long way toward protecting the ozone layer, there is still much work to be done, particularly in limiting greenhouse gas emissions. I urge the Howard government to do the responsible thing and to ratify the Kyoto protocol to protect Australia’s climate for all of our futures.

Senator ALLISON (Victoria) (7.15 p.m.)—I rise to speak on the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, the Ozone Protection (Licence Fees—Imports) Amendment Bill 2003 and the Ozone Protection (Licence Fees—Manufacture) Amendment Bill 2003. The Vienna convention and the Montreal protocol have proven to be amongst the most successful international environmental agreements in history. They were made in the mid-to late 1980s in response to a mountain of scientific evidence that demonstrated that certain chemicals were depleting the ozone layer.

As most people now know, the ozone layer absorbs harmful ultraviolet B radiation from the sun and also screens out lethal UVC radiation. Without the ozone layer, life as we know it would not exist. Consequently, when scientists first realised in the early 1970s that chlorofluorocarbons—CFCs—destroy ozone
in the upper atmosphere alarm bells began to ring. Since then, as the scientists predicted, we have witnessed the deterioration of the ozone layer above the Antarctic to the point where the so-called ozone hole now covers an area of around 30 million square kilometres. The chemicals responsible for the depletion of the ozone layer are primarily from the halocarbon family and are used in such things as airconditioning units, aerosol cans, refrigeration equipment and pest control products. These chemicals are now widely known as ozone-depleting substances.

The Vienna convention and the Montreal protocol established a framework and a process for phasing out the use of ozone-depleting substances. The cornerstone of this system is the phase-out schedules which put in place arrangements to prevent the production and distribution of these harmful gases. These schedules were designed to be periodically updated in response to scientific evidence and need. The phase-out schedules have been updated through a series of international agreements, including those in London in 1990, Copenhagen in 1992, Vienna in 1995, Montreal in 1997 and Beijing in 1999. Unfortunately, the effectiveness of the schedules has been undermined by the failure of certain countries to ratify the new agreements. However, on the whole the framework has been very successful in reducing the use of ozone-depleting substances.

The United Nations has estimated that, without the convention and the protocol, global consumption of CFCs would have reached about three million tonnes by 2010 and eight million tonnes by 2060, resulting in a 50 per cent depletion of the ozone layer by 2035. The consequences of this for humans could have been catastrophic, including sharp increases in the incidence of skin cancer and cataracts. There would also have been significant consequences for the environment.

Due to the operation of the Montreal protocol, between 1986 and 2001 the total consumption of CFCs worldwide fell by almost a million tonnes. In developed nations the consumption levels fell from around 900,000 tonnes to under 7,000 tonnes. The results in developing nations were less dramatic, with only a 15 per cent decrease in usage. However, these countries were responsible for less than 20 per cent of usage overall in 1986. Further, in 2001 three of the 130 developing countries—Brazil, China and the Republic of Korea—accounted for almost 50 per cent of total consumption amongst developing nations. Since then a number of countries have made considerable progress in reducing the use of ozone-depleting substances. Indeed, only recently the United Nations presented China with an award for its efforts to reduce the consumption of ozone-depleting substances.

In all, the Vienna convention and the Montreal protocol have provided tangible evidence of the benefits of international cooperation in addressing global environmental issues. It is a shame that our government has not learnt from this process and sought to encourage a similar approach to addressing climate change. Instead, it has participated in the United States led conspiracy to derail the Framework Convention on Climate Change. The tragic irony of this situation is that global warming is likely to result in further damage to the ozone layer and will undermine the success of the Vienna convention and the Montreal protocol. We can only hope that the government will review its policy towards the FCCC and the Kyoto protocol in the near future.

Despite the success of the Vienna convention and the Montreal protocol, a considerable amount remains to be done at both in-
ternational and national levels to address ozone issues. A key reason why ozone-depleting substances remain a significant problem is that many industries have sought to adapt to the phase-out of CFCs by developing replacement substances that are either ozone-depleting or highly potent greenhouse gases. This process started with HCFCs, which were introduced soon after CFCs began to be phased out. While they are an improvement on CFCs, HCFCs still degrade the ozone layer and are now in the process of being phased out. That process is likely to take at least half a century.

Many other new ozone-depleting substances have also emerged, some as replacements and some as new products. The latest wave of replacement gases bring with them a collection of new challenges. Most relevant to the current debate are the so-called synthetic greenhouse gases, or SGGs. These include such things as hydrofluorocarbons, or HFCs, and perfluorocarbons, PFCs. These are highly potent greenhouse gases. As a result, whilst we are solving one problem we are in effect contributing to another.

The Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003 is intended to partially address these problems by ensuring that the manufacture, export, import and use of SGGs and new ozone-depleting substances are appropriately regulated and controlled. It will introduce a licensing system for the import, export and manufacture of SGGs. This will ensure that ozone-depleting substances and their replacements, SGGs, are subject to similar controls, although I understand that the SGG controls will target use and emissions while the ozone controls target imports.

If administered appropriately and coupled with incentives to reduce SGG use, this regulatory system could make a valuable contribution to reducing Australia’s greenhouse emissions. The Democrats would like to see a time line for the phase-out of SGGs and their replacement with natural refrigerants. However, we recognise that it may be too early at this stage to entrench this time line in legislation. Further time needs to be available to develop and commercialise environmentally benign replacement substances and to ensure that refrigerant and airconditioning industries are appropriately educated and accepting of the changes. Consequently, while sympathising with Senator Brown’s attempts to introduce a statutory time frame for the phase-out, we understand that the information that would allow us to do that is not yet available, and we would be relying to some extent on guesswork.

The bill will also introduce a licensing system for refrigeration and airconditioning equipment imported into Australia containing HCFCs, which are ozone-depleting substances, or HFCs, which are SGGs. This is intended to ensure that the regulatory system cannot be undermined by simply acquiring manufactured products containing these gases from overseas. The bill will also extend the licensing system so that it applies to a new ozone depleting substance, bromo-chloromethane or BCM, and will enable the Commonwealth to establish a nationally consistent framework for the regulation of the end uses of ozone-depleting substances and SGGs.

Previously, the regulation of end uses of ozone-depleting substances was left to the states and territories. This has led to different regulatory regimes applying in the relevant jurisdictions. That has resulted in confusion and unsatisfactory regulatory outcomes. This bill will enable the issue to be resolved. However, disappointingly, the framework for the end use regulatory regime was not placed in the bill but rather will be outlined in the regulations. That, of course, reduces the scope for parliamentary scrutiny of this re-
gime. We will be looking at the regulations when they are released to ensure that they are appropriate.

This bill makes changes to the Ozone Protection Reserve. The reserve will now be called the Ozone Protection and SGG Account, and it will be able to be used for a far broader range of purposes. At present, the Ozone Protection Reserve can only be used for reimbursing the Commonwealth for costs associated with furthering the HCFC and methyl bromide phase-out programs, providing information about those programs and administering the licensing and quota systems. This bill will enable the new Ozone Protection and SGG Account to be used for additional purposes, including furthering the ODS phase-out program, emission minimisation programs for ozone-depleting substances and SGGs and paying for the Commonwealth’s costs of managing the National Halon Bank. The government has also assured us that, as a result of these amendments, the moneys in the account can be used to support research into replacement substances. I think that is a commendable initiative.

An issue the Democrats are concerned about is the continued use of methyl bromide as a quarantine treatment for agricultural commodities. Under the terms of the Montreal protocol, methyl bromide must be phased out in developed countries by 2005. However, this phase-out requirement does not apply to quarantine and pre-shipment uses. As a result, approximately 7,000 ODP tonnes of methyl bromide are used annually for these purposes. The justification provided for this exemption is that there are insufficient alternatives to methyl bromide for quarantine and pre-shipment uses. Whilst that may have been partially correct in 1992 when the agreement to phase out the use of methyl bromide was made, this argument is no longer as convincing. There are alternative methods of controlling pests and diseases that could be applied for quarantine and pre-shipment uses, and we think these should be pursued.

Obviously, in order for this to be achieved, the government will have to seek agreement with importers of Australian products on the effectiveness of these alternatives. Unless this occurs, Australian exports could suffer considerable losses as importing countries may reject Australian products. However, we call on the government to devote more resources to developing environmentally benign replacements for methyl bromide and to engage importing countries to convince them of the effectiveness of those alternatives.

While the Ozone Protection Act 1989 and these bills are not perfect, they have the capacity to achieve important environmental outcomes. The Democrats would like to see more done to phase out the use of ozone-depleting substances and to commence the process of phasing out the use of SGGs. However, the changes in the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003 are a necessary step in the right direction. Accordingly, we will be supporting these bills.

Before finishing, I want to briefly address Senator Brown’s request to refer this issue to a committee. The difficulty we have with this request is that it would leave SGGs, pre-charged equipment and other ODSs, unregulated. At the end of the day it comes down to a choice: either we allow a bill to pass that, while not perfect, establishes a regulatory system, or we defer the bill to a committee in the hope of achieving outcomes that are probably unachievable at the present moment. The Democrats would like to see a public inquiry into the phase-out of SGGs. However, we are not prepared to allow the positives associated with the bill to pass us
by or be delayed any longer in order for this to be achieved.

Senator BROWN (Tasmania) (7.28 p.m.)—I listened with appreciation to the last two speeches on the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, the Ozone Protection (Licence Fees—Imports) Amendment Bill 2003 and the Ozone Protection (Licence Fees—Manufacture) Amendment Bill 2003. I am a bit more optimistic than Senator Allison about what is achievable—even in the current legislative climate. We proposed that this go to a committee over the Christmas break and that it be dealt with in February—which is not much of a delay—to allow the community organisations and businesses that are involved in this area to bring their expertise to bear on the legislation. That is a very healthy thing to do with any process as complicated as this one and any process where we are still looking for the answers to the problem—which is the damage that ozone-depleting substances have done to the atmosphere that protects all life on the planet, including we human beings—of how to stop that human impact.

What we do know is that the ozone-depleting substances, particularly chlorofluorocarbons, CFCs, have been damaging the atmosphere and creating the so-called hole in the ozone layer over the last few decades. In particular these have come from artificial propellants and refrigerants which have brought new chemical complexes not known in the natural environment in anything like these quantities, if at all. Suddenly they have been put into the environment by mass production through inventions largely in the American and European industrial complexes. In the 1970s it was hypothesised that this could damage the upper atmosphere and, lo and behold, the forecast was right.

One of the great hopes of the global community working together comes through the Montreal protocol of more than a decade ago by which the world’s manufacturers primarily got together and said, ‘We have got to do better than this, otherwise the damage is going to far outweigh the advantage of these new refrigerants and propellants.’ So the Montreal protocol, which has since been amended a number of times, came into place. By global agreement it was seeing that the damage to the environment, including to our own potential to live on this planet, was so great and coming so fast it outweighed the advantages of having the latest chemicals propel our mosquito repellents or freeze our fridges when there were alternatives.

The Greens position—and it is backed up by sections of industry and by best practice in Europe and the Northern Hemisphere—is to go back to the natural refrigerants and propellants. With propellants the problem has been replaced, but we need to do the same with refrigerants now and go back to the pre chemical whiz-bang but environmentally damaging era of the last half century. This legislation does not adequately do that. This legislation is not designed to go to natural refrigerants; it is designed to allow the continued use of HCFCs which are damaging to the environment because they have an enormous impact on promoting global warming.

They are two separate things. One is past damage to the ozone hole created by HCFCs; but the problem now is that the new chemicals, which do not damage the ozone layer in the same way, enormously promote global warming. They do a much bigger job tonne for tonne—in fact in some cases they have an impact on global warming hundreds of times more significant than carbon dioxide, the biggest global warming gas and the one that we are all familiar with.
So the problem with the replacement hydrocarbons used in refrigeration is that they are a massive cause of global warming. That is the penalty involved. The human community is moving to fix up the problem of damaging the ozone layer, but we are far from fixing up global warming—and here we are allowing an alternative technology which promotes global warming. That is what this legislation does, unfortunately—and I will talk about it a little bit more.

Why should we be taking that option when there are natural refrigerants which do not damage the ozone layer and do not enhance global warming? That is the point of the amendments that the Greens have brought forward into this debate tonight, and that is the feedback, by the way, that we would have got from the business community—promoting natural refrigerants—had they been given an opportunity to come before a Senate committee. They ought to have been given that opportunity. I am astonished that only the Greens supported that opportunity being given through a Senate committee when it was voted down by all other components of the Senate yesterday.

The purpose of the bills before us is to implement the most recent amendments to the Montreal protocol—the 1999 Beijing amendment—and to regulate the synthetic greenhouse gases or HFCs which are replacing the ozone depleting gases already banned in refrigerant and airconditioning systems. You have got to note that both the greenhouse gas promoters and the ozone destroyers are environmentally damaging fluorocarbons. It is important to note that one destroys the ozone layer, as I have said, and the other exacerbates global warming. They are no-win options.

The alternative, however, is natural refrigerants, or better building design to avoid the need for airconditioning, which is a major user these days of these refrigerants. Natural refrigerants are naturally occurring substances. They include ammonia, carbon dioxide, hydrocarbons, nitrogen and water, and they have minimal environmental impacts. They have been widely adopted in Europe, China, India and, recently, by major Japanese manufacturers. In Australia the Fluorocarbon Council represents importers and users of fluorocarbons—because we do not manufacture these domestically—that is, the people involved in producing refrigeration and similar manufactured goods for which fluorocarbons are imported. These interests, through the Fluorocarbon Council, have largely captured government policy and resources to perpetuate the market for the global warming causing fluorocarbons.

The ozone legislation we have here is being used to cement this situation because it promotes rather than replaces the ozone-depleting HCFCs with greenhouse gas exacerbating HFCs rather than with natural refrigerants. The legislation promotes a transition to the global warming gas option but not to natural refrigerants. That is what the Greens amendments will aim to do: to go to the better natural refrigerant option. The legislation sets funding mechanisms and, potentially, industry boards, but they represent only the fluorocarbon side of the industry. They leave out the natural refrigerant component of the industry, and I ask Senator Allison to understand that when it comes up in the amendments.

There is a plethora of industry organisations in the field. The natural refrigerant organisations include: the Natural Refrigerants Transition Board, which was launched in February this year; and Greenchill of New South Wales. On the other side is the much more established fluorocarbon lobby, which is advantaged by this bill. It includes the Fluorocarbon Council and also the National Refrigeration and Air Conditioning Council,
NRAC. NRAC was established in 2001 with a grant from the Greenhouse Gas Abatement Program—that is, Commonwealth money—to minimise HFC emissions. Because natural refrigerants are not regulated by the Commonwealth and there is no environmental requirement to limit their emissions, they are not represented directly on NRAC, this National Refrigeration and Air Conditioning Council, where they should be.

There is also a lobby group called Refrigerant Reclaim Australia, which was established by the Fluorocarbon Council in 1993 to implement a scheme to reclaim, recycle and destroy fluorocarbons in Australia. In 2001 the Greenhouse Gas Abatement Program—Commonwealth money—gave $3.5 million to set up NRAC and supposedly to save 3.6 million tonnes of carbon dioxide equivalent by 2008-12. NRAC has apparently failed to meet its targets and I will be interested to hear from the minister how well it is doing in achieving its targets, including attracting industry support. I will also be asking the minister about its financial situation. The Fluorocarbon Council gave NRAC $50,000 in the last financial year. I will be asking whether NRAC has met its targets under the Greenhouse Gas Abatement Program and what the role of the Fluorocarbon Council is with it. I will be asking who the members of the advisory board are and whether there are representatives of the natural refrigerant industry, environment groups and consumer associations on that advisory committee.

The new legislation turns the Ozone Protection Reserve—that is a fund—into the Ozone Protection and Synthetic Greenhouse Gas Account. Its purposes are to cover administrative costs and to fund programs to phase out ozone-depleting substances and emissions minimisation programs for ozone-depleting substances and synthetic greenhouse gases—that is, it does not fund programs to promote natural refrigerants or to reduce the need for airconditioning. They are the twin aims that this legislation should be giving priority to.

The new legislation foreshadows the establishment of a national industry board through regulations to administer the new licensing system for fluorocarbon refrigerants. The Greenhouse Office called for expressions of interest from existing industry bodies but has rejected all but NRAC—and I will be asking about that. As I have said, we want to see the massive increase in airconditioning reversed by better building design and proper allocation of costs. It is estimated that in Melbourne this year 100,000 new airconditioning units will be put in place. That is not only a great impost on peak load electricity—which is the ostensible argument for Basslink, which will cause major problems for Tasmania’s environment, including the potential for wood-burning furnaces—but also has the problem of putting into place, in a country which is not using natural refrigerants except in small quantities, refrigeration systems which are potentially damaging the atmosphere by enhancing global warming.

As I have been saying, we also want to promote the transition from fluorocarbons to natural refrigerants and to make it an explicit objective of that new industry board. Our amendments would incorporate the transition to those objectives and would ban the import of small domestic airconditioners—split system airconditioners—and, if I am not wrong, heat pumps, precharged with fluorocarbons. We are saying: let us not have fluorocarbons being imported into the country in ready-made, precharged air conditioners, in their thousands. That is not regulated; they come without the overview that exists in other countries. That should be done here in this country; we should be in total control of these fluorocarbons within our country.
We have a number of amendments, as I have said. We will be pushing for that national industry board with oversight of this industry to include representatives from refrigeration and airconditioning contractors and their association—the Institute of Refrigeration and Airconditioning Service Engineers, Airconditioning and Mechanical Contractors Association—NRAC, TAFE institutes, national environmental organisations and consumer organisations. All of them, and all of us, have a big interest in this matter because it impacts on the sort of world that we are bequeathing to the next generation.

I have other matters I will be raising during the committee stage but I will leave that until the amendments come up. I hope that the government will seriously consider the amendments we have put forward, and in particular the need to boost the natural refrigerants industry in Australia—as it has been boosted by very strong phase-out proposals in Northern Hemisphere countries like Germany. We can do it in Australia. We can emulate that and that is what the Greens amendments to this important legislation would do if they were adopted.

Senator HILL (South Australia— Minister for Defence) (7.44 p.m.)—I thank all honourable senators who have contributed to this debate. The bills before the Senate, the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, the Ozone Protection (Licence Fees—Manufacture) Amendment Bill 2003, and the Ozone Protection (Licence Fees—Imports) Amendment Bill 2003, will ensure that Australia remains an international leader on action to protect the earth’s ozone layer and climate. For the first time, Australia will have a truly national regulatory scheme for the management of both ozone depleting substances and the synthetic greenhouse gases used as their replacements. This national approach will deliver environmental gains more efficiently and realise benefits to industry in terms of increased certainty and consistency.

Australia is a world leader in ozone protection, dramatically curbing its consumption of ozone depleting substances in accordance with, and, in some instances, in advance of, its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer. However, in phasing out ozone depleting substances, Australia, like most other countries, has increasingly turned to hydrofluorocarbons and perfluorocarbons, which are potent greenhouse gases. Compared to carbon dioxide, they are thousands of times more potent on a tonne for tonne basis. While still delivering a better environmental outcome, their increasing use as a replacement for ozone depleting substances makes their responsible management important to Australia’s achievement of both its ozone protection objectives and its climate change objectives.

These bills address this issue by extending Australia’s ozone protection program by adding supply controls to the synthetic greenhouse gas replacements of ozone-depleting substances. These bills also help industry improve Australia’s management of both sets of gases by enabling the establishment of a consistent national approach to end-use regulation. Finally, these bills ensure that Australia remains at the forefront of global ozone protection by implementing the Beijing amendment to the Montreal protocol. The Beijing amendment adds a new ozone depleting substance to the list of controlled substances and bans the trade of hydrochlorofluorocarbons with countries who have not agreed to phase out these gases.

All of the amendments to these bills follow extensive consultation with industry and other stakeholders over the last four years.
and have received widespread support. Industry views them as providing necessary certainty and consistency with regard to its obligations to effectively manage ozone depleting substances and their synthetic greenhouse gas replacements. In developing this approach, government has ensured industry’s ongoing competitiveness whilst protecting the environment. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS LEGISLATION AMENDMENT BILL 2003

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (7.48 p.m.)—I move Greens’ amendment (1) on sheet 3226:

(1) Schedule 1, page 3 (after line 19), after Item 4, insert:

4A Paragraph 3(a)

After “atmosphere”, insert “and of synthetic greenhouse gases”.

4B Subparagraph 3(c)(i)

After “substances”, insert “and synthetic greenhouse gases”.

With the licence of the committee, I will ask some questions which cross the field of all my amendments as we go. In the principal act—the Ozone Protection Act 1989—in section 3, objective (a), it says that the objective is to institute a system of controls on the manufacture, import and export of substances that deplete ozone in the atmosphere. The amendment would add the words ‘and of synthetic greenhouse gases’, and that would institute a system of control on the manufacture, import and export of substances and synthetic greenhouse gases that deplete the ozone layer.

The reason for doing that is that the amendments we are bringing forward here are to help promote natural refrigerants. We ought to be very aware of the fact that we are trying to reduce and control the manufacture of not just goods that deplete the ozone but also those that enhance global warming. Unfortunately, that is what the bill does as it stands because it is promoting global warming gases, but not natural refrigerants, as an alternative to ozone depleting gases. That is the point that I will be asking the minister to explain: why the bill of itself does not promote natural refrigerants or the need for the reduction of airconditioning—through building codes and education campaigns with people who are building houses—but simply promotes alternative fluorocarbons, which enhance global warming. There are three options. We got rid of the bad one: ozone depleting gases. We are moving to the middle one: alternative fluorocarbons, which cause global warming. We should be going straight to the best one: natural refrigerants, which do not cause global warming and do not damage the ozone layer. I would like the minister, if he would, to respond to that at the outset.

I have just been given the latest figures for the hole in the ozone layer. In spring, the figure was—and others may have cited this—28 million square kilometres, the biggest ever recorded, over Antarctica and the Southern Hemisphere. We have a long way to go to fix that, but, as my fellow speakers in this debate have pointed out, we are going backwards as far as global warming is concerned. The problem I have with this legislation tonight is that it is a global warming promoter. The minister may argue that it is small in the order of things, but we should be going to the alternative of natural refrigerants in a much more vigorous and mandatory fashion, as they are doing in Germany and elsewhere. I ask the minister if he can re-
spond to that general point before we get into the specifics.

Senator Hill (South Australia—Minister for Defence) (7.52 p.m.)—I do not think that we disagree in principle with what Senator Brown is saying. He is saying that we should encourage natural refrigerants and that they have advantages over those that are greenhouse intensive. In fact, the amendments that we have before the chamber, as I understand them, have the effect of regulating the import of the synthetic greenhouse intensive products. In other words, without these amendments you have no restraint—correct me if I am wrong—and therefore you are worse off than with this legislation. So I would have thought that on that basis Senator Brown would be supporting this legislation.

Senator Brown—I am. I am saying that it falls far short of where it should be.

Senator Hill—For you, it is always far short of where it should be. But where are we tonight? We are looking at an improvement in the existing situation. Australia’s record in relation to restraining ozone depletion has been commendable; we have been a world leader. As I said in my summing up, what have been substituted are products that are very greenhouse intensive. Now we would like to manage that, for a different purpose. The first one was to do with the ozone issue and the second is to deal with the greenhouse issue. In principle, we all seem to be heading in the same direction. It is just that Senator Brown would like us to head much further, but I do not know that he is suggesting the way in which that should occur.

Senator Brown (Tasmania) (7.54 p.m.)—I must have been a bit more technical than I thought I was. I am suggesting the way, absolutely. I am saying we should be going to natural refrigerants, and I listed them. We should not be promoting the HCFCs, because they are damaging in terms of global warming. I wonder why, for example, we are still allowing and not prohibiting the import of airconditioners which have these global warming gases already built into them. One of the problems is that they can be installed by a handy person—it does not have to be a qualified installer under current regulations—and the gases can be released, and they do get released. Would it not have been much wiser—leaving aside natural refrigerants, even though it would be better to use them—as far as the global warming HCFC gases are concerned, if we were here insisting that airconditioners be charged in Australia with the right gases and under regulations?

There are regulations following this legislation: we do not have them with us tonight. But wouldn’t it be much more prudent to install the refrigerant gases—particularly the global warming ones, which we are concerned about—under regulated and professional installation rules? As it is, any Joe Blow can get one of these imported airconditioners, install it and release gases on the way. Naturally, the professional organisations in the fields of plumbing and so on believe that they are licensed to do this and they should be in charge of it. Fluorocarbons are not to be mucked around with and we should have domestic rules about that, but that is not in this legislation. I do agree with the legislation; it just does not go far enough.

Senator Hill kindly says that the Greens usually find that legislation on environmental matters does not go far enough, but all we are asking for here is something like world’s best practice. What I am concerned about is that the government is being nobbled by industries representing the production of HCFCs and not natural refrigerants—in other words, industries which do not want to give up their current practice of charging aircon-
ditioners and so on with global warming gases and go straight to natural refrigerants. I might get specific about that by asking the minister: is it true that the Greenhouse Gas Abatement Program in 2001—he will know this because he was minister—gave $3.5 million to set up the NRAC, the National Refrigeration and Air Conditioning Council, which was supposed to save 3.6 million tonnes of CO₂ equivalent by 2008 to 2012? The minister will recognise that as the Kyoto protocol timetable. Is it meeting its targets and is it getting industry support? What is happening with that particular allocation of money from the Greenhouse Gas Abatement Program?

Senator HILL (South Australia—Minister for Defence) (7.58 p.m.)—In concluding the previous debate, I find it difficult to see how Senator Brown is supporting the legislation, because it seems to me that what he is wanting to do is to prohibit the import of HCFCs. The government are saying that we are not ready for that but that we can, in the meantime, regulate them. Therefore, our argument would be that this is a significant step in the right direction but perhaps one that is a little more realistic, bearing in mind the state of the industry and the development of alternatives.

As I understand it—and I do not want to spend too much time simply responding to Senator Brown—I am told that work on natural refrigerants is progressing in this country. As reported in the November edition of Ecolibrium, the journal produced by the Australian Institute of Refrigeration, Air Conditioning and Heating, companies finalised a comparative trial of ice-cream freezers using hydrocarbons and synthetic gas refrigerants. The report stated:

This trial has concluded that hydrocarbon freezers operate satisfactorily and deliver better environmental outcomes.

Here is an example of an industry initiative, companies moving in that direction, and we would certainly want to support and encourage them to do so. As a matter of interest, I am advised that this bill does extend the special account to support industry innovation in reducing emissions of synthetic greenhouse gases which could include projects that trial or promote the uptake of natural refrigerants—something that I would have thought Senator Brown would want.

In relation to NRAC, I am advised that it is fully meeting its milestones under the Greenhouse Gas Abatement Program. It has already certified over 5,000 tradespeople. It is fully in compliance with its GGAP deed. It has been delivering and will continue to deliver better greenhouse outcomes for Australia. Refrigerant Reclaim Australia has also received funding of $280,000 under GGAP. It is also fully compliant with its GGAP deed and has already collected over 40 tonnes of synthetic greenhouse gases which would have otherwise been vented to the atmosphere. My submission to the committee would be that Australia is heading in the right direction, it is doing it with the encouragement and the support of the government, and the passage of these amendments tonight will be a further step in that direction by, as I said, regulating these highly greenhouse gas intensive products.

Senator BROWN (Tasmania) (8.02 p.m.)—As the minister has the figures there—and I know how much the Greenhouse Gas Abatement Program relies on that information—can the minister give us the figures of achievement for NRAC in terms of better greenhouse gas outcomes. The minister has assured us of these figures, but 'no figures, no believe'. Let us have the figures if we are going to accept that statement.

Senator HILL (South Australia—Minister for Defence) (8.02 p.m.)—I will see
if I can get a figure for that, but it seems to me that the particular program with NRAC is more a facilitative process. Whether it can be translated into tonnes of greenhouse gas at this stage, I am not sure. But I will take that on notice and come back with at least an answer, whether or not the answer pleases Senator Brown.

Senator BROWN (Tasmania) (8.03 p.m.)—But, Minister—through you, Mr Temporary Chairman—NRAC is supposed to save 3.6 million tonnes carbon dioxide equivalent by the end of the decade. We must know how it is getting on. You cannot have a goal like that if you do not have figures, and I would have thought they would be here tonight. This is very specific and germane to this piece of legislation, and bland statements such as: ‘We’re achieving better greenhouse gas outcomes,’ should come with those figures. I know when the minister says he will go away and look for them he will do exactly that, but they should be here tonight. We are talking about this legislation tonight. I have difficulty in accepting that NRAC has achieved its goals if the minister cannot come up with figures to point to that. In the last financial year, as I said earlier, the Australian Fluorocarbon Council gave NRAC $50,000. Can the minister tell me what that was for?

Senator Hill—Regrettably, no.

Senator BROWN—I wonder if the minister would be kind enough to find out?

Senator Hill—I will endeavour to do so.

Senator BROWN—I would be very grateful.

Senator LUNDY (Australian Capital Territory) (8.05 p.m.)—You are all being very polite tonight, which is good to see. I rise to say that Labor has resolved not to support the Greens’ amendments. It is not because we do not think this issue is extremely important. As I said during my second reading contribution on this bill and related bills, we think the issue of natural refrigerants is extremely important and it requires serious policy consideration, something which Labor is in the process of doing. As I also said, we do not believe dealing with this issue in this way is appropriate for this bill. We think it is important that this bill is passed as soon as possible. For the record, because it may save some time, this is our view in relation to all of these amendments.

Senator ALLISON (Victoria) (8.06 p.m.)—It seems to be a good time to raise a few questions that came up in my speech in the second reading debate. I wonder, Minister, if it is possible to indicate what the government is doing currently to phase out SGGs—if you could start with that one.

Senator HILL (South Australia—Minister for Defence) (8.06 p.m.)—This bill is all about regulating synthetic greenhouse gases.

Senator Brown—That’s the problem.

Senator HILL—Is open slather a better solution? We do not think it is. We think this is a step in the right direction. There was an inadvertent detrimental consequence of these products that were an alternative to ozone depleting substances. Now we are seeking to address that inadvertent consequence. That will take some time, and the regulation of these synthetic gases is a step in the right direction.

Senator ALLISON (Victoria) (8.07 p.m.)—It would be useful for this debate for us to understand, for instance, what the government has in mind in terms of phasing out those SGGs and what the viability of natural refrigerants as replacements for synthetic greenhouse gases would be over, say, the next 12 months. Would it be anticipated that it would be more like 10 years? Is there any kind of intelligence the minister can share
with those of us here tonight about that likelihood?

Senator HILL (South Australia—Minister for Defence) (8.08 p.m.)—I do not think that the government is working to a specific timetable. If the government is encouraging the development of yet other alternatives, as I indicated in answer to Senator Brown, and in the meantime we are regulating for synthetic greenhouse gases, the timetable would obviously depend on the extent to which industry can take up better alternatives that we will encourage and support.

Senator ALLISON (Victoria) (8.08 p.m.)—I will add to that. I wonder whether it is possible for the minister to indicate whether there is a formal review that is taking place or when we might expect some advice about the viability of natural refrigerants. It would be handy to know what consideration has been given to this by the department, or whether it is not something the government thinks is a serious option.

Senator HILL (South Australia—Minister for Defence) (8.09 p.m.)—The government has not put in place a structure for a review. That is something that obviously can be undertaken at any time. We clearly think that it is premature at the moment, but at some time down the track, as the alternatives develop further, taking stock may well be in order. We would suggest that that is a judgment to be made another day.

Senator ALLISON (Victoria) (8.09 p.m.)—I will pursue a similar line of questioning about methyl bromide for quarantine and preshipment uses. Is a phase-out being proposed? If so, over what time frame would that be? Will the government be moving to remove the exemption in the Montreal protocol for the use of methyl bromide for quarantine and preshipment uses some time in the future?

Senator HILL (South Australia—Minister for Defence) (8.10 p.m.)—I am not sure where we are up to with methyl bromide. I am advised that, for quarantine and preshipment uses, methyl bromide is exempt. It is correct that alternatives to this substance are becoming available in some instances. However, the path towards a transition to these substances is not a straightforward one. For an alternative to be viable, it must be tested and proven to be effective against the quarantine pests currently controlled with methyl bromide, and with regard to occupational health and safety standards it must not pose unacceptable threats to the health of those who would use it. In the case of quarantine treatments of export materials, agreement must also be negotiated with the country of import to ensure that an alternative meets their own requirements—a process that can take up to 10 years. Any immediate freeze or phase-out of the product could therefore have dire consequences for Australia’s high quarantine standards and could restrict some import and export trade.

Of course, the government is keen to ensure that alternatives to methyl bromide are used wherever possible and that industry is encouraged to make such a transition, even where it might take some time. To this end, the department of environment is working with relevant import and export sectors, the Australian Quarantine and Inspection Service and other relevant agencies to develop a strategy to reduce and manage Australia’s quarantine and preshipment use of methyl bromide in the short, medium and long term, wherever possible. I should also note that Australia’s consumption of methyl bromide for that purpose is far below the 7,000 ozone-depleting tonnes mentioned earlier, in 2002, the most recent year for which we have full records of our quarantine and preshipment consumption, which was in the
vicinity of over 450 metric tonnes or about 270 ozone-depleting tonnes.

Senator BROWN (Tasmania) (8.13 p.m.)—I will not labour this but I will just ask: is there really anybody in this committee who cannot support amendment (1)? It simply brings the principal act up to date with what we are doing tonight. We are dealing with the CFCs which are synthetic greenhouse gases, so it simply expands the first objective of the act to say that we are not just controlling the manufacture and import and export of ozone-depleting substances but also of synthetic greenhouse gases. I am not talking about prohibitions here; I am talking about the fact that this legislation and the amendments in this legislation are towards the control of the manufacture, import and export of such things.

Senator HILL (South Australia—Minister for Defence) (8.14 p.m.)—I should answer that. We are opposing it for a very technical reason in that the objectives have been drawn in a way which limits them to substances that deplete ozone in the atmosphere as covered by the Montreal convention and protocol. Because synthetic greenhouse gases are not ozone-depleting substances, they are not controlled under that treaty, and therefore, on my advice, the way in which Senator Brown has sought to include that reference is technically invalid. What he says is right in principle; there is no secret about that. We are seeking to regulate synthetic greenhouse gases for other than ozone reasons. But we are not seeking to do it under the Montreal convention; we are seeking to do it under the climate change convention.

Senator BROWN (Tasmania) (8.15 p.m.)—It ought to be there. If you look at the bill we are dealing with, which amends the Ozone Protection Act, on the front page it is summarised as: A Bill for an Act to amend legislation relating to ozone protection and synthetic greenhouse gas, and for related purposes ...

It is here on the front of the bill we are dealing with tonight but it is not in the objectives of the act it is amending. That is a bit sloppy, to say the least. It ought to have been translated into the objectives in the principal act. I hear the technical nicety of the reasoning for saying that the amendment does not quite do that, but the drafters of the bill should have foreseen that and put the objective of this amending bill as we have it into the principal act.

Question negatived.

Senator BROWN (Tasmania) (8.17 p.m.)—I move Greens amendment (2):

(2) Schedule 1, item 5, page 3 (lines 20 to 22), omit the item, substitute:

5 Subparagraph 3(c)(ii)

(ii) encourage the use of natural refrigerants; and

(iii) avoid the need for air conditioning;

This amendment is consistent with the Greens’ amendments throughout. It would add to the objective that we are dealing with here with the two new phrases ‘encourage the use of natural refrigerants’ and ‘avoid the need for air conditioning’. I wonder if the minister might respond to the second point. It is very important here that we understand that good environmental design is going to be absolutely imperative as we move further into this century. Housing, for example—but buildings of all sorts—is horribly wrong in Australia. Maybe the ACT has got it better than anybody; nevertheless, we see the most extraordinarily great environmental and economic mistakes being made in new houses and housing estates all over Australia.

When you land at Tullamarine, you look down at blocks of very large houses facing the street. They are not oriented to catch the
sun from the north. They are not oriented to take into account that the prevailing winds come from the west. There is nothing. That is going to be a great expense to the occupiers of those houses for the next century. It is very poor planning that we allow that to happen. We cannot just leave that to local government. It should be state government doing it, but it has to have national leadership in it. If we can get legislation like this coming out of the states and territories, with the Commonwealth agreeing, surely we can get standard housing design parameters built into federal and state laws by agreement. That is long overdue.

People who build their houses the wrong way around end up paying hundreds of dollars every year—if not thousands of dollars—in extra heating and cooling bills and a whole range of add-on costs because they have got it environmentally wrong at the outset. You cannot blame the average citizen for that. They simply do not know that convention is extremely costly. We need leadership in this, but it is not forthcoming. What a silly thing it is to build a house that is going to be unduly hot in summer when, with a few thoughts about design, it could be five degrees cooler just from the way it is built, the way it is constructed. People have to stick in an airconditioner and turn it right up to make up for it, leading to the problems we are dealing with tonight. When you get this on a national scale, it is a massive failure for everybody.

We need national environmental design standards for housing and schools—for buildings in general—as well as for transport. While we are looking at objectives here for the people dealing with these matters to be pursuing to avoid the need for airconditioning, that is the way to do it. I wonder if the minister can say what the government’s position is as far as looking at excellence in environmental planning for buildings and new developments in this country is concerned.

**Senator HILL** (South Australia—Minister for Defence) (8.22 p.m.)—The government has a number of programs through which it is seeking to encourage better building practices in relation to greenhouse gases. It has programs that it has funded with the Housing Industry Association and with the Master Builders Association. It has sponsored reforms to the Building Code of Australia. This is the way that the government thinks it can encourage building practices that are more environmentally friendly and, as with the issue raised by Senator Brown, that produce better greenhouse gas results.

I agree with Senator Brown: with good building design, you can avoid a great deal of the need for both heating and cooling. Nevertheless, we are not dealing with a blank sheet of paper. In many instances we are dealing with a building environment that has not taken into account the better opportunities, may not have understood them and, at times in the past, was not encouraged to see the benefits in them. We have situations where elderly people need airconditioning simply to stay alive in hot weather. We have only to look at the catastrophe in France recently, which was a result of not having the benefit of that airconditioning.

So the desirability of encouraging better building practices is not in dispute. What we are debating tonight is the government’s efforts to regulate a greenhouse intensive substance, and that in itself is a different issue. The problem is that Senator Brown—and I know that his amendment is really just a hook to make his point—in bringing before the Senate this particular amendment, wants to delete objective (c) in the act that says:

To use the best endeavours to encourage Australian industry to:

...
(ii) achieve a faster and greater reduction in the levels of production and use of ozone depleting substances than are provided for in the Convention and the Protocol.

Why Senator Brown would want to delete that, I do not understand. I would have thought that he would want to entrench that. But Senator Brown’s amendment seeks to delete that and to substitute simply an encouragement of the use of natural refrigerants and an encouragement of efforts to avoid airconditioning. So the government’s response to Senator Brown’s amendment is that the way he has drafted it is inappropriate because it would delete an important objective of the bill, and to add the other objectives is not necessary because they are being addressed through other methods rather than through this particular bill before the Senate tonight, which is designed to regulate synthetic greenhouse gases.

Senator BROWN (Tasmania) (8.25 p.m.)—We are putting in some direction as to what should be done, rather than a best endeavour to do what we can, perhaps, if we try a say-nothing objective in relation to the protocol. This amendment is about trying to give some actual direction instead of comfortable words that say nothing.

Back on the design of houses and office buildings: sure people need airconditioning, but the disaster in France in which 11,000 mainly elderly people died in the recent heatwave was not caused by the lack of air-conditioning; it was caused by global warming. One of our problems is that we are promoting the use here of fluorocarbons, which enhance global warming. The Greens amendment says, ‘Let’s move across, sure. We can’t do it instantly but let’s go pronto to the natural refrigerants, which don’t do that. Let’s get out of this mess of competing synthetic gases, all of which harm the environment. Let’s get to some natural gases that don’t do that but give us the refrigerant qualities we are looking for.’

Question negatived.

Senator BROWN (Tasmania) (8.27 p.m.)—by leave—I move Greens amendments (3), (4) and (5) on sheet 3226:

13A Subsection 7(1)
Insert:

natural refrigerant means a naturally occurring substance that, in equipment or installations, transports heat energy for refrigeration or air conditioning purposes.

21A Subsection 7(1)
Insert:

split system refrigeration and air conditioning equipment means equipment that has components in two locations, usually inside and outside the building.

27A After subsection 13(2)
Insert:

(2A) A person must not import pre-charged split system refrigeration or air conditioning equipment.

Amendments (3) and (4) are definitional, and I will not labour them because I have already talked about them. Amendment (3) would insert the definition of ‘natural refrigerant’ as ‘a naturally occurring substance that, in equipment or installations, transports heat energy for refrigeration or airconditioning purposes’. Amendment (4) would insert the definition of ‘split system refrigeration and airconditioning equipment’ as ‘equipment that has components in two locations, usually inside and outside the building’. At home we have recently had a heat pump put in, which
has the big device outside under the veranda and the airconditioning unit inside.

Senator Crossin—You wouldn’t need that at all if you lived in the Territory, Senator Brown.

Senator Brown—You would in summer, because it both heats and cools—at a third or half the cost of conventional heating and cooling equipment. So its energy rating is better. The reason we got it is that we had a wood heater. That is a bit like passive smoking: you might get away with it inside your own house but you are creating problems for people walking down the street or trying to breathe the air elsewhere, as well as creating environmental problems. It was a bit expensive to install, but within a few years it will have paid for itself with the cut in the power bills.

I was made aware, then, of the installation factor with the split system refrigeration and airconditioning equipment that, if it is installed by other than a skilled tradesperson, you can get the release of the gases which create the global warming. So I think it is important. The government might take notice that these imported systems are coming into the country. Our amendments say that you cannot import the gases in these devices; you would have to have the gases put in when they get to Australia. Short of that, it should be required that they be installed by skilled tradespersons.

Senator Allison (Victoria) (8.30 p.m.)—Before voting on these amendments, I would be interested to get some advice either from you, Senator Brown, or from the minister as to how reasonable it would be to prohibit the importation of pre-charged split system refrigeration or airconditioning equipment. I am not sure I understand what that means or why we should support these amendments.

Senator Brown (Tasmania) (8.30 p.m.)—If you go and get a Hitachi or GE heat pump, as I did, the imported ones have already got the HFCs in them. It is the refrigerant and it is part of the system. What amendment (5) says is that you can import the equipment but you cannot have the gas in it. That would have to be installed in Australia by a skilled tradesperson. The middle ground is that, if these systems are to be imported, they need to be put in by a skilled tradesperson. At the moment, that is not required. Theoretically, I could have got that system and put it in myself. That would have been a mess, I can tell you. I do know which way to turn a screwdriver but that would not be any match to working my way through what appeared to be a complicated piece of equipment like that. We should not allow airconditioners to be imported with gas in them. By all means, import the airconditioners, but not with the gas in them. But, if you are going to import airconditioners with gas in them, require that a skilled tradesperson put them in place.

Senator Hill (South Australia—Minister for Defence) (8.32 p.m.)—I must admit that I am not an expert in pre-charged split system refrigeration or airconditioning, but my advisers tell me that it is not technically feasible to import a split system without a holding charge, which I am further told is positive gas in the system, in order to maintain the seals. Therefore, the effect of amendment (5) would be to prohibit the importation of split system refrigeration and airconditioning equipment. That, as I understand it, would be contrary to what Senator Brown is actually seeking. On that basis, we are opposed to his amendment (5), and it flows from that that we do not see any need for the additional definitions.

Senator Brown (Tasmania) (8.34 p.m.)—Could the minister tell the committee
what stage Australia is at in the development of nitrogen charged systems?

Senator Hill (South Australia—Minister for Defence) (8.34 p.m.)—I am told with great authority that it does not work.

Senator Brown (Tasmania) (8.34 p.m.)—That says that it has been developed and found to fail. That is not my information at all. Does the minister mean that the nitrogen charged option has no future potential, because that is what he is implying?

Senator Hill (South Australia—Minister for Defence) (8.35 p.m.)—I should invite Senator Brown to come in for a technical briefing on this matter. It seems to be extraordinarily complex, but the competent advice I am receiving is that it will not work as it relates to the operation of the system.

Senator Brown (Tasmania) (8.35 p.m.)—I will if the minister will. He is the man who has charge of this and really needs to have his mind around it. There is potential there and it needs to be looked at. However, I am not going to labour that. It would have been good if the experts present were to have provided the committee with their view on the alternatives which the Greens are putting forward tonight and gave us the confidence that they knew what the alternatives are, because that is not written into this legislation. The natural alternatives are being ignored in this legislation and that is a real problem for us.

The rest of the world, as I said, is moving rapidly on. I would have preferred this matter to have gone to a committee inquiry so as to avoid this situation where we have several parliamentarians dealing with issues that are technically complex and upon which we needed good, balanced advice from the community. That is why I moved for this matter to go to a committee for inquiry yesterday and that is why I was so disappointed when only the Greens supported that. This is important legislation. The parliament should be ahead of the game in this field. It will have impacts for decades to come, and we should expect to be getting a more informed debate from government on the matter.

Senator Hill (South Australia—Minister for Defence) (8.37 p.m.)—I am told that Senator Brown is, with great respect, confused. I am told that nitrogen is not a refrigerant. It will therefore not achieve the objective he is seeking. It is not suitable for the operation of this equipment. Nitrogen can be used to hold the seals in place in transit.

Senator Brown—Now you are catching up. Now you are getting there.

Senator Hill—We are trying to help. So, if the product was overseas, it would be filled with HFCs or whatever the refrigerant was and that would have to be removed before transport. Nitrogen would have to be inserted to maintain the seals. After it had arrived in Australia, the HFC would then be re-inserted in the equipment by a qualified installer. I hope that is helpful.

Senator Brown—Yes, it is, and now the minister has caught up with the need for the nitrogen charge. But the problem is that the systems coming in from overseas at the moment do not have to be installed by a technically competent person, as they would under that system, so there are leaks occurring of these damaging gases into the atmosphere. That is the problem.

Senator Lundy (Australian Capital Territory) (8.39 p.m.)—All these points and technical issues that Senator Brown is trying to query the government on supports Labor’s view that this issue deserves comprehensive policy, and that is what we are addressing at the moment. It is very difficult to try and build into this bill, in the way that I think Senator Brown is trying to do with his amendments, the range and complexity of
what are extremely important issues. There is no denying that, and many of the points he raises are extremely important. It is just that Labor’s view is that they are deserving of comprehensive policy attention in their own right and that that process should not delay the passage of these bills.

Senator BROWN (Tasmania) (8.40 p.m.)—That is why we should have had a committee hearing, Senator Lundy, and that is why Labor should have supported that. To inform the committee finally about the matter of nitrogen charging, I will paraphrase points made by an industry source. It will help to prevent unauthorised and unqualified people from handling ozone-depleting substances and synthetic greenhouse gases that are presently in split type airconditioning systems being imported. It will stop thousands of tonnes of these damaging gases that are presently released into the atmosphere each year by the incorrect process of purging, that is, installation. It will reduce the excessive amounts of ozone-depleting refrigerants in airconditioning units that are overcharged and have been installed by unqualified people who do not have the correct recovery equipment to reclaim the excessive refrigerants that come standard in split type airconditioners. Correctly charged airconditioning units will reduce the excessive electricity consumption that is presently happening in split type airconditioning systems due to them being overcharged from the factory. This idea alone will make it easy for government and industry to police and regulate the airconditioning industry and thereby reduce the amount of ozone refrigerants in environment.

Those are very sensible, important points being made by the representatives of an Australia-wide company, and that is the sort of information that would have come, and should have come, to a Senate committee inquiry into this matter. I am very frustrated that Labor and the Democrats voted against that so that this information will not be taken up by a committee and that these amendments are not being adopted tonight. There is no excuse for it. We should be dealing with this in six or eight weeks time, when the parliament comes back, much better informed and producing a much better outcome as a result of being informed by the community. That is what the Senate committee system is for, and that is why it was very frustrating when we moved for that committee inquiry and only Senator Nettle and I voted for it.

Senator HILL (South Australia—Minister for Defence) (8.43 p.m.)—I feel we are at cross-purposes, to some extent, because it is the government’s intention under this legislation to in fact regulate the installers and to provide standards and competencies, which is what Senator Brown is wanting. I think what Senator Brown is saying is that that should have been done in the legislation itself, but that would be highly unusual. The normal process is to provide the framework, the structure, in the legislation and then the implementation, the detail, is done through regulations. That is what is being done. The bottom line will actually be the outcome that Senator Brown is seeking.

Senator BROWN (Tasmania) (8.43 p.m.)—No, that is wrong. We need to know what the government’s intentions are. You should have the regulations here tonight and we should be dealing with those. That is sensible, that is logical and that is the way it should be dealt with. To say, ‘We are dealing with an act. We don’t have the regulations. We don’t know what they are. The committee is not going to be told about that. We will develop them as we go along,’ is very poor process. If there is anybody from the industry listening to this tonight, they will be tearing their hair out with frustration.
The only thing that may come of the debate tonight is that a little of that frustration in industry circles may be passed on, through me, to the government. I hope that the regulations, when they are drawn up, are drawn up with tonight’s debate in mind. If the advisers to the minister would like some very helpful clues as to which people outside those who are dependent upon using fluorocarbons in refrigerants they might approach, I would be very happy to give them to the minister because that is important.

The whole point of my contribution tonight is that we should be seeking the advice of people who are using natural refrigerants. That is very important. But there is nothing in this legislation or from the advisory committees that the government has set up so far in this matter to indicate that natural refrigerants and the people who are using them and are at the cutting edge of environmental excellence in this industry in this country are being heeded.

Question negatived.

Senator BROWN (Tasmania) (8.45 p.m.)—I move Greens amendment (6) on sheet 3226:

(6) Schedule 1, page 16 (after line 26), at the end of paragraph 65D(b), add:

(iii) programs to promote the use of natural refrigerants;
(iv) programs to reduce the use of air conditioning;

This amendment would make programs to promote the use of natural refrigerants and programs to reduce the use of airconditioning a purpose of the account. Maybe the minister can give us a peek at the regulations which he has in mind and tell me whether the programs that these amendments are fostering will in fact be funded under the account. Maybe he can also tell me whether representatives of consumers, environmental organisations and people in industry who are dealing with natural refrigerants will be brought onto the federal government funded committees that are working in this area.

Senator HILL (South Australia—Minister for Defence) (8.46 p.m.)—I have in part answered this question. The government’s argument is that the amendment is unnecessary as the bill already extends the special account to support industry innovation in reducing emissions of ozone-depleting substances and synthetic greenhouse gases, which could include projects that trial or promote the uptake of natural refrigerants and those that support the best practice use of technologies reliant on ozone-depleting substances and synthetic greenhouse gas replacements.

The government opposes these amendments as it does not believe that the special account should be defined, as proposed by Senator Brown, in a way that focuses the account in favour of any one industry sector. Instead the account should, as proposed by the government, focus on selecting those projects that most effectively deliver the best environmental outcomes consistent with the bill’s objectives.

Senator ALLISON (Victoria) (8.48 p.m.)—The Democrats are inclined to support this amendment. It seems to us to be important to start talking about these matters of natural refrigerants and reducing the use of airconditioning. I think I hear from the minister some reassurance that programs that would do this could be paid for out of the Ozone Protection and Synthetic Greenhouse Gas Account. I see no danger in including them under this amendment but if that is not possible, Minister, could you confirm what I think you said—that those programs could be funded under this account. If that could be confirmed it would be useful.
Senator HILL (South Australia—Minister for Defence) (8.48 p.m.)—That is correct.

Senator BROWN (Tasmania) (8.49 p.m.)—Then why not say so? The purposes of the account set out in schedule 1 item 65D(b) are, firstly, funding the ozone-depleting substances phase-out programs, which is fine; and, secondly, funding emission minimisation programs for ozone-depleting substances and SGGs. But it does not mention the natural refrigerants; that is left unspoken. I am saying that these are a reality and that they are the best option. The SGGs are damaging to the environment; the natural refrigerants are not. It should be stated explicitly in the bill that that is the purpose of the account. It is not and it ought to be. We ought to be supporting this amendment, and the opposition ought to be supporting this amendment too. It is very inconsistent with our aspiration to reduce global warming that this amendment, which would give explicit intent to the people who are dealing with that account, is not written into the bill. If the minister has no problem with it then I appeal to him to accept the amendment.

Question negatived.

Bill agreed to.

OZONE PROTECTION (LICENSE FEES—IMPORTS) AMENDMENT BILL 2003

Bill—by leave—taken as a whole.

Bill agreed to.

OZONE PROTECTION (LICENSE FEES—MANUFACTURE) AMENDMENT BILL 2002

Bill—by leave—taken as a whole.

Bill agreed to.

Bills reported without amendment or request; report adopted.

Third Reading

Senator HILL (South Australia—Minister for Defence) (8.52 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bill read a third time.

SPAM BILL 2003

SPAM BILL (CONSEQUENTIAL AMENDMENTS) BILL 2003

In Committee

Consideration resumed.

SPAM BILL 2003

The TEMPORARY CHAIRMAN (Senator Bolkus) (8.52 p.m.)—The committee is considering the Spam Bill 2003 and the opposition amendments (6), (5) and (4) on sheet 3162 moved by Senator Lundy. The question is that those amendments be agreed to.

Senator LUNDY (Australian Capital Territory) (8.53 p.m.)—Before we ran out of time at an earlier point in the day, I was just beginning my remarks about these opposition amendments. I moved amendments (6), (5) and (4). Amendment (6) relates to the conspicuous publication of email addresses and is designed to limit the conspicuous publication exception to consent in schedule 2, subclause 4(2) so that conspicuous publication of an email address must have occurred not more than six months before the commercial electronic message is sent.

This is intended to address the concern that, if an email address is published conspicuously, the owner of that address will be open to receiving unsolicited commercial emails forevermore unless they change their address. That is how the bill currently stands. This amendment operates so that a conspicuously published email address can be used only for six months after it was last obtained. After six months, the address must be ob-
tained again. For example, an email address can only be used within six months of obtaining a business card or within six months of reading that address from a web site.

The purpose here is to make sure that old email lists cannot be used as some sort of defence or justification for the sending of an unsolicited commercial email. We believe that this amendment again refines and adds another element of strength to this bill. It has the potential to reduce the use of email addresses, particularly old email addresses, for the purposes of unsolicited commercial spam. We urge the Senate to support this amendment.

Amendments (5) and (4) relate to an issue discussed previously. In particular, amendment (4) tightens up the rules governing withdrawal of consent in clause 6 of schedule 2 of the Spam Bill so that consent may be withdrawn where consent was never formally given in the first place. We are now talking about the ability to unsubscribe from exempted organisations sending commercial emails. This amendment would have effect with exempt emails such as those sent from political parties, government bodies or, as the bill is currently amended, those from not-for-profit political lobby groups and trade unions.

Amendment (5) removes the designated commercial electronic messages classification from electronic messages where the sender has been expressly notified by an electronic account holder that he or she does not wish to continue receiving messages of this type. Amendments (4) and (5) will ensure that even commercial electronic messages which would otherwise be considered designated or sent by an exempted organisation may not be sent if the recipient has previously expressed a desire not to receive them. They effectively empower the unsubscribe or opt-out mechanism in the process.

Obviously there is no intention that any of these provisions can be used by recipients to knock back emails which they are legally obliged to receive, for example by contract or legislation.

Labor believes that, while some emails should be exempt from the prohibitions outlined in the Spam Bill, it is simply unacceptable that these emails could continue to be sent in the face of direct opposition to or rejection by recipients. This group of amendments, particularly (4) and (5), will provide the mechanism for an unsubscribe facility to be included in all emails and will ensure that such a request, once received, is acted upon. As I said, these amendments fit with opposition amendments (2) and (3) and complete that package of resolving the issue of providing for an unsubscribe facility, even for those designated commercial electronic messages sent by an exempted organisation.

Senator GREIG (Western Australia)—I have spoken at length in support of the principles behind these amendments as I have addressed other issues and some similar amendments, as well as in my speech in the second reading debate. I do not propose to go over that again other than to simply reiterate our continued view that, as I have said, the bill ought to contain no exemptions but, if they are to be there, there should be equity applied to them. Also, the bill should ensure the opportunity for those people who receive emails from those exempted spamming operations or groups within the community allowed to pursue commercial spam to say, ‘No thanks,’ or ‘No more’. As I understand it, these Labor amendments go to the heart of that, and we endorse that.

Senator KEMP (Victoria—Minister for the Arts and Sport)—I feel I must respond to the remarks made by Senator Lundy because I think it draws on the wider
issue that we have with the Spam Bill 2003. Senator Lundy spoke to an Internet industry roundtable early this year and I understand that Senator Lundy said that the primary challenge is to get workable legislation—and we agree with that.

Senator Lundy—We want it to be workable.

Senator KEMP—It was a lot of work to get workable legislation. I think the government worked hard and we did that in spades. It went to the Senate committee and the report recommended that it really should have been passed in its original form without amendment. We have had a series of amendments. I regret to say that they have added to the complexity of the bill. They have made it very difficult for the bill to be workable in a number of significant areas. There are some issues—no-one pretends that a bill is perfect—which certainly would be worthy of further exploration, but there are none that need to be immediately resolved. We will be opposing, again, these amendments that Senator Lundy has moved. Again, we do not think that they are well merited. Again, they will add to the complexity of the bill.

When the Senate committee considered the Spam Bill it was suggested by some witnesses, and in the Labor minority report, that there should be an additional element to the conspicuous publication provision—that the publication should be fresh or of recent occurrence. The figure of six months proposed by Labor’s amendments, frankly, seems very arbitrary and runs the risk of imposing an unreasonable and unsupportable administrative burden on Australian business. There needs to be significant consultation to ensure that the addition of such a provision has no adverse consequences. In addition, the amendment as proposed by Labor does not appear to ensure that the publication of the address is of recent occurrence. It simply ensures that the sender obtained the address recently. It would still enable an electronic address, which had been posted on a web site several years previously, to be used, or one from an old copy of a phonebook—a very unsatisfactory position, I would have thought.

The government considers that the suggestion of a freshness provision is certainly an issue that could be considered as part of a planned review of the legislation. However, an amendment to the act would not be appropriate at this stage. Let me assure you that we would be happy to work with other parties to develop a consultation program and a form of words which more effectively meets the proposed intent for consideration at the two-year review, or indeed earlier if required. I think that is the best way forward and I hope that Senator Lundy, when she reflects on what has happened to this bill in this chamber, will pay heed to the words that I have said. I think that Senator Lundy would agree that I have a reputation for being a consultative minister as part of a consultative government. We are not opposed to listening and working with people. Indeed, I think part of our success has been that we have been able to do precisely that. Senator Lundy, my point is that, frankly, the amendment introduces another arbitrary element into this bill.

Let me turn to Labor amendment (5). Labor’s proposed amendment is intended to enable relevant electronic account holders to permanently unsubscribe from future designated commercial electronic messages from a particular sender. However, the government noted in discussing Labor’s sixth amendment that it is concerned that this could have undesirable consequences. For example, there may be certain types of messages which a person should not be able to unsubscribe from.
Senator Lundy interjecting—

Senator KEMP—I know this is difficult and I think you have again headed down the wrong path in this matter. There are times in politics when you have just got to recognise that there are great complexities and people have to work together. You finally produce the legislation then the Labor Party, with the assistance of a few advisers who may be very clever and eminent in their own right, simply produce amendments—some, I have to say, for the sake of amendments—and respond to particular sectional interests. Trade unions are a classic one. You and I have had an argument on trade unions and I think—

Senator Lundy—And we might have another one.

Senator KEMP—I am always happy to have an argument about trade unions. The public just love to hear how the Labor Party jumps when the orders come from the trade unions. We are happy to have that argument but I do not propose to unless you really want that. Going back to what I was saying, there may be certain types of messages which a person should not be able to unsubscribe from—for example, product recall notices, where a person has a contractual obligation not to opt out. That seems to me to be an important objection to your amendment.

Further, the amendment introduces a legal discontinuity with related provisions of schedule 1, and in fact it departs from the intent of having an opt-out regime with narrow and closely defined exemptions. Labor’s amendment would change the Spam Bill into legislation with two classes of messages, some operating as an opt-out and others under an opt-out regime. Again, complexity has been brought into the bill—done on the run. After a long period of work and review, it is suddenly done on the run. Someone has got to Senator Lundy’s advisers and put these arguments forward.

As for the Democrats, who knows what the Democrats want—flip-flopping on every issue. Apparently they support this. Have they carefully considered the complexity issue? For heaven’s sake, Senator Greig keeps on telling us he wanted a straightforward bill, a bill that could be understood, but with every amendment which adds complexity, Senator Greig is right up there at the front supporting it. It defies belief. It is a great pity. This is an area where the Democrats could have played a significant role and all they have done is just encourage Senator Lundy. Frankly, I count on my advisers but it seems to me that a lot of these amendments are making this bill quite unworkable. It is very unfortunate. It was a bill you supported. Senator Greig supports the bill, supports simplicity, supports no exemptions and then supports every amendment which is quite contrary to all that.

Let me make a couple of comments on amendment (4). The government does not support this amendment because as it stands it would require people to withdraw consent in situations where they never provided consent in the first place. Such an amendment may be appropriate for an opt-out regime, where consent is assumed until proven otherwise, but not in an opt-in regime as provided by this bill. It is no good shaking your head, Senator Lundy.

Senator Lundy—You are talking about the exemptions—

Senator KEMP—I am talking about your amendment.

Senator Lundy—You do not even understand the amendment.

Senator KEMP—You clearly do not understand the bill. You raised a whole host of amendments. Regrettably, you thought, ‘How can I take up the time of the Senate?’
How can I show my colleagues how effective I am as a shadow minister? I haven’t done very well in sport or arts but my colleagues are not following this IT bill closely.’ Frankly, Senator, I think you have mucked this up.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—You should address your remarks to the chair, Minister.

Senator KEMP—Indeed I should. I stand chastened, Mr Temporary Chairman. It is not my habit, as you know, not to follow standing orders and it certainly will not happen again. Let me just summarise the government’s position: we will be opposing the amendments that Senator Lundy has made. Senator Greig is going to support them. Okay, the bill will go down to the other place and we will have to deal with all this again at some stage. Then we can test whether Labor actually wants the bill or not. It is as simple as that; that is life.

Senator LUNDY (Australian Capital Territory) (9.08 p.m.)—It is amazing how easily Minister Kemp is provoked. He got caught out misunderstanding one of Labor’s amendments and launched into a condescending tirade of personal abuse. That is pretty pathetic for a minister. We are trying to debate serious legislation. Labor is of the view, as I have said many times, that our amendments refine constructive improvements to the bill that we have before us. To suggest that in some way Labor is making these amendments for the sake of it shows the paucity of your argument. We are dealing with a bill that has been hastily drafted.

I am glad the minister raised the issue of the committee because most of our amendments reflect what I could only describe as a general consensus—or a broad consensus—about the areas of the bill that needed refining. One thing that is pretty interesting—and I want to note this—is the view of the Internet Industry Association, which the minister also mentioned. I absolutely did attend a forum earlier in the year where Labor was calling for this legislation. We have been calling for this legislation for 12 months—as the Internet Industry Association were calling for effective legislation. The Internet Industry Association did not even bother putting a submission into the inquiry. Why was that? I do not understand it because the Internet Industry Association are always on at the opposition about how foolish the government’s regulations and legislation are with regard to the Internet. Yet in this case we did not actually hear from them. So it is incorrect for the minister to come in here and imply that all was hunky-dory with the Internet industry generally. Whilst the Internet Industry Association chose not to express a view about this particular bill through the committee process, many other organisations, including other Internet industry associations, did. And they all had issues and concerns.

I will go through the list of submitters to the Senate inquiry: Mr Colin Hunt, Mr Howard Lowndes, Professional Way Pty Ltd, Australian Direct Marketing Association, Electronic Frontiers Australia, Australian Consumers Association, the Coalition Against Unsolicited Bulk Email Australia, Microsoft Australia, Captain Susan Smith, Australian Privacy Foundation, the Internet Society of Australia, Mr Rowan Rafferty, the Australian Computer Society, the National Office for the Information Economy, Dr Dan Svanesson, Ms Sharon Grierson MP, Mr Andrew Calvin, Infobase Systems Pty Limited and the Australian Council of Trade Unions. All of them took the time to put together submissions about this legislation because they felt it could be improved. The Minister for the Arts and Sport is absolutely right when he says that Labor wanted this legislation. We have been calling for it. And we have said we are going to support this
legislation. The real test for the government is whether you respect the views expressed in this chamber. Our amendments were born out of the committee process of hearing from those 19 organisations.

Senator Kemp—All of those organisations support your amendments. Is that what you are saying?

Senator Lundy—No, I am not saying that, Minister. The minister asks, ‘Are you saying all of these organisations support Labor’s amendments? Of course not; I am saying that there was enough general concern about some of these points that we have raised in our amendments to motivate Labor to put forward constructive refinements to these bills. Minister, your arguments against specifically—

The TEMPORARY CHAIRMAN—Senator Lundy, I invite you to address your comments to the chair.

Senator Lundy—Thank you, Mr Temporary Chairman. The minister raised several points about our conspicuous publication amendment where we nominate six months because we think that qualifies as the recent period that the minister spoke of. There is a really strong point of hypocrisy in what the minister said, because he said it was too hard for business to manage what he described as an arbitrary time limit. If that is the case, Minister, where is the government’s proposal to limit that time? If you concur with the sentiment, why evoke the prospect of a review in two years time. This is the first time you have conceded, as far as I can tell, in this debate that you are going to need to fix this up.

The TEMPORARY CHAIRMAN—it is a bit confusing when you use the second person. Could you please address your comments to the chair.

Senator Lundy—it is confusing when the minister talks about the review as being some sort of release valve for the problems that are currently in the bills as they stand and which, hence, led to Labor’s amendments. It is particularly confusing in the context of the government’s complaint in relation to a previous Labor amendment, where we were arguing that there was genuine motivation involved in single commercial emails. That was a Labor amendment and it was certainly successful. The government argued that it would cause problems. Yet on this amendment, Labor amendment (6), they are saying the opposite—that it will make it too hard for business. They argued previously that it would create a loophole for business. I do not think the government can have it both ways. What they are doing is scrounging around over there to try and scrape together some kind of argument against Labor’s amendments, and I think they are finding it very difficult.

The fact that the minister evoked the two-year review as an opportunity really says it all. We are actually really pleased there is a two-year review in this legislation, Minister, because we do think it will be necessary. It is smart to put a two-year review in it. The Internet changes all the time. But I also think that you need to respect the decisions of this place in successfully moving amendments that, as I have said, are constructive refinements to the legislation before us, because we really do need this legislation as soon as possible. We have been waiting such a long time. People’s in-boxes and in-trays have been filling up with incredible amounts of spam. I think the percentage of emails that are spam has risen from 17 per cent to about 50 per cent, and people are fed up with it. So we do need a regime and, whilst we know this only affects spam generated in Australia, it will hopefully provide some inspiration to other jurisdictions to start tackling the issue, and that is commendable.
Finally, I would like to say, with regard to amendments (5) and (4), relating to the unsubscribe facility, that this makes perfect sense. Why wouldn’t you have an ability for people to opt out? Firstly, you can opt out under the Privacy Act anyway. Not to have this provision in this bill implies that you cannot opt out in circumstances in which you can under the Privacy Act and other legislation. Secondly, we are dealing with email here. People can opt out of having their email account anyway. So how can you say that you cannot opt out of something and you cannot have an unsubscribe facility in an exempted email?

We made the point that, if it is a government service and someone has made an agreement or whatever, that is fine. But email is not a compulsory service that people have to receive, so it does not make sense if you take the government’s view on our amendment to the logical end point. People can opt out of receiving an email, and that would be consistent with the principles of the Privacy Act and people having the ability to control what comes into their inbox. Again, it is about consistency and it is about honouring those principles. We want to make sure that this legislation takes the most credible position on these issues, and that is exactly what Labor’s amendments seek to do.

Senator Kemp (Victoria—Minister for the Arts and Sport) (9.18 p.m.)—I will respond briefly to some of the comments that Senator Lundy made. I think the attack that Senator Lundy made on the Internet Industry Association was unfortunate. It is fair enough to make attacks on politicians, ministers and the government, but the attack that Senator Lundy made on that association was a bit unfair, and I do not think it helps the debate.

This is a complex issue. A huge amount of work has been done to bring the bill to this stage. No-one pretends it is not a difficult issue. One of the things that we have in this bill is a review after two years. I drew the senator’s attention to it. Senator Lundy then said I had made a big concession, then she suddenly remembered that it is part of the bill and it has always been there. It is not making a huge concession; it is basically saying that it makes a bit of sense, when you are bringing in pathfinding legislation in this complex area, to have a review. There is no big deal in that.

The bill ultimately strikes a balance between supporting legitimate marketing activities—and it is supported by the Australian Direct Marketing Association—and being tough enough on spam to be supported by the Internet Industry Association. There are people who are greater experts than me in this area—and I concede that I am here acting for a minister. Probably—in fact certainly—they are even more expert than you, Senator Lundy. They suggest to me that this bill is without peer in comparison with legislation worldwide. The truth is that you are going to be faced with a choice. This government will not support an unworkable bill. You moved ahead in a complex area to bring forward these amendments. You listed a whole 19 groups which gave submissions. Someone listening to this broadcast might have assumed that they actually supported your position. When I tested you on that, you of course rapidly corrected any impression by saying that they did not support your position but you had consulted with them. Some of them do. The ACTU does. You have to support the ACTU’s position; that is fair enough. You support the paymaster; we understand that.

The test will be that you are going to have to decide whether or not you want to have a workable bill. The government will make a
decision, but my advice would be that, if the bill is seen to be unworkable, we should not proceed with it. This will go down to the other place and then the government will have to decide their position. But they have given a pretty strong view, I would say. Minister Williams gave a pretty strong view today in his press release. We will not be supporting an unworkable bill. Every time you go through these things, I turn to my advisers in the advisers’ box and they produce a whole host of issues which your amendments would lead to. I think it is a pity that when you get up to speak you do not respond to those. I make arguments, based on the best advice I have, and you do not respond to them.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Lundy does not respond to them.

Senator KEMP—Senator Lundy does not respond to them; you are quite right, Temporary Chairman. Let me finish this section of the debate: the government opposes these amendments.

Senator LUNDY (Australian Capital Territory) (9.22 p.m.)—I ask the minister: will this legislation in any way conflict or override existing privacy legislation? I would also like an explanation as to what the interrelationship is.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.23 p.m.)—The advice I have got for Senator Lundy is that this legislation will not override the Privacy Act.

Senator LUNDY (Australian Capital Territory) (9.23 p.m.)—There was more to my question. What is the interrelationship between the proposed bills and the existing privacy legislation, particularly in the context of the point I just made with regard to opposition amendments (4) and (5)?

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.23 p.m.)—All the organisations which have to comply with the privacy legislation will still have to comply with the privacy legislation.

Senator LUNDY (Australian Capital Territory) (9.24 p.m.)—I would ask the minister if he could explain whether or not ISPs carry any liability as a result of these bills. Indeed, what will the responsibilities of ISPs become if this bill is passed?

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.25 p.m.)—I refer you to the material which has been distributed. The bill itself, at clause 9(1), says:

For the purposes of this Act, a person does not send an electronic message, or cause an electronic message to be sent, merely because the person supplies a carriage service that enables the message to be sent.

That actually means they are not liable.

Senator LUNDY (Australian Capital Territory) (9.26 p.m.)—Another question I have for the minister relates to the ACA funding for the purposes of implementing these bills. Can you confirm that it is $300,000? Is this enough to achieve the objectives of this bill? As we heard from the National Office for the Information Economy at the committee inquiry stage, this bill is aimed at preventing spam produced only in Australia, and we know that over 80 per cent of content comes from overseas anyway. It is a very worthy investment of public funding to go into educating end users to protect themselves from unwanted emails, from spam. I think we all understand that this bill will not stop spam per se, but it will obviously ensure that Australia is at least trying to take a responsible position with regard to spam generated in Australia.

I think everyone understands that a very important part of this whole campaign is to educate end users, so my question is: is the ACA funding only $300,000? Is that designed just for the monitoring regime, the
inspectors et cetera or will some of that money be spent on that public education campaign to help Internet users become empowered to use spam blockers and all the other technology that is available? Will that be enough? In the scheme of things, it is not that much money. When you look at the cost of national public education and awareness campaigns—and we have got a few notorious ones we could refer to—we are usually talking about far more than $300,000 to achieve the substantial objective of raising general awareness.

So it is a question about the budget. Can you tell me, if it is only $300,000, what that will be spent on and what the government is planning to do about the public education campaign that needs to accompany this legislation? We do not want users being misled into thinking that once this bill passes they will not get any spam anymore. If that is what they think, they are all going to get a rude shock. Minister, I note that you have finished speaking now so I am looking forward to your answer.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.28 p.m.)—As you know, Mr Temporary Chairman, I am always happy to assist ministers and senators with information. I have to say that, if Senator Lundy had turned to the explanatory memorandum on page 3, she would have found the answers to those questions that she asked me.

Senator Lundy—I am asking you.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—You are not asking me, Senator Lundy.

Senator KEMP—Sure, you can ask me. We can go through the whole explanatory memorandum, but one would have thought it would have been easier for you to read it. If you do not wish to read it, it would have been easier for your advisers to read it before they gave you the question. This is what it says:

Implementation of the regulatory and legal measures proposed in this Bill and the Spam Consequences Bill will require an additional expenditure of $0.3M in the 2003-4 financial year, $1.5M in the 2004-5 financial year, and $1.6M in the 2005-6 financial year ie. a total of $3.4M over this period.

It then goes on with some more information, which you are able to read. You raised the education issue and asked if that was included. If you had cast your eyes down on page 3—

Senator Lundy interjecting—

Senator KEMP—Yes, Senator, I know that. You can ask me questions about everything in the explanatory memorandum. But I would have thought there are more useful ways to use the committee’s time—and, indeed, for Senator Lundy to use her time. She could read the information here in the explanatory memorandum. It says:

The NOIE-coordinated educational program will be funded from the existing NOIE budget.

You asked me whether this was separate. It is all set out in the explanatory memorandum, and I can only urge you, Senator Lundy, to read that explanatory memorandum.

Senator LUNDY (Australian Capital Territory) (9.30 p.m.)—I think my point is proven: how much will be spent within the National Office for the Information Economy on the education campaign?

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.31 p.m.)—I do not have the precise figure for you, but I am sure that whatever is appropriate will be spent. We recognise the need for an educational campaign, and, as I said, it will be funded from the existing NOIE budget.

Question agreed to.

Bill, as amended, agreed to.

CHAMBER
SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003

Bill—by leave—taken as a whole.

Senator LUNDY (Australian Capital Territory) (9.32 p.m.)—by leave—I move opposition amendments (1) and (3) on sheet 3164:

(1) Schedule 1, page 17 (after line 9), after item 63, insert:

63A At the end of section 535
Add:

(3) A warrant may not be issued under this section in relation to a breach of the Spam Act 2003, where a person’s sole connection to a breach of the Spam Act 2003, is as a recipient of unsolicited commercial electronic messages.

(3) Schedule 1, page 18 (after line 4), after item 68, insert:

68B At the end of section 542
Add:

(6) Nothing in this section authorises an inspector to search or seize an article in relation to an actual or suspected breach of the Spam Act 2003 if that article belongs to a person whose sole connection to a breach of the Spam Act 2003, is as a recipient of unsolicited commercial electronic messages.

The point here—and I can only presume it relates to a bit of sloppy drafting—is that the Spam (Consequential Amendments) Bill 2003 allows search and seizure operations on the premises of spam recipients. Our amendments are intended to limit the power of ACA inspectors so that individuals who are mere recipients of spam—not generators of spam or suspected of sending spam—not be subject to any search and seizure operation. When this concern was raised in the committee inquiry, it was argued that this power would never be utilised by the ACA inspectors. But, if this is the case, Labor see no reason for this power to be present in the legislation, as we believe it represents an unacceptable intrusion on the privacy of the victims of spam and it could be used in an inappropriate manner—in a worst-case scenario, as a direct breach of privacy of quite innocent private citizens who are victims of receiving spam.

Conceivably, almost anyone could be subject to such a search and seizure provision for receiving spam, particularly since we know that everyone gets a lot of it all the time. I think the solution is that it is reasonable to assume that victims would assist ACA inspectors and volunteer assistance. Labor note that there is absolutely nothing in this bill that would prevent victims of spam voluntarily assisting the ACA in its inquiries, particularly in the context that government representatives at the committee inquiry talked about these bills trying to change behaviours. I think that was quite genuine—it is about changing the behaviours and the practices of potential spammers. But for ACA inspectors to have a search and seizure power with regard to the recipients of spam is not a great way to get the goodwill of the Internet-using community to think about changing their behaviour. We think it crosses over the line of what is an acceptable level of intrusion for the purposes of ensuring this act can be enforced. We will talk a bit more about these powers in other circumstances through our other amendments, but we do not think ACA inspectors should be able to search or seize the computers of the recipients of spam. We think it is reasonable that those recipients would in fact volunteer their assistance to the ACA in the conduct of any of their investigations.

Senator GREIG (Western Australia) (9.36 p.m.)—I concur strongly with what Senator Lundy is saying. As she was speaking I was trying to think of an illustration, perhaps in a different context, so that people who are not familiar with the technology might get a mental picture of what we are
talking about. Regrettably, I did not get one. I guess it would be a little like taking a car from someone whose car had been stolen and then had been returned to them, seizing the car from them because it had been broken into by other unknown people. That is perhaps a clumsy illustration, but I think people will see what I am trying to get at.

The Democrats have very similar concerns in terms of the search and seizure provisions contained in the bill, and at least some of the Democrat amendments on the running sheet expand and complement the principle that Senator Lundy and the opposition are proposing. I think Senator Lundy has articulated clearly what it is that is trying to be achieved there. It is a principle that we can endorse. We think that, as it is currently drafted, the sharp edge of the mechanisms for criminal proceedings within the Spam (Consequential Amendments) Bill 2003 are focused, in this instance, on the wrong target.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.37 p.m.)—Again, the government does not support this amendment. The advice that I have received from the very expert people in the advisers box is that the amendment, as drafted, is legally unworkable. The provision in the Telecommunications Act which it proposes to amend—and I think we should note that—provides for a magistrate to issue a search warrant to enter premises where an inspector suspects, on reasonable grounds, that there may be anything related to a breach of the Spam Bill 2003.

The provision focuses on issuing a warrant in respect of a particular property, not persons. However, the Labor amendment, which Senator Greig has rushed to support as usual, proposes to limit when a warrant may be issued on the basis that a person’s sole connection to a breach of the Spam Bill is that they are a recipient. The amendment focuses on a person, rather than the property. In terms of a strict legal interpretation of the amendment, it is not clear that the person referred to is necessarily connected with the premises being searched. I think it is fairly clear that, in drafting this amendment, Labor had a particular scenario in mind, but their amendment neither addresses that particular scenario—that is the advice I have received—nor the wider range of circumstances that the provision will need to address.

As the Minister for Communications, Information Technology and the Arts said in the House, a suggestion that an ACA inspector would conduct a search and seizure operation in respect of a recipient of spam is, on the face of it, ludicrous. It would be a waste of time and resources when the ACA would be productively targeting the origin of the messages. An inspector cannot conduct a search without a warrant or consent. They would require a warrant obtained from a magistrate or the permission of the owner or the occupier of the premises. The only way the ACA would be aware of a recipient of spam would be if the recipient complained to the ACA of receiving spam or if they had network logs showing the person had received the spam. In the first instance, the recipient is likely to welcome and assist any investigation. In the latter case, there would be no reason for the ACA to seek further evidence. So we do not support this amendment. Again, we think it is heading towards the unworkable stage. That is the expert advice that I have received.

Senator LUNDY (Australian Capital Territory) (9.40 p.m.)—I think the minister is concurring with us that it is a provision that would never actually be used, but he is arguing that a technicality about the way these amendments are worded is an argument not to support them. If that is the case, I would have thought it would be incumbent upon the
government to suggest their own amendments to close off this loophole—if you are going to leave it there, why, if it undermines the credibility of the bill? You say yourself that it is a ludicrous prospect that recipients of spam have their computers searched and seized.

On the issue of premises with regard to a warrant, we are talking about a scenario where consent is potentially given. I am not even going into the area of a warrant having been necessary yet, because I presume the minister would know that a warrant is not necessary if, in fact, consent is given. In this scenario, consent could indeed be given and then the search and seizure powers could be enacted, and that is an undesirable outcome. If someone says: ‘Sure, here’s my computer. Have a look—I want to help with this investigation,’ and then the ACA invoke their search and seizure powers and want to take that person’s computer away, I do not think that is reasonable for victims of spam. Our amendment proposes to close off what we think is an unreasonable power of those inspectors.

Question agreed to.

Senator GREIG (Western Australia) (9.42 p.m.)—by leave—I move Democrat amendments (1) and (3) on sheet 3206:

(1) Schedule 1, page 17 (after line 11), after item 64, insert:

64A At the end of section 537

Insert:

(e) in relation to a breach of the Spam Act 2003, the warrant must specify;

(i) the owner of the computer data;

(ii) the nature of the class of data being sought from a computer.

(3) Schedule 1, item 71, page 22 (line 24), at the end of subsection 547D(5), add:

; and (e) where a warrant is issued in relation to a particular breach of the Spam Act 2003, specify the kind of electronic files that may be searched.

These amendments aim to implement recommendation 3 and recommendation 4 of the Australian Democrats in our minority report to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee inquiry into this bill. Our recommendation 3 was that the bill be amended to require inspectors to obtain a warrant for search or seizure of property in the absence of securing permission from the owner of the hardware to be searched or seized and picks up on the point that Senator Lundy was just speaking to. Recommendation 4 from the Democrats was that the bill be amended to require that search or seizure warrants expressly indicate what items or types of files may be searched or seized. Certainly that is not clear, in my view, or indicated in the legislation. These recommendations are linked together, and our main contention is that the search and seizure powers contained within the bill are limited to reduce the potential impact of the bill on privacy and computer security. Amendments (1), (2) and (3) all go towards achieving that objective. I would like to make some brief comments about the broad aims of these amendments. Later, Democrat amendment (2) and then Democrat amendments (7) and (8) will be moved. They also relate to this objective, and I will speak to those later.

As we pointed out in our minority report, many submissions to the committee raised serious concerns about the powers being extended to the Australian Communications Authority inspectors in being able to enter premises and search and seize property. These concerns related specifically to the failure of the bill in any instances to require inspectors to present such warrants, a failure to determine limits on the extent to which searches may be conducted, issues in relation to who might consent to search and seizure
and, arising out of all of those things, a range of significant privacy concerns.

Our purpose in this regard is in two parts. Firstly, the ACA inspectors must be required to either (a) obtain a warrant to search premises or (b) obtain the consent of the owner of the equipment, not merely the owner’s agent or the occupier of the premises. Amendment (2), which I will speak to in a moment, deals with this. Secondly, the warrant must be specific—and I stress ‘specific’—and detail exactly what is being searched for in the investigation. Inspectors should not be permitted to conduct fishing expeditions.

Computer security is a very important issue. We live in a world where everything is networked and where it is an extremely common practice to have a large number of non-related documents residing on the same network. Most of these would be completely unrelated to the person under investigation—and may not even be owned by that person—even if they reside on the same server. With the increasing size of hard disks, storage-attached networks, network-attached storage and so on, increasingly huge amounts of information are being stored on the same equipment. Whereas an accountant would once have separate files for each client, now the accountant is likely to have, and keep, all the details of all clients on the same equipment. The purpose of these amendments is to ensure that a search warrant that specifies the name of Joe Smith, for example, should supply access only to the property of Joe Smith.

Democrat amendments (1) and (3) seek to achieve this objective. These amendments insert an additional subclause to schedule 1 of the consequential amendments bill to amend the Telecommunications Act 1997. Amendment (1) would insert a new subsection, (e), in section 537 of the telco act. This new subsection would say:

(e) in relation to a breach of the Spam Act 2003, the warrant must specify:

(i) the owner of the computer data;
(ii) the nature of the class of data being sought from a computer.

Amendment (3) would insert the same subsection—that is, (e)—but add it to the end of section 547D(5) of the telco act.

These amendments are an important safeguard and ensure that this bill is not unnecessarily draconian. As it currently stands, the bill gives ACA investigators too much power to search and seize whole computers when really all they are looking for is one file. For small businesses that manage a number of different clients, the ability for investigators to conduct fishing expeditions could result in a crippling of their business while they wait for the investigation to be over to be able to regain access to their files. We believe that warrants for searches related to suspected breaches of the spam act must specify precisely what it is that the investigators are looking for.

Senator LUNDY (Australian Capital Territory) (9.48 p.m.)—Labor are of the view that these two amendments are indeed consistent with our approach to amending this bill, as they refine and clarify aspects of the search and seizure powers. We think amendment (1) is a sensible amendment which links the ambit of warrants obtained under section 537 of the Telecommunications Act and that it is entirely reasonable that only computer files in relation to a breach can be accessed. Senator Greig quite clearly made the point that many computers are really large and powerful these days and may well contain many files and many gigabytes of data. This is a very sensible amendment to keep the activities of ACA inspectors extremely focused around the problem and the issue and therefore protect the privacy of others from either unfair or arbitrary inter-
ference. Indeed, it will protect the ability of a small business or a student to keep doing their work and not have their capability to get on with their lives unreasonably interfered with when they are an innocent party.

Democrat amendment (3) is also a sensible amendment. It limits the ambit of warrants obtained in relation to monitoring compliance with the regime—again so that only computer files in relation to a breach can be accessed.

We think both these amendments are deserving of support. They are consistent with Labor’s willingness to tighten up the use of warrants as regards monitoring, compliance and the ambit of the warrant.

Senator Kemp (Victoria—Minister for the Arts and Sport) (9.50 p.m.)—The government cannot accept these amendments, as they are unworkable. I again make the point that this is not a partisan bill. This is a bill that everyone recognises is necessary to solve a problem. These amendments have been produced. I am advised—if I am wrong, I am sure I will be corrected—on the morning that the bill is being debated. They were not discussed with the government or our expert advisers. They seem strange to me. We are not attempting to score political points; we are trying to get a workable bill. But suddenly a whole host of amendments in a highly technical area are produced, and they are not discussed with the government. I am sure we would have provided the ability to consult with our people. It is a pity that that opportunity was not taken. That is the advice I have received. If there is a contrary view, someone can tell me. This is why we are finding these amendments to be simply unworkable. Senator Lundy rushes to support Senator Greig’s amendments and Senator Greig rushes to support Senator Lundy’s amendments. It beggars belief, as people say, that you would do this to make a bill unworkable.

Currently the bill as drafted sets out what must be included in an issued warrant—such as the purpose for which it is issued, the time for which entry is authorised and when the warrant ceases to have effect. The Democrat amendments are designed to further specify what must be included in a search or monitoring warrant issued in relation to a breach of the Spam Bill. The amendments propose that a search warrant must specify the owner of the computer data and the nature of the class of the data. A monitoring warrant, as the Democrats say, must include the types of electronic files to be searched. Whilst I am sure that Senator Greig understands what he is attempting to achieve, I do not think the Democrat amendments achieve what Senator Greig has set out to do.

The government is concerned, first of all, that they contain serious technical flaws. Firstly, the amendments suppose that a search can relate only to computer data. However, this legislation also deals with mobile phone spam, for example, and where access may be required to something other than a computer. Another example is that a warrant may also need to cover articles other than electronic files, such as paper financial records or non-computer based correspondence. The advice I have, Senator Greig, is that it is absurd that a warrant must specify matters that may not be relevant to the search. In addition, the Democrats’ amendments propose that the owner of the computer data must be specified in the warrant. Leaving aside my earlier point that the search may be in respect of something other than computer data, a further concern held by the government relates to the difficulties involved in identifying the ownership of data.
As I have explained—and I hope I have explained things to the satisfaction of Senator Greig and that he will now withdraw his proposed amendments—the legal advice that I have received from my experts is that this is simply unworkable. I have to say that the government will not support the amendments.

Senator GREIG (Western Australia) (9.54 p.m.)—Firstly, I do not accept for a moment that the amendments are unworkable. In fact I find it strange—no, I do not find it strange; I find it sadly predictable that, I think without exception, the minister’s argument against every single amendment that has been up here today is that it is unworkable. What rubbish! Minister. I must pick you up on the point where you accuse us on the non-government benches of not seeking information or briefings, of not raising concerns with the government. I point out that on two separate occasions more than two weeks ago my office contacted the minister’s office by phone—one call by a staff member and one by me directly—to seek further information and clarification on this bill. We did not hear back from anyone until two hours before this bill came on for debate yesterday, when I got a five-page letter from the Attorney hand-delivered to my office telling me that the Spam Bill would be coming on shortly, that he was aware that I had some concerns with it and that he and his office would be happy to discuss any proposed amendments at my convenience. I am sorry, but my convenience was 2½ weeks ago. It is simply unacceptable to receive a communication from the minister dated on the day that I receive it, just a matter of hours before the bill comes on. You might like to convey that to the minister.

Senator GREIG—The minister may like to convey that to the minister.

The TEMPORARY CHAIRMAN—You are saying to me that the minister may like to convey that?

Senator GREIG—I am indeed, Mr Temporary Chairman, and you perhaps could pass that on to the minister in case he did not hear. My key point is that, irrespective of the information that the Attorney did ultimately send me, having gone through it, it changes neither my opinion nor my strategy, neither my view on the bill nor my belief in the amendments. We will insist on them.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.56 p.m.)—Senator Greig, I hear what you say. Obviously, there may be an argument about what was said to whom, and that argument can continue. But the point I was making was about the amendments themselves: you have drafted amendments to amend the bill as it stands. This is a highly technical bill. It is one thing whether your concerns were addressed—and obviously there will be debate on that. But, when you draft amendments like this, I receive the best advice the government can offer. It is not party political or ideological. There is no ideological debate involved in this as far as I can see. We are seeing amendments that I have been advised are simply unworkable. It simply is not good enough for you to say, ‘Well, I don’t think they are.’ It simply is not good enough to say that. I think the process is flawed. Senator Greig and Senator Lundy have got together and have profoundly agreed with each other: I will have this amendment and you can have that amendment, and we will all profoundly agree. You have produced a series of amendments which, on the best advice available to the government, are simply unwork-
able. The industry will not accept them and the government will not accept them.

Senator Lundy—You’re cracking me up.

Senator Kemp—Senator Lundy bursts into a giggling fit—well, that is a mature way to deal with an important bill! The truth is that it is a great pity. This is an important bill, and we have finally got it to this chamber. Senator Greig and Senator Lundy rush around and get these amendments drafted and profoundly agree with each other. The amendments are simply unworkable, all this time has been wasted and the bill will go back to the House of Representatives. Frankly, the government will not agree to a bill that cannot be properly administered.

Senator Lundy (Australian Capital Territory) (9.58 p.m.)—Every now and again in this place I hear extraordinary things, but I have never heard anything quite as extraordinary, not in recent times anyway, as the minister ridiculing the prospect of seeking to amend legislation in the Senate. That is what we do in this place, Minister. Whether you like it or not and whether you persist with your condescending language and your unjustified claims that these amendments are unworkable, the fact remains that in the Senate the opportunity exists for the opposition and the crossbenchers to seek to amend legislation. Nothing will change that fact. It is always a telling moment, as I have said previously, when you resort to personal abuse and a condescending manner to make a point.

The Temporary Chairman—Address your remarks through the chair, please, Senator Lundy. You are saying, in effect, that I do that, and I do not. Please address your remarks through the chair.

Senator Lundy—In fact, you are, Mr Temporary Chairman—
are extremely constructive improvements to the Spam Bill 2003.

It is very disappointing that the government is not willing to engage with us in discussion. I expected the government to look through the committee process and come up with its own amendments. But it did not bother. The need is clearly there and, as so many times in the Australian parliament, it is up to the opposition and the crossbenchers, in this case, to come up with constructive amendments to improve legislation. Certainly, that is what we are charged with the responsibility to do. I find it very frustrating and, indeed, offensive that the minister scoffs at the thought that an elected opposition would have the audacity to try in this place to amend legislation that is in some need of improvement.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.03 p.m.)—I do not propose to engage in a prolonged debate but I have to correct a fundamental error that started Senator Lundy on this track. Of course oppositions seek to amend bills. Of course the Senate amends legislation. No-one argues that. What I am making a plea for are workable amendments. That was the substance of my point, Senator Lundy. It was not the practice of amendment which was my complaint. Of course, we accept that the Senate has those powers. It is the practice of moving unworkable amendments which, if carried, mean that the bill will be unworkable from the government’s point of view.

The only point I was making is that—and no-one is trying typically to score politics on this; this is not an issue where the political processes engage with a deep passion—it would have been pretty sensible, I would have thought, to test and discuss amendments with the government. If we need to put in place a proper process to see how that can be done, we will see what we can do. It is one thing to have concerns; it is another thing to translate those concerns into law. When they are translated into the law of the land, they should be in a workable fashion. All the advice that I have is that these amendments are unworkable. It is simply not good enough to keep on asserting that they are. We can go on forever about this but the government will not be supporting these amendments.

Senator GREIG (Western Australia) (10.04 p.m.)—I have been advised that in his contribution, particularly his critical contribution, to the debate on Democrat amendments, the minister has made an error in one part. In the circulation of Democrat amendments in the previous set to the ones that we have before us now there were two different sets of words. Amendment (1) had the correct words, which are:

(i) the owner of the ... data;

(ii) the nature of the class of data ...

Amendment (3), however, said ‘type of electronic file’. That was wrong. It was a drafting error. The revised version—that is the version we now have on the table—is in sync with the first set of words, so it has the same set of words in both versions. That is to say in amendment (1) it refers to the owner of the data and the nature of the class of data. So the minister has accused the Democrats of drafting poorly and then, as an example, read out that version in the penultimate draft. Of course, this is one of the points the minister made to try to prove that these amendments are unworkable. That was not his entire argument but he did say that. Clearly, that is not the best legal advice you have. Clearly, they cannot be unworkable if, in fact, you are working from the wrong version of the amendments in question.

Question agreed to.
Senator LUNDY (Australian Capital Territory) (10.06 p.m.)—I move opposition amendment (2) on sheet 3164:

(2) Schedule 1, page 18 (after line 4), after item 68, insert:

68A At the end of section 542
Add:

(5) Nothing in this section authorises an inspector to search or seize an article in relation to an actual or suspected breach of the Spam Act 2003 without a warrant issued under Division 3 unless the owner of the article (or a person who the inspector believes on reasonable grounds to have the authority of the owner of the article) has consented to the article being searched or seized.

This amendment is intended to limit the scope of the power of the ACA search and seizure operations. Specifically, it will prevent ACA inspectors from conducting search and seizure operations on private property without the knowledge or permission of the person whose articles are being searched or without a warrant.

Section 542 would allow such searches simply with the permission of the owner or occupier of the premises or property. In other words, a landlord or flatmate could provide that consent even if that person giving the consent was not having their computer email or data being searched. In the case of a landlord, permission could be given to an ACA inspector where the landlord themselves would not be allowed access to a property—and that is indeed the case in many scenarios.

It is not appropriate for a third party to give consent to search the data of a person who has computer data on a computer inside a place, as it is potentially a breach of the privacy of the person whose computer data is going to be investigated. The National Office for the Information Economy has defended the operation of section 542 as proposed in the bill, stating:

... the search and seizure provisions relating to breaches of the Spam Bill are unaltered from the search and seizure provisions currently in the Telecommunications Act.

However, when you apply it to breaches of the spam legislation, these existing provisions are far more intrusive. Let me explain why. Currently, the existing powers of ACA inspectors relate to investigating illegal telecommunications hardware installed in commercial or residential premises. In these circumstances, inspectors would not need to go through a person’s computer, data or email messages to find out whether someone was breaching the law. Rather, it is a visual inspection. Labor is of the view that a visual inspection of that nature is a very different exercise from analysing the content inside people’s email and, indeed, inside their inboxes or their email application on their computer. The owner of that data must, therefore, be directly involved. Whilst this may have the effect of delaying an investigation—that is, the person may not be home when the door is opened by the occupier of the premises—it is a reasonable argument to present that the owner of the computer data needs to be there to provide that consent. The alternative, of course, is for the ACA inspector to obtain a warrant, and then you are talking about a different area, which we will come to later. Furthermore, to quote the Australian Consumers Association:

In the radio communications hardware environment there may be urgency in stopping the operation of illegal equipment, since there could be danger to life or health. Spam has many hazards, but direct threat to health or life is not one of them.

To reiterate—and these are other examples—the provisions would currently allow a university vice-chancellor to give permission for ACA inspectors to search and seize a com-
puter owned by a student or a hotelier to give permission for the search and seizure of a computer owned by a hotel guest. Labor does not think this is acceptable. It is ironic that the potential for offensive intrusion into individuals’ privacy caused by these provisions could potentially outweigh the positive impact these bills could have on the potential offensive intrusion of spam emails. This amendment would make it a requirement that, in relation to spam searches, no items, like computers, could be searched without either a warrant or the permission of the owner of the data. It is obviously quite appropriate for warrants to be used, if permission cannot be obtained.

The government has said that this bill is about changing behaviours. I do not think having this power for the occupier or the landlord, effectively, to give their consent is an effective way of gaining the trust and assisting in the changing of the behaviour of spammers or people accused of spamming others. This is not an unworkable amendment; it is a highly workable amendment. It is another constructive improvement to this bill and it will greatly enhance the relationship that ACA inspectors have with the Internet community. People will be able to be confident that, if they do have a problem or are acting on a complaint, they are able to do so and confront and work with, hopefully, the person under question—as opposed to a third party who may have absolutely no knowledge or relationship with the computer data under investigation.

Senator GREIG (Western Australia) (10.13 p.m.)—As it happens, we Democrats have produced an identical amendment, so clearly we have the very same and strong views on this particular aspect of the legislation. As far as we are concerned, this amendment, as we too have drafted it, goes to the heart of implementing what for us would be recommendations 3 and 4 of our minority report to the Senate committee. I have spoken to those recommendations in relation to the previous amendment. I said with those amendments that we believed the recommendations were important to improve the bill as it currently stands. What would have been Democrat amendment (2) but which will now lapse would have inserted a requirement in the Telecommunications Act 1997 search and seizure provisions that, in relation to suspected breaches of the Spam Act without a warrant, searches could only be carried out with the consent of the owner of the data or the item of equipment. We believe that the Spam (Consequential Amendments) Bill needs to be amended so that only the owner or authorised agent of the owner can authorise use of a specific piece of equipment if there is no search warrant. An employee or flatmate cannot authorise the use of equipment that the person does not own—and, in many cases, would not be able to, as they would not know what security measures were in place to protect the system or the network, for example.

As we also noted in our minority report, Mr Besgrove of the National Office for the Information Economy in answer to a question on notice acknowledged that in the absence of an owner’s consent there was a very real possibility that evidence gathered in an investigation would be rendered inadmissible in a court of law. Mr Besgrove went on to state that it would consequently be highly likely that, in the absence of consent from the owner of the account or computer, the ACA would as a matter of practice seek a warrant to enter and search premises. Given that likelihood and the fact that such a scenario would both alert a suspect and provide time to remove or destroy evidence, it certainly makes sense to us that an ordinary course of action would be to secure a warrant from the outset to ensure access and admissibility of evidence and to maximise the ele-
ment of surprise. We therefore believe that this process should be codified in the legislation from the outset. Like this Labor amendment, Democrat amendment (2), which will now lapse, would have inserted a new subsection (5) at the end of section 542 of the Telecommunications Act 1997.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.16 p.m.)—I should perhaps put this debate in perspective. We are discussing search and seizure provisions. It is worth noting that in the bill as it now stands these provisions are unaltered from the search and seizure provisions that are currently in the Telecommunications Act, except to the extent that they cover contraventions of the Spam Bill 2003, so apparently the Senate has been comfortable in the past with these search and seizure provisions. Contrary to Senator Greig’s suggestions during this debate on the Spam (Consequential Amendments) Bill 2003, these search and seizure provisions simply do not give unprecedented powers of seizure; instead they are consistent with similar provisions in other Commonwealth legislation. It is possible that people listening to the remarks of Senator Lundy and Senator Greig have not understood that very important point.

This Labor amendment and the almost identical Democrat amendment (2) seek to ensure that an article may only be searched or seized if the owner of the article in question consents. As with previous amendments, I reiterate that the best advice available to me—this is not my opinion; this is the best advice that I can obtain—is that these amendments have serious technical and practical difficulties. The government is concerned that requiring consent from the owner of the article may prove very difficult where it is unclear where the ownership lies. For example, determining the ownership of data could be problematic, as could identifying the owner of a computer which is leased or on hire-purchase. If one company owns computer hardware but another owns the software, whose consent is required? It is an important point.

Senator Lundy—No.

Senator KEMP—It is not an important point? Okay. I would have thought it was. We are talking about consent and we are talking about a very practical issue. I do not know whether Senator Lundy can stand up and clarify that matter, but it is an issue that we have to grapple with and deal with. A computer based search under the proposed Labor and Democrat regime would, for these and a number of other reasons, be unworkable. I urge the Senate to reject these amendments and not further complicate this bill.

Question agreed to.

Senator LUNDY (Australian Capital Territory) (10.19 p.m.)—I move opposition amendment (4) on sheet 3164:

(4) Schedule 1, item 71, page 19 (line 10), omit paragraph 547A(2)(a), substitute:

(a) the occupier of the premises, who also meets the conditions under paragraph 547D(4)(a) or (b), has consented to the entry; or

This amendment is designed to clarify the operation of the proposed section 547A. The stated intention of this section is to allow search and seizure operations on private premises in order to monitor the ongoing compliance of individuals already found by the ACA or by a court to have breached the spam legislation. However, under paragraph 547A(2)(a) as currently worded, ACA inspectors could gain access to any premises with the permission of an occupier—for example, again, a flatmate or a landlord—even if no resident has previously been found to have breached the legislation. Again we have spotted an inconsistency in the bill and we
have moved an amendment to try to clarify it.

Once inside, the inspectors have a wide range of powers to seize property. Inspectors may also operate equipment to see what information it contains. I think it is appropriate under these circumstances to ensure that these powers are appropriately limited. We have drafted a very straightforward amendment designed to overcome what we have interpreted, again, as a drafting oversight. It is not a good argument to say, ‘It’s simply unworkable because we’ve got legal advice from the government that says this is unworkable.’ We have made a determination and we have prepared an amendment that we think will strengthen and refine the bill.

Our amendment will ensure that consent by an occupier to enter premises can only be obtained if that occupier is actually someone who needs to be monitored under this section—that is, someone who has previously breached the legislation, as outlined in paragraphs 547D(4)(a) and (b) of the bill. These are the same conditions that are required before a warrant can be issued, so there is no doubt that this is an appropriate amendment. Again, it is about consistency. We want the bill to be fair and clear. We do not want powers for ACA inspectors that are unnecessary or that could undermine confidence in the operation of this bill. The intent of this amendment is similar to that of previous amendments now passed but, as I said, it relates to the monitoring of ongoing compliance of individuals who have already been found by the ACA or by a court to have breached the legislation.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.22 p.m.)—The point that I think has to be made is that we are not simply saying the act is unworkable; we are actually giving reasons for why we think it is unworkable, and they are never responded to. You seek advice, I ask why it is unworkable, I then quote examples of where confusion may reign and all I get are blank looks. To the last amendment I said, ‘This is one of the reasons why my advisers from the department and the minister’s office say the previous one was unworkable. If one company owns the computer hardware but another owns the software, whose consent is required?’ All I got were giggles. This is where you are not engaging with the fundamental issues. I am not asserting that this is unworkable and that we just wipe it. In each case I am explaining why the government feels that this will add to complexity and make the bill confusing and at times unworkable.

Let me turn to the amendment that Senator Lundy has now moved. The government is concerned that this Labor amendment, as drafted, would seriously limit an occupier’s ability to provide informed consent to entry to their premises for monitoring compliance with the bill. The government believes the occupier should be able to consent if they wish to do so. It gives them the opportunity to consent without wasting court resources where they are willing to accede to the request. But the critical point of the amendment, as drafted, is that it seems to limit consent based searches to private residences.

One of the conditions proposed by the Labor amendment is that only an individual who ordinarily resides at the premises may consent. This necessarily rules out consent based searches on commercial premises. Therefore, a company concerned about an employee’s potential activities could not consent to an inspector entering their premises to monitor whether the Spam Bill had been complied with. I think that is a fair point. If there is an argument against that, I should hear that. Again and again, as I have gone through these relentless series of
amendments, I have raised the arguments that have been put to me. I have put these on the table and no-one ever responds. They just say, ‘Ho hum. We just think this is workable.’ I simply do not think that is good enough. No-one ever responds.

You say a matter is unworkable. Let me just look at this one. I will pause to see whether anyone wants to respond. Senator Greig is supporting this amendment. Did Senator Greig know that a critical point of the amendment seems to limit consent based searches to private residences? Is that what the intention was? Therefore, as I said, this necessarily rules out consent based searches on commercial premises. That is the advice I have got. That is either right or it is wrong, but it is the best advice I have got. That is why I say this adds to the complexity of the bill. It means that clauses are sometimes unworkable. No-one ever engages and says, ‘Your advice is wrong, Senator Kemp. This is what this means.’ This is how this bill is so frustrating. I think someone has drafted these amendments without doing the necessary work. I do not want to disparage advisers of the opposition. I know it is difficult—I have been an adviser in opposition myself. But this is a highly technical bill. Time and time again I am making the point that it is unworkable, I am raising the arguments as to why it is and no-one ever engages. That is the problem.

Senator LUNDY (Australian Capital Territory) (10.27 p.m.)—I note the late hour and I note that the minister has now resorted to abusing advisers of the opposition in his comments, which I think is completely out of order. I ask the minister to withdraw his reflections on advisers in the boxes here.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.27 p.m.)—Let me say that I did not reflect on advisers. Having been an adviser myself, I was making the point that I am acutely aware that advisers, particularly in opposition, where often resources are limited, labour under very heavy workloads. If you read the Hansard carefully you will see that that is how I expressed that. I am saying the problem is that these amendments do not show that the necessary hard yards have been done through appropriate legal advice to make sure that they are workable and will achieve their objectives. That is the point I am making. I am a great supporter of advisers. I happen to have a few myself, Senator Lundy, so it was rather unfair of you to suggest I was reflecting on them.

Senator LUNDY (Australian Capital Territory) (10.28 p.m.)—I do believe the minister was reflecting, and I would like to respond. Again, as with many amendments the minister has not supported, he has not understood the intent of the amendment. This amendment says that consent can only be given by the person who is to be monitored. The whole point of this amendment is that consent cannot be given by anyone who is not the subject of the ongoing compliance investigation. That is what we are talking about; not about residences or anything else. I do not know where you got that from. It is about making sure that, when the ACA come onto a premises and get consent, they get consent from the person that is subject to that investigation. That is what we are asking for here in relation to the monitoring of ongoing compliance. Again, it is straightforward. I have explained what the amendment does. The points the minister raised now and previously are a perfect illustration of the minister’s inability to understand the points we are trying to make. Quite frankly, it is getting very tedious having to refute claims so lacking in substance.

We believe our amendments are constructive improvements to this bill. The minister has made it very clear that the government is
going to take a very political approach to rejecting these amendments. We know what the inevitable consequences of that will be. It is all cut and dried. We are trying to get through this process now of at least giving the Senate chamber the opportunity to express its views on the amendments before it.

I would like to respond to the point the minister raised earlier about the owner of the equipment. It is not about who leases it or who sells them the software; it is about the person who uses that computer to receive those emails. It is basic—absolutely basic. Hide behind all the technical confusion you like, but the intent and wording of our amendment is quite succinct and quite clear. Your defence of the government’s position is exposed, as each amendment goes by, as being weaker and weaker.

Senator GREIG (Western Australia) (10.30 p.m.)—I just want to pick up briefly on the rhetorical questions from the minister. Frankly, you raised some points or you get to some incisive questions when it comes to your criticism of this aspect of the bill in terms of ownership. But my response is to say that that is exactly why our previous amendments were so important. The warrant must be specific. The amendments that we moved in that regard would make it very clear—were they accepted and finally insisted on and were they to become part of the legislation—by specifying exactly what is being searched for. That makes the ownership clear.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.31 p.m.)—Senator Lundy, merely asserting something does not prove the case. What you really have to do is to engage the argument. It is very kind of you to say that this is the minister who has developed these arguments. I am quite happy to tell you, Senator Lundy, that I have a team of advisers who have been working very hard on this bill and they are far more expert on these matters than I am—and, I suspect, maybe than you are, Senator Lundy. Complaints about ad hominem arguments from you do not alter the fact that these are serious points and they just cannot be swept over by you saying, ‘The minister does not understand this,’ and ‘What we are trying to do is make things simple.’ That does not engage the argument at all. This is the point that I was making.

All of us who have been involved—and I was involved in a lot of tax bills that came before this parliament—know that these are highly technical bills and that it can be very difficult to draft amendments to achieve the outcomes that people want. I am relying heavily on expert advice. These are not views that I have pulled out of the air. This is not my area of the portfolio. I claim to have no particular blazing insights in this area so I am working with advisers to work through the bills and to work through your amendments.

I think it is a very disappointing debate. Asserting that you have dealt with the issues does not mean you have, and the Hansard will show time and time again that you have not dealt with the issues that have been raised. This is why I think there have been some unfortunate exchanges from that side of the chamber in which people have been attacked unnecessarily. What I am trying to do is get a bill, for heaven’s sake, that can deal with the problem of spam and which is workable. Time and time again I see Senator Greig in blazing agreement with you and you in blazing agreement with Senator Greig and I make a range of points based on the best advice I have and no-one ever seems to respond to them. And then they get further amendments passed. It is actually a very ordinary way to deal with a bill, I think. It is simply just not good enough.
Question agreed to.

Senator GREIG (Western Australia) (10.34 p.m.)—I move Democrats amendment (4) on sheet 3206:

(4) Schedule 1, item 71, page 24 (lines 20 to 21), omit subsection 547H (3).

This amendment clarifies what we consider to be quite an absurd aspect of the bill. As the Spam (Consequential Amendments) Bill 2003 currently stands an owner may be required to physically be in more than one place at one time during the search of their premises. Proposed new section 547H provides that the occupier of a property is entitled to be present during the search of their property. Subsection 1 states that, if a warrant under section 547D in relation to premises is being executed and the occupier or their representative is present, that person is entitled to observe the search being conducted. Subsection 3, however, states that this section does not prevent two or more areas of the premises being searched at the one time. Well, yes, it does. Unless the two areas in question are adjoining and with no fixed wall or impediment of visibility between them, or unless someone is capable of being in more than one place at one time, that proposition is impossible.

If the occupier is entitled to be present, then the search must only be conducted in such a manner that the occupier can observe what is going on at all times. You cannot give a person an entitlement, or enshrine it in legislation, and then require them to try to physically be in two places at the one time to meet the requirement. So subsection (3), unless I can be convinced to the contrary, has to be omitted and removed.

Senator LUNDY (Australian Capital Territory) (10.36 p.m.)—Labor is not going to support this particular amendment. It requires, as Senator Greig said, ACA inspectors searching a premises under a monitoring compliance warrant and to search those premises one room at a time so that any permitted observer can watch at each stage. Currently, ACA inspectors could conceivably search every room at the same time even if there were enough inspectors, so to our understanding it would be an unusual type of restriction for a search warrant. Furthermore, restricting a search to one room at a time could conceivably give people an opportunity to destroy or remove evidence. This does not take away from the observation the Democrats have made about this feature of the bill, but we have concluded that these issues give us good reason not to support it.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.37 p.m.)—The government will not support this amendment. I will not delay the Senate by going into the detailed reasons unless Senator Greig would like me to do so.

Senator Greig—I would.

Senator KEMP—I thought you were looking a little bit tired, Senator Greig. I wondered whether I could speed the journey but you have called my bluff. The Democrat amendment relates to an occupier’s entitlement to be present during the search. As Senator Greig has said, the bill provides that an occupier of premises that are being searched—or their representative—is entitled to observe the search being conducted. The provision as drafted in the bill makes it clear, however, that this entitlement does not prevent two or more areas of the premises being searched at the same time. That was the point Senator Greig made.

I think the Democrats have perhaps failed to understand that an occupier’s entitlement to observe a search is exactly that: it is an entitlement and not a requirement. An occupier need not be present for a search to be undertaken. They need not be present in multiple different locations for several different
areas to be searched. They can, however, choose to observe the search at whichever of several simultaneous searches are being undertaken. During the debate, Senator Greig suggested that the bill contains a logical absurdity. On the contrary—Senator Greig, I do not want to cause you any offence—the absurdity would exist only if the Democrat amendment were to be accepted. Requiring only one area of premises to be searched at a time would greatly impede the effectiveness of a search and would greatly increase the time being taken. Senator Lundy made some useful points and I regret to tell you, Senator Greig, that I think at last one of these amendments will be lost.

Senator GREIG (Western Australia) (10.39 p.m.)—I will respond briefly. I do not accept the argument from Minister Kemp. I accept that it is an entitlement rather than a right, but if you are going to include the entitlement then it should be fair. It seems to me that it would be perfectly possible for the officers inspecting premises to move about that place with the person in question—or the person under suspicion—so that they could go with them. It is not the case—as I have heard here; I think from Senator Lundy—that officers might be inspecting one room and the suspected person or occupier might be removing, tampering with, or damaging evidence or materials in another room. That ought not to be the case.

It still seems to me that the amendment makes sense. I better understand now that it is an entitlement rather than a right, but, that said, the arguments advanced by both Senator Lundy and Senator Kemp—in terms of officers being away from the person in the building, thereby perhaps allowing that person to remove or damage evidence—are not valid, because the officers could move about the premises with that person. But I accept the other point: it is an entitlement rather than a right. It looks as if on this occasion I do not have support on this amendment.

Question negatived.

Senator GREIG (Western Australia) (10.41 p.m.)—I move Democrat amendment (5) on sheet 3206:

Schedule 1, item 71, page 24 (lines 3 and 4), omit “the occupier of the premises, or the occupier’s employees and agents, if they were available at the time, provided” substitute “the owner of the equipment, or the owner’s employees and agents, were able to or required by law to, at the time, provide”.

This goes to the heart of Democrat recommendation 10 in our minority report to the Senate inquiry. Our recommendation was:

That the Bill be amended to ensure consideration for damage compensation gives regard to whether the owner was consulted, able to give appropriate warning or guidance on the operation of the equipment, and whether they were required to do so by law.

The aim of this amendment is to ensure that the inability of an occupier’s agent to provide information or assistance is not a factor. The fact that an occupier’s agent was present does not mean that they were aware of security arrangements. This section should give regard to whether the owner was consulted, able to give appropriate warning or guidance, and whether they were required to do so by law. If any damage occurs as a result of a failure to properly consult an owner in this manner that owner should be entitled to recover damage compensation as a result. Democrat amendment (5) substitutes relevant words into item 71 of schedule 1 to achieve that objective.

Senator LUNDY (Australian Capital Territory) (10.43 p.m.)—Labor intends to support this amendment. I think it goes to the issue that the minister raised earlier about whether or not a computer is leased or owned and all the rest of it. I think this is one amendment where those questions are rele-
vant. In general, we see this amendment as being consistent with our approach and that is why we will support it. As with most of these provisions, it only makes sense that the owner of the equipment is referred to rather than the occupier of the premises in which the equipment lies. It does raise the question, when we talk about equipment, of the leasing of equipment or the owner of the equipment, because I think the presumption here is that the user of the equipment—that is, the person who has the email account—has the same relationship as an owner of the equipment. We know that is not necessarily the case so some clarification there would be helpful.

The other thought I had about this was in relation to the possibility of compensation relating to both the owner of the equipment and the occupiers, in some circumstances. Whilst the Democrat amendment does not go to that it occurred to Labor that that would be workable as well: the provisions for compensation to be paid following damage to computer equipment that may have occurred during the search and seizure for monitoring compliance could apply to both. But we have determined that we will support this amendment because we think it better targets where that compensation for damage to equipment goes.

This provision of the bill makes an assumption that it is the occupier—the occupier’s employees and so forth—that has that relationship with the equipment, and that is not necessarily the case. I think the drafting of this bill gets confusing for the government because they have commercial businesses in mind, where the business owner might well be the occupier and employees are the other party. Labor are coming from the scenario where we are not talking about a business but about individuals, all of whom could spam. I think these provisions are constructed to apply to a commercial business situation and employees of a business perhaps being guilty of spamming. When you apply these same provisions to the situation where an individual is renting premises from somebody else, and therefore there is the landlord relationship—which is an example we have used throughout this debate—they just do not fit; they do not work.

The bill does not take into account that variety of scenarios, and the Democrat amendment that we are going to support in this case sharpens that up and makes it apply, I think, effectively to both. As I said, there is probably scope for it to cover both occupiers and owners. If you look at it from the owner’s point of view then that would cover the private home based or flat based scenario, but it would also in fact cover that more business or commercial scenario. So I think our amendment covers both scenarios more effectively than the government’s proposition, which only covers one scenario.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.47 p.m.)—The government do not support this amendment, Senator Greig, because we do not believe that it is necessary. The bill as drafted sets out what the courts must consider when determining a reasonable amount of compensation when equipment is damaged as a result of a search. It must have regard to whether the occupier of the premises or their employees and agents, if available, gave appropriate warnings or guidance. This is a non-exclusive list. A court could, for example, choose to take into account any warning or advice provided by the equipment’s owner, as suggested by the Democrat amendment, in determining compensation. The example given in the bill as currently drafted, however, has listed the people most likely to be able to give informed advice about the operation of the equipment concerned. Senator, we do not think it is necessary. We think your
concerns are covered, and so we do not support the amendment.

Question agreed to.

Progress reported.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.49 p.m.)—by leave—

I move:

That Senators Kirk and Collins replace Senators Cook and Hogg, respectively, on the Foreign Affairs, Defence and Trade References Committee for the committee’s inquiry into the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002, during the periods of absence of Senators Cook and Hogg on 28 November 2003.

Question agreed to.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 10.50 p.m., I propose the question:

That the Senate do now adjourn.

Building on IT Strengths Program

Senator HUMPHRIES (Australian Capital Territory) (10.50 p.m.)—I seek leave to have my adjournment speech incorporated into Hansard.

Leave granted.

The speech read as follows—

I rise tonight to talk about a program of huge importance to the future of Australia’s telecommunication and information technology industry. I want to draw attention to the success of the Building on IT Strengths Program, or BITS, as it is better known.

The aim of BITS is to build the strength and competitiveness of the Australian information industries sector by fostering strong commercial linkages with R&D organisations and the creation of innovative information technology and telecommunications industries. This reflects the ineluctable link between Australia’s future economic performance and the so-called “knowledge industries”.

BITS was announced in June 1999 and was allocated $158 million by the Federal Government to June 2004. This money came from the “social bonus” announced as part of the sell off of the second packet of Telstra shares. There are three components of BITS—the Incubator Program; the Advanced Networks Program; and the Intelligent Island Program, the latter promoting an internationally competitive information technology sector in Tasmania.

BITS is a form of industry assistance—I make no attempt to conceal that. The term “industry assistance” has negative connotations among some economists, who do not like governments superseding the market by attempting to pick winners. Indeed, they have a right to be sceptical. In the past, Australia’s industry policy has too often been about “assisting losers” rather than picking winners. I see BITS, however, as an investment in the future rather than a futile attempt to revive irrevocably declining industries.

Economist Fred Argy has written:

“We should make a conscious decision as a nation to create our own comparative advantage in high skill, high wage industries. Industry policy will not do this on its own: it needs, for example, supportive labour market intervention. But industry policy can make an important contribution through R&D subsidies, by offering investment incentives in strategic knowledge intensive sectors with export growth potential, by improving access to export markets, and so on.”

This approach falls under what has been dubbed “new growth theory—which emphasises public investment in education, R&D, innovation and technological change.

Last year, Professor Steven Dowrick released a paper titled Investing in the knowledge economy: implications for Australian economic growth.
Professor Dowrick is an Australian Research Council Senior Fellow and a Professor of Economics at the Australian National University. Reviewing a wide range of empirical studies, Professor Dowrick concluded that investment in research and development was an important source of sustained economic growth.

Professor Dowrick found that private rates of return on R&D expenditures are very high, and that social rates of return are even higher. He stated that Australia is a relatively poor R&D performer and called for a major improvement in this area.

This Government shares these concerns. That is why it introduced the $3 billion Backing Australia’s Ability program in January 2001. BITS, however, fills a gap in the market not covered by Backing Australia’s Ability, and is funded independently of that program.

The Government has yet to decide whether BITS will continue past June 2004 and, if it does, in what form. Much of the attention of stakeholders has been devoted to the Incubator component of BITS, worth $84 million. The goal of the BITS Incubator program is to provide incentives for established IT firms, or “incubators” to invest in start-up companies. Ten incubators have been established, which have provided funding to more than 100 start-up companies.

The Program guidelines allow BITS incubators to provide up to $450,000 of BITS funding in assistance to individual start-up companies. In all cases, the BITS incubators take an equity interest in the firms they are funding but this cannot exceed 45 per cent.

A final evaluation of the BITS Incubator program is due to be handed down shortly. In February this year, a pilot evaluation of the program was released by the Department of Communications, Technology and the Arts. Recently, a report by Econtech, commissioned by the incubators, was handed down. Both reports contained broadly similar findings.

The pilot evaluation, conducted by Allen Consulting, concluded that the BITS Incubator Program has: “proved to be an excellent initiative to assist the growth of ICT businesses, providing unique economic benefits that could not have been achieved in its absence and making a cost-effective contribution to Australia’s innovation program.”

It also stated that the program has provided valuable assistance to start-up firms and that demand for access to BITS Incubators greatly exceeds the number of opportunities available.

The Econtech report found that the BITS Incubator Program performed credibly against the Key Performance Indicators. There was a co-investment rate of 82 cents private investment to every $1 of government funding; 3500 applicants for assistance from the BITS incubators; and over 700 jobs created. Nearly 1000 people are expected to be employed across the program by its conclusion.

According to Econtech, data collected internationally demonstrates that early stage IT companies normally take 5-10 years to become profitable. As these companies become more profitable, they will become less dependent on government funding.

In their studies, both reports took account of the deteriorating economic environment that the BITS Incubator Program has operated in. At the time of inception, the IT business cycle had reached a peak. Since then, we have witnessed the “tech-wreck” and a marked decline in participation in start-ups. For example, first stage investment by venture capitalists fell from a peak of $175 million in the fourth quarter of 2000 to $29 million in the first quarter of 2002.

The Allen Consulting report described the BITS Incubator program as a useful counter-measure to this cyclical downturn and suggested that incubators will get good returns if they wait for the market to regain some strength before selling their investments.

The BITS Program addresses a clear market failure and investment gap. Many venture capitalists, particularly in the IT&C sectors, have made bad investment decisions because they lack expertise in those areas. This problem is labelled “imperfect information” by economists.

The BITS Incubator Program addresses this by helping established IT companies invest in start-up companies. These enterprises are in a much better position than a general financier to assess
the prospects of a potential start-up company. With these established firms on board, an incentive is created for other parties to invest in these projects.

The Incubator located in my electorate, Epicorp, has committed $4.9 million to start-up companies and has raised an additional $5.9 million of private co-investment in the companies. It has invested in 13 companies and has assisted a further 14. Employment in both Epicorp and its incubatees is currently at 78 full time and 16 part time jobs.

In mid June, the CSIRO made an agreement with Epicorp for the commercialisation of WindLab Systems, a company providing new technologies in the wind energy area. This collaboration is the first of its kind under the new CSIRO Commercialisation Executive structure.

The benefit of the incubation and investment activity provided by Epicorp has been recognised and supported by the ACT Government in providing a further $1 million for investment in ACT-based start up companies. In the ACT, the BITS Incubator program has been vital in generating a skills base in cutting edge areas of information technology and communications. This also applies to several other incubators around Australia.

It is crucial to note that the benefits of the program are not just the incubators and incubatees, but also those start-up companies not funded by BITS. This is a result of the spill-over effect or “positive externalities” that investment in knowledge generates.

I make no secret of my support for this program. To pull the plug on BITS risks irrevocably damaging the progress that has been achieved in giving Australia a head start in the industries of the future.

I hope it will continue to be funded, and I hope in doing so many opportunities will be capitalised upon.

Senate adjourned at 10.51 p.m.

DOCUMENTS Tabling

The following documents were tabled by the Clerk:

Superannuation Industry (Supervision) Act—Requests from Minister to APRA, dated 1 July 2002; and 5 [2] and 6 February, and 30 May 2003.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Customs: Southern Supporter**
*(Question No. 1887)*

*Senator Mark Bishop* asked the Minister for Justice and Customs, upon notice, on 1 October 2003:

1. What is the estimated cost of the charter of the *Southern Supporter*.
2. Who owns the vessel; and (b) what is the term of the charter.
3. In the recent pursuit of the Viarsa, when did the *Southern Supporter* first come within sight of the Viarsa.
4. What attempts did the crew of the *Southern Supporter* make to board the Viarsa.
5. On how many occasions and on which days of the chase was the Viarsa ordered to heave to or change direction.
6. (a) What arms are carried on board the *Southern Supporter*; and (b) were they deployed for use during the chase.
7. What assistance was sought and given by the Governments of France, South Africa and Great Britain in apprehending the Viarsa.
8. Will the Australian Government be asked to reimburse those governments for assisting the *Southern Supporter*; if so, what sum is estimated for each.
9. (a) What is the estimated cost of sending Royal Australian Naval personnel to sail the Viarsa 1 back to Australia; and (b) how will that cost be funded.
10. Is any consideration being given to installing heavy armament on the *Southern Supporter* to facilitate its interception power; if not, why not.

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

1. The charter costs of the *Southern Supporter* for the recent patrol are in the order of $1.7 million.
2. (a) The vessel *Southern Supporter* is owned by P&O Maritime Services Pty Ltd. (b) The term of the contract is for the conduct of one Southern Ocean patrol with an option of a further three such patrols. The contract runs from July 2003 to December 2004.
3. The *Southern Supporter* first came within sight of the Viarsa 1 on 7 August 2003.
4. As this matter is the subject of legal proceedings it would be inappropriate to comment at this stage.
5. As this matter is the subject of legal proceedings it would be inappropriate to comment at this stage.
6. (a) This is an operational matter and it is inappropriate to comment. (6) (b) This is an operational matter and it is inappropriate to comment.
7. Although an offer was made, the French government was not in a position to offer practical on the water assistance during the pursuit of Viarsa 1. The Government of Great Britain provided the Fisheries Patrol vessel *DORADA*, based in Falklands Islands, to assist in the apprehension of Viarsa 1. The Government of South Africa provided assistance in the form of armed Fisheries Officers and the Fisheries Patrol vessel *AGULHAS*. The South African Navy also provided two escort vessels during the refuelling and reprovisioning of both *Southern Supporter* and Viarsa 1 off Cape Town. Customs also leased a South African registered tug, *John Ross*, to assist in the transport of armed officers and with the apprehension of Viarsa 1.
Australia will be requested to reimburse those governments that provided assistance. Estimated amounts are as follows:

- Great Britain - $A167,000; and
- South Africa - $A1,542,000

(a) This question should be referred to the Minister for Defence. (b) This question should be referred to the Minister for Defence.

There has not been any consideration given to installing heavy armament in the Southern Supporter to facilitate its interception power.

Health and Ageing: Aged Care Places  
(Question No. 2027)

Senator Forshaw asked the Minister representing the Minister for Ageing, upon notice, on 15 September 2003:

(1) How many allocated aged care places were available as at 30 June 2003 in each state and territory for: (a) high care residential; (b) low care residential; (c) and community aged care packages.

(2) How many operational places were available as at 30 June 2003 in each state and territory for: (a) high care residential; (b) low care residential; and (c) community aged care packages.

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

Information relevant to the Senator’s request is available on pages 119 to 121 of the 2002-03 Annual Report of the Department of Health and Ageing.

Foreign Affairs and Trade: Institute of Public Affairs  
(Question No. 2040)

Senator O’Brien asked the Minister representing the Minister for Foreign Affairs, 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 was 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 Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable member’s question:

No.

Defence: Anti-Vehicle Mines  
(Question No. 2333)

Senator Bartlett asked the Minister for Defence, upon notice, on 29 October 2003:
(1) Does the Government support restrictions on the production, storage and use of anti-vehicle mines; if so (a) what level of restrictions does it support; and (b) are there any plans to support wider restrictions in the near future.

(2) What steps, if any, has the Government taken to express this position at an international level through multilateral forums, and, in particular through the ongoing dialogue in relation to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, or in its bilateral communications with other states.

(3) Does the Government support a ban on anti-vehicle mines which use mechanisms such as tripwires, tilt rods or low pressure thresholds that can be set off by a person; if not, why is such a ban not supported.

(4) Does the Government believe that anti-vehicle mines have military utility; if not, why does the Government rely upon to support that belief.

(5) Does the Government support work towards a global ban on anti-vehicle mines.

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

(1) Yes. (a) The Government supports global restrictions on anti-vehicle mines that ensure that such mines are detectable by commonly available mine detection equipment, and that remotely deployable anti-vehicle mines are engineered to self-destruct or self-deactivate within a set timeframe. (b) No.

(2) The Government has strongly supported the Certain Conventional Weapons Convention. As President of the Second Review Conference of the Convention held in December 2001, Australia worked to establish a Group of Experts in 2002, which continued to meet in 2003. Australia plays an active role in the work of the Experts’ Group, part of which has been to examine issues regarding anti-vehicle mines. The Government has agreed to Australia joining a number of other countries co-sponsoring a United States proposal covering detectability, self-neutralisation and self-deactivation.

(3) Yes, the Government is committed to the provisions of the Ottawa Convention and Protocol II to the Certain Conventional Weapon Convention on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices. The Government supports a global ban on mines that are designed specifically to explode by the presence, proximity or contact of a person, and further condemns the indiscriminate use of such weapons. But the Government recognises the utility of various forms of anti-handling devices for anti-vehicle mines that might use such mechanisms. These devices provide a legitimate means of preventing enemy forces deliberately interfering with mines, which, if not protected, might subsequently be used by those forces.

(4) Yes. Anti-vehicle mines have legitimate military utility as obstacles to deny enemy mobility. Individual mines and minefields achieve this through a combination of physical effects that impede movement by slowing, obstructing, immobilising or destroying the target; and the psychological effect of fear and uncertainty experienced by an adversary encountering or attempting to negotiate the obstacle. Historical evidence of the military utility of anti-vehicle mines is extensive and includes examples from the Second World War and, more recently, the 1991 Gulf War.

(5) No.
(2) Are any of the anti-vehicle landmines that Australia possesses fitted with anti-handling devices.

(3) When will Australia’s existing stock of anti-vehicle landmines expire in terms of operational use and what plans are in place to replace them.

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

(1) The number and type of mines are classified.

(2) No.

(3) Australia’s current stocks of anti-tank mines are used only for training purposes. Options for a replacement capability are being pursued.